



# HAWAII STATE ETHICS COMMISSION

State of Hawai'i · Bishop Square, 1001 Bishop Street, ASB Tower 970 · Honolulu, Hawai'i 96813

## ADVISORY OPINION NO. 2024-1

February 21, 2024

A State Agency (“Agency”) requested an advisory opinion regarding whether it may hire former employees from a staffing agency during their one-year post-employment period. As discussed below, the Commission believes that the post-employment law, Hawai'i Revised Statutes (“HRS”) § 84-18(c) prohibits former employees from representing a “business” before their former state agency during their one-year post-employment period. So long as the staffing agencies are operating solely to facilitate the former employee’s work on behalf of the State, the Commission does not believe that the former employees are violating the post-employment law by communicating or interacting with the Agency’s personnel.

### I. Background

The Agency provides specialized services to clients and employs highly skilled personnel to deliver those services. The Agency also employs temporary employees from staffing agencies to meet its employment needs, which is ordinary practice in the Agency’s field. The temporary employees are employed on an hourly basis and are typically contracted through a staffing agency, which assists the employee in obtaining work for a fee, for instance by processing paperwork, facilitating payments, or arranging travel.

### II. Analysis

As state employees, Agency personnel are subject to the State Ethics Code.<sup>1</sup> Once they leave state employment, they are subject to the post-employment law, HRS § 84-18(c),<sup>2</sup> which prohibits former state employees from representing a business for

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<sup>1</sup> See HRS § 84-2 (“This chapter shall apply to every nominated, appointed, or elected officer, employee, and candidate to elected office of the State and for election to the constitutional convention . . .”).

<sup>2</sup> HRS § 84-18 provides in relevant part:

(c) No former employee, within twelve months after termination of the former employee's employment, shall

pay before their former state agency or on matters in which they participated as a state employee for one year. “Representing” a business<sup>3</sup> includes engaging “in direct communication on behalf of any person or business” with a state agency or its employees. Typically, employees who leave state service are not permitted to communicate with their former state agencies on behalf of their private employers during their one-year post-employment period.

An exception to the post-employment law allows state employees to provide their personal services “to act on a matter on behalf of the state” even within the one-year “cooling off” period. See HRS § 84-18(d); see supra n.2. The Commission has previously held that work performed under this exception must generally be done through personal service contracts, rather than through a larger company. See Adv. Op. No. 2021-2 at 3 n.4, available at <https://files.hawaii.gov/ethics/advice/AO2021-2.pdf>.

The overarching intent of a post-employment law is to ensure fairness and competition and prevent favoritism or conflicts of interest that undermine public trust in government operations. There are circumstances, however, where a strict application of the law may inadvertently hinder efficient and effective administrative processes and sabotage a state purpose. For example, in Advisory Opinion No. 2021-2, the Commission considered whether former employees working at a non-profit run by a state agency could interact with their former department during the post-employment period. The Commission concluded that they could because “although the Non-Profit is technically defined as a ‘business’ under HRS § 84-3, it is essentially an extension of the Agency and is controlled by the Agency.” Id. at 4. The Commission also noted it had

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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. This section shall not apply to a former task force member who, but for service as a task force member, would not be considered an employee.

(d) This section shall not prohibit any agency from contracting with a former legislator or employee to act on a matter on behalf of the State within the period of limitations stated herein, and shall not prevent such legislator or employee from appearing before any agency in relation to such employment.

<sup>3</sup> HRS § 84-3 defines a “business” as including “a corporation, a partnership, a sole proprietorship, a trust or foundation, or any other individual or organization carrying on a business, whether or not operated for profit.” (Emphasis added.)

previously stated that in “cases where the functions of a nonprofit organization are so closely entwined with a particular state agency that the two work hand-in-hand to further the state objective, the Commission has concluded that sections 84-18(b) and (c) should not apply, since the non-profit organization does not constitute a ‘business’ as the Commission believes that term was meant to be interpreted by the Legislature.”

Likewise, the Commission believes that the post-employment law would not prohibit a former employee from assisting their former agency for pay on behalf of a staffing agency if the agency is solely facilitating a transaction between a former employee and their state agency as contemplated by HRS § 84-18(d). A former state employee may not have the interest or capacity to address human resource issues, such as withholding or calculating taxes owed, insurance coverage, or other logistical details involved in entering into a contractual relationship with the State of Hawai‘i. In this case, it serves a public interest to allow a third party to navigate these challenges on behalf of a former state employee.

Where a private business is not directly profiting from the State of Hawai‘i, the risk of unethical behavior diminishes. The primary motivation for the private business’s involvement is to offer a service to the individual employee, and not to gain undue advantage from the employee’s relationship with a state agency.

This interpretation of the post-employment law is limited to situations where the State agency is specifically trying to hire a former employee on behalf of the State and the staffing agency is facilitating the relationship by addressing administrative and contractual issues. It would not apply where the staffing agency is competing for additional business with the State of Hawai‘i and is using former state employees as a means for profit. For instance, the Commission does not believe that the post-employment law would permit former employees to interact with their former state agency where a staffing agency persuaded several employees to terminate their state employment and negotiate with their former agency for increased pay. Likewise, the post-employment law would not permit an employee to interact with his or her former state agency if employed by a staffing agency that retained control over the employee’s employment such that it could dictate the duties the employee performs. The staffing agency or other entity must only facilitate the employee’s employment on behalf of the State.

A determination of whether the staffing agency is providing a service to address human resource issues or profiting from a former state employee is a fact-specific question, dependent on each situation, and likely contingent on the going rate for comparable individual employees and the cost of the services offered.

### **III. Conclusion**

For the reasons discussed above, the Commission believes that the post-employment law does not bar employees from communicating with their former state agency if staffing agencies are simply facilitating work on behalf of the State by running payroll and performing other administrative tasks, rather than operating as a traditional employer. In that case, HRS § 84-18(d) applies and the former employees may communicate with their former state agency during the one-year post-employment period. The Commission thanks the Agency for seeking guidance on this matter.

Dated: Honolulu, Hawai'i, February 21, 2024.

HAWAI'I STATE ETHICS COMMISSION

Wesley F. Fong, Chair  
Beverley Tobias, Vice Chair  
Robert Hong, Commissioner  
Cynthia Thielen, Commissioner

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