



HAWAII STATE ETHICS COMMISSION

State of Hawaii • Bishop Square, 1001 Bishop Street, ASB Tower 970 • Honolulu, Hawaii 96813

INFORMAL ADVISORY OPINION NO. 2012-3

The Hawaii State Ethics Commission (“Commission”) issued a charge (“Charge”) against John Doe (“Doe”), a former state employee,¹ for violations of the post-employment provisions of the State Ethics Code, Hawaii Revised Statutes (“HRS”) chapter 84. The Charge alleged that Doe represented a private business in certain contracts with his former state agency, less than twelve months after his separation from state employment, in violation of HRS section 84-18(c). Doe filed an answer to the Charge which admitted, in part, and denied, in part, the allegations contained in the Charge. Doe denied knowing that his actions may have violated the statute; however, he did not contest certain of the material allegations contained in the Charge.

Doe agreed to, and paid, an administrative penalty of \$1,000 to the State’s general fund, and as part of the agreed upon resolution of the Charge, the Commission issued Doe an informal advisory opinion, pursuant to HRS section 84-31(b).² The informal advisory opinion is summarized herein.

I. ALLEGED FACTS

A. Doe’s State Employment

From March 2003 until April 30, 2011, Doe was employed on a part-time basis as a theater technician by a state agency responsible for and involved in community theater productions (“Agency”).

B. Doe’s Representation of the Production Company

Doe was also the manager and the owner of a private business which provided entertainment production services, including lighting and audio services (“Production Company”).

¹ HRS section 84-31(f) provides that the Commission shall publish yearly summaries of decisions, advisory opinions, and informal advisory opinions, with sufficient deletions in the summaries to prevent disclosing the identities of persons involved in the decisions or opinions where the identity of such persons is not otherwise a matter of public record under HRS Chapter 84.

² Doe was represented by private legal counsel in his Answer to the Charge and in reaching the agreed upon resolution of the Charge.

In August 2011, about three and a half months after Doe left state employment, the Agency electronically posted two requests for quotations (“RFQs”) to provide equipment and services for a community theater production (“Fall Show”). Doe, on behalf of the Production Company, submitted electronic bids and signed written quotations in response to the two RFQs. The Agency subsequently selected the Production Company to provide the equipment and the services described in the RFQs.

Prior to the first performance, the Agency requested and Doe, on behalf of the Production Company, agreed to supply certain additional production-related items. The Agency also added additional performances and asked the Production Company to provide the equipment and services for the additional shows, to which Doe, on behalf of the Production Company, agreed.

C. The Charge and Doe’s Answer to the Charge

On March 21, 2012, the State Ethics Commission issued the Charge, No. 12-Cg-2, against Doe. The Charge alleged that Doe’s actions with respect to submitting the bids and written quotations, and negotiating and agreeing to provide the equipment and services for the Fall Show, violated HRS section 84-18(c), the post employment section of the State Ethics Code. HRS section 84-18(c) prohibits a former employee, within twelve months of termination of state employment, from representing a person or business for compensation on matters in which the employee participated or on matters involving official action by the agency or subdivision with which the employee served.

In answer to the Charge, Doe admitted submitting the electronic bids and written quotations on behalf of the Production Company. He further admitted that he acted on behalf of and represented the Production Company in negotiating and agreeing to provide the additional production-related items and to provide the services and equipment for the additional performances.

However, Doe generally denied violating HRS section 18(c). Doe asserted that, as to both bids, he inquired and/or conferred numerous times with the Agency, and was never informed that his participation on behalf of the Production Company was improper or otherwise an issue.

II. APPLICATION OF THE STATE ETHICS CODE

HRS section 84-18(c) prohibits a former employee from representing others, for a fee or other consideration, on certain matters within twelve months after leaving state employment. The purpose of the post-employment law, generally, is to provide a “cooling off” period after an employee leaves state service so that he or she cannot “profit” from

relationships made and influences gained as an employee by being paid to represent others before his or her former agency. Specifically, HRS section 84-18(c) provides:

No former employee, within twelve months after termination of the former employee's employment, shall represent any person or business for a fee or other consideration, on matters in which the former employee participated as an employee or on matters involving official action by the particular state agency or subdivision thereof with which the former employee had actually served.

HRS section 84-18(c), contains two prohibitions. First, it prohibits a former employee, for a twelve month period after leaving state employment, from being paid to represent³ a private business on matters in which the former employee participated while a state employee. Second, it prohibits a former employee, for a twelve month period after leaving state employment, from being paid to represent a private business on matters that involve official action⁴ by the state agency or subdivision thereof with which the former employee served.

In this case, based on the allegations in the Charge and Doe's admissions as to certain of those allegations, the Commission reasonably believed that Doe violated the second provision of HRS section 84-18(c), i.e., he represented the Production Company, within twelve months of leaving state employment, on matters which involved and required official action by the Agency, the state agency Doe formerly served.⁵

³ The term, "represent" means "to engage in direct communication on behalf of any person or business with a legislator, a legislative employee, a particular state agency or subdivision thereof, or their employees." HRS section 84-18(f).

⁴ The term, "official action" means "a decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority." HRS section 84-3.

⁵ Based upon its investigation, the Commission does not believe that Doe, while an employee, was involved or otherwise participated in the RFQs or the matters which the Production Company was subsequently contracted to provide.

Doe was an employee, as defined by the State Ethics Code,⁶ until he left the Agency on April 30, 2011. After leaving the Agency, Doe was subject to and required to comply with the post-employment law applicable to former employees. Approximately three and a half months after leaving state employment, Doe represented the Production Company in its efforts to secure the contracts to provide the lighting, special effects, and audio equipment for the Fall Show, as well as to provide the labor to operate the equipment. Specifically, he submitted the Production Company's electronic bids in response to the RFQs and confirmed the bids in writing; he negotiated directly with the Agency and eventually agreed that the Production Company would provide additional production-related equipment; and, on behalf of the Production Company, he agreed to provide the equipment and the services for the additional performances.

It is also clear that the Agency was involved in and took official action relating to Doe and the Production Company by, among other things, procuring the Production Company's equipment and services; requesting the Production Company to provide the additional equipment and agreeing to the cost for that equipment; and extending the Production Company's services for the additional performances. Doe acknowledged that he was paid a salary by the Production Company. Doe also had an ownership interest in the Production Company. Therefore, for purposes of HRS section 18(c), Doe represented the Production Company "for a fee or other consideration."

In light of the foregoing, the Commission had reason to believe that Doe violated the second provision of HRS section 84-18(c). Doe's ignorance of the State Ethics Code's post-employment law did not excuse or otherwise justify his actions.

The Commission, however, noted that the Agency appeared to also have been unaware of the post-employment provisions of the State Ethics Code and did not object to or otherwise inform Doe that his participation on behalf of the Production Company less than 12 months after leaving the Agency may violate the post-employment provisions of the State Ethics Code. The Commission further was unaware of any evidence suggesting that Doe attempted to use, or unfairly benefited, from his relationships or connections with the Agency.

⁶ HRS section 84-3.

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The Commission believed that, in consideration of the circumstances presented herein, the negotiated resolution of the Charge by way of payment of an administrative penalty in the amount of \$1,000 and an Informal Advisory Opinion was reasonable and in the public interest.

Dated: Honolulu, Hawaii, October 17, 2012.

HAWAII STATE ETHICS COMMISSION

Maria J. Sullivan, Esq., Chairperson
Cassandra J. Leolani Abdul, Vice Chairperson
Les M. Knudsen, Commissioner*
Susan N. DeGuzman, Commissioner

Note: There was a vacancy on the Commission when this Informal Advisory Opinion was considered.

* Commissioner Knudsen dissented as to the amount of the fine.