



HAWAII STATE ETHICS COMMISSION

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State Ethics Commission Staff Recommendation **to Reconsider Current Interpretation** **of Hawaii Revised Statutes Sections 84-14(d), 84-18(b), and 84-18(c)**

December 11, 2014

Hawaii Revised Statutes (“HRS”) section 84-14(d) prohibits legislators and employees from assisting or representing “any person or business” for compensation on matters in which they have participated or will participate in their state capacities, or on matters before their own state agencies. HRS section 84-14(d) is part of the conflicts of interest section of the State Ethics Code and is intended to prevent state legislators and employees from using influence derived from relationships they have established in state government to personally benefit anyone. HRS sections 84-18(b) and 84-18(c), part of the post employment section of the State Ethics Code, set forth similar prohibitions that apply to former legislators and employees.

The plain meaning of these laws appears to be that legislators, employees, former legislators, and former employees may not assist and/or represent for compensation themselves, their own businesses, other persons, or other businesses on certain prohibited matters. This meaning is clear from the statutory language, which expressly prohibits the assistance and/or representation of “any person or business” (emphasis added). Notwithstanding this, however, the State Ethics Commission (“Commission”) has in the past created exceptions to the law in certain situations.

The Commission currently interprets the phrase “any person or business” in HRS sections 84-14(d), 84-18(b), and 84-18(c) to not include the legislator, employee, former legislator, or former employee. The Commission currently construes the phrase to generally mean only a third party. For example, under the current interpretation, an employee cannot assist or represent someone else or someone else’s business for compensation in contracting with the employee’s state agency, but an employee is allowed to assist or represent himself or his own business in doing so.

The Commission’s current interpretation of the law does not appear consistent with the plain meaning of the law or the underlying purpose of the law. The Commission’s staff (“Staff”) therefore recommends that the Commission amend its interpretation of the law by determining that “any person or business” also includes the legislator, employee, former legislator, or former employee. In other words, under the revised interpretation, the law would prohibit a legislator or employee from assisting or representing himself or herself or any business for compensation to secure passage of a bill or to obtain a contract, claim or other transaction or proposal in which he or she

has participated or will participate as a legislator or employee; and would prohibit a legislator or employee from assisting or representing himself or herself or any business for compensation on a bill, contract, claim, or other transaction or proposal before the Legislature or agency of which the legislator or employee is an employee or legislator.

Under the amended interpretation, the law would also prohibit a former legislator, within 12 months after leaving employment, from representing himself or herself or any business for compensation on matters in which the former legislator participated as a legislator; or on matters involving official action by the Legislature. The law similarly would prohibit a former employee, within 12 months after leaving employment, from representing himself or herself or any business for compensation on matters in which the former employee participated as an employee; or on matters involving official action by the employee's former agency or subdivision thereof. However, as discussed later, a former legislator or employee on his or her own behalf may enter into a contract with any state agency to act on a matter "on behalf of the State."

This revised interpretation will impact certain types of contracts and transactions that heretofore were not determined to be prohibited under the State Ethics Code. Under the revised interpretation, such contracts and transactions are likely to be prohibited. Nevertheless, Staff believes the revised interpretation is more in keeping with the letter and spirit of the law, and the Commission's responsibility to administer the law as written. If the application of the law to certain situations is unfair or unreasonable, it is up to the Legislature and not the Commission to amend the law.

I. The State Ethics Code

A. HRS section 84-14(d)

HRS section 84-14(d) prohibits a legislator or employee from:

- assisting or representing
- any person or business
- for compensation

(1) to secure passage of a bill or to obtain a contract, claim, or other transaction, or proposal in which he or she has participated or will participate as a legislator or employee; or

(2) on a bill, contract, claim, or other transaction or proposal before the Legislature or agency of which the legislator or employee is an employee or legislator.¹

B. HRS sections 84-18(b) and 84-18(c)

HRS section 84-18(b) prohibits a former legislator, within twelve months after termination of his or her employment, from:

- representing
- any person or business
- for compensation

(1) on the same matters in which he or she participated as a legislator; or

(2) on matters involving official action² by the Legislature.³

HRS section 84-18(c) similarly prohibits a former employee, within twelve months after termination of his or her employment, from:

- representing
- any person or business
- for compensation

¹ HRS section 84-14(d) states:

No legislator or employee shall assist any person or business or act in a representative capacity for a fee or other compensation to secure passage of a bill or to obtain a contract, claim, or other transaction or proposal in which the legislator or employee has participated or will participate as a legislator or employee, nor shall the legislator or employee assist any person or business or act in a representative capacity for a fee or other compensation on such bill, contract, claim, or other transaction or proposal before the legislature or agency of which the legislator or employee is an employee or legislator.

² The term “official action” is defined as “a decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority.” HRS section 84-3.

³ HRS section 84-18(b) states:

(b) No former legislator, within twelve months after termination of the former legislator's employment, shall represent any person or business for a fee or other consideration, on matters in which the former legislator participated as a legislator or on matters involving official action by the legislature.

- (1) on the same matters in which he or she participated as an employee; or
- (2) on matters involving official action by the agency or subdivision thereof that he or she formerly served.⁴

There is an exception for state contracts awarded to former legislators and former employees. HRS section 84-18(d) states that a state agency shall not be prohibited from contracting with a former legislator or employee to act on a matter “on behalf of the State,” and does not prohibit a former legislator or employee from appearing before any agency in relation to such employment.⁵ In that situation, the agency need not wait 12 months before contracting with the former employee. For example, immediately after an employee retires, his former state agency may contract with him to allow him to finish a project for the agency that he was working on before he retired.

For purposes of the State Ethics Code, 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.⁶ For example, an employee who is privately employed with a company as a sales representative is prohibited from negotiating a sale with his state agency on behalf of his private employer.

The term “assist” includes activities intended to provide help on substantive matters involving official action (i.e., individual judgment or discretion) by a state agency.⁷ Assistance does not necessarily involve engaging in direct communication with a state agency. For example, a state employee is prohibited from being hired as

⁴ HRS section 84-18(c) states:

(c) 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. 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.

⁵ HRS section 84-18(d) states:

(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.

⁶ HRS section 84-18(f). The term “represent” is defined in the section of the State Ethics Code that applies to former legislators and employees. In the context of HRS section 84-14(d), the Commission has construed the term in essentially the same way for current legislators and employees.

⁷ See, e.g., Advisory Opinion No. 86-10 and Advisory Opinion No. 87-2.

a consultant by a private company to help the company from “behind the scenes” to pass an evaluation conducted by the employee’s state agency, where the agency’s evaluation of the company involves the exercise of personal judgment or other discretionary action.

The State Ethics Code is applied to prohibit activities that are intended to influence, or that one can reasonably believe might influence, either a matter in which an individual participated as an employee, or official action to be taken by an agency or subdivision thereof that he or she served. The State Ethics Code does not prohibit “assistance” or “representation” on matters involving ministerial action by a state agency.⁸

The term “compensation” means “any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by oneself or another.”⁹

II. Current Interpretation of “any person or business”

The phrase “any person or business” appears in HRS sections 84-14(d), 84-18(b), and 84-18(c). The Commission currently interprets the phrase “any person or business” to mean a third party. Stated differently, the Commission does not interpret the law to prohibit an individual from assisting and/or representing himself or herself before his or her state agency or former agency for compensation regarding contracts and other transactions. For example, under the current interpretation of the law, an employee, on behalf of himself, may enter into a contract with his state agency to perform computer consulting services that are beyond the scope of his normal state duties. However, an employee, on behalf of a transportation company, may not negotiate a contract with his state agency to provide bus services to the agency.

The Commission also has interpreted the phrase “any person or business” to not include an employee’s sole proprietorship business, where the contract was viewed, in essence, as a contract for an individual’s “personal services.”¹⁰ In Advisory Opinion No. 87-4, the Commission held that an employee who owned and operated a consulting business as a sole proprietorship with no other employees was not prohibited from contracting to provide personal services to his state agency through his consulting business. In that case, the employee was to personally perform all work in connection

⁸ See Advisory Opinion No. 87-2.

⁹ HRS section 84-3.

¹⁰ The Commission has determined whether a contract is in essence a “personal services contract” on a case by case basis, by considering a number of factors, including: the nature of the services to be provided; the type of business entity (e.g., sole proprietorship, limited liability company, partnership, corporation and whether there are others in the business who will benefit from the contract); and whether the contract involves the services of only one individual or whether others will participate in the contract.

with the consulting contract and would not be assisting or representing any person or business other than himself in contracting with his agency. The Commission determined that, given those circumstances, a consulting contract between the employee's agency and his sole proprietorship was in essence a contract for the employee's personal services. The Commission stated that it did not believe that HRS section 84-14(d) was intended to prohibit personal services contracts between a state agency and its employees.

The Commission also has not strictly applied the State Ethics Code to prohibit a state agency from contracting with a business entity consisting of an employee of the agency and others, where the contract provides for that particular employee's services and not the services of the business entity or others in the business entity; where the services sought from the employee are unique; and/or where the agency must contract with the business entity for administrative reasons only.¹¹

In addition, the Commission has created "exceptions" to allow certain types of state contracts with third party business entities where the Commission believed that the State would benefit from the arrangement. In Advisory Opinion No. 92-2, the Commission held that the State Ethics Code did not per se prohibit an employee from assisting or representing a business entity on a matter in which he participated before his own state agency, so long as the State's interest was adequately protected and the State stood to benefit from the arrangement. In that case, employees submitted project proposals to their state agency to qualify for a grant to research a technology project of their choice. The projects were intended to transfer technologies from the research level to private industry. Private sector matching funds, joint venturing, or partnership with industry and/or government was a specific requirement demanded of the grant proposal. Due to private sector reluctance, the employees formed their own private companies in order to provide a vehicle to meet grant requirements for matching funds from private enterprises, a practice that was encouraged and facilitated by their state agency.

The Commission recognized that the employees' private companies stood to benefit from these joint ventures only if the employees were successful in producing a patentable invention that lead to a license being awarded to the employee's company for marketing purposes, followed by successful marketing of the product. However, such a license could only be awarded if a patent issued to the State and with that patent, half of the royalties and any licensing revenues it produced. The Commission concluded that with adequate administrative safeguards in place, the private company in which the researcher held a financial interest could not benefit from the employee's official action unless the State did, as well. The Commission held that, were it not for the fact that the State through the state agency stood to benefit from the projects as a joint venturer, the State Ethics Code would prohibit the employees from, among other things, assisting those private companies or representing them for compensation in

¹¹ See, e.g., Advisory Opinion No. 201 (Commission held that the post employment provisions did not prohibit a state agency from contracting with a nonprofit institution to secure the consulting services of a former employee).

matters in which the employees participated, and from so assisting them before their own state agency.

III. Recommended Revised Interpretation of “any person or business”

Under the general principles of statutory construction, the fundamental starting point is the language of the statute itself.¹² The Commission has generally construed the phrase “any person or business” in HRS sections 84-14(d), 84-18(b), and 84-18(c) to mean a third party only. However, under a plain reading, the language does not exclude a legislator, employee, former legislator, or former employee. The term “person” ordinarily means an individual.¹³ The term “business” is defined in the State Ethics Code as “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.”¹⁴

Staff submits that the plain meaning of the phrase “any person or business” in HRS sections 84-14(d), 84-18(b), and 84-18(c) also includes a legislator, employee, former legislator, or former employee. Where the language of a statute is plain and unambiguous, effect should be given to the law according to its plain and obvious meaning.¹⁵ Moreover, the revised interpretation of the phrase “any person or business” to also include the legislator, employee, former legislator, or former employee is consistent with the purpose of HRS sections 84-14(d), 84-18(b), and 84-18(c); i.e., to prevent legislators, employees, former legislators, and former employees from using influence or inside knowledge derived from state employment to benefit themselves or others.

In situations such as those described above, where a strict application of the law perhaps would have led to an “unintended” or even “unfair” outcome, the Commission appeared to have created “exceptions” in order to achieve what it may have believed was a more “appropriate” result. Notwithstanding the Commission’s efforts to avoid what might be perceived as an unreasonable application of the law, the Commission cannot make exceptions without the statutory authority to do so.

The Hawaii State Legislature is vested with the authority to enact, amend, and repeal laws in the Hawaii Revised Statutes. The Legislature enacted the State Ethics Code, Chapter 84, Hawaii Revised Statutes. The Commission is charged with

¹² See Konno v. Cnty of Hawaii, 85 Haw. 61 (1997).

¹³ Webster’s New World College Dictionary 1008 (3d ed. 1988).

¹⁴ HRS section 84-3.

¹⁵ See Univ. of Haw. v. Leahi Fdn. 56 Haw. 404 (1975).

administering and enforcing the State Ethics Code as written by the Legislature and does not have the power to “legislate” by making “exceptions” to the law.¹⁶

The Commission derives its authority to administer and enforce the State Ethics Code from the Hawaii State Constitution, which provides that the Legislature shall adopt a code of ethics which shall apply to appointed and elected state officers and employees, and that the code of ethics shall be administered by Commission.¹⁷ Pursuant to this constitutional mandate, the Legislature adopted the State Ethics Code. The Preamble to the State Ethics Code makes clear the respective duties of the Legislature and the Commission:

The purpose of this chapter is to . . . prescribe a code of ethics for elected officers and public employees of the State as mandated by the people of the State of Hawaii in the Hawaii Constitution, Article XIV . . . and . . . establish an ethics commission which will administer the [code] of ethics . . . adopted by . . . the legislature and render advisory opinions and enforce the provisions of this law”¹⁸

Thus it is clear in both the Hawaii State Constitution and the State Ethics Code that the Legislature is responsible for adopting the code of ethics for state officers and employees and the Commission is responsible for administering and enforcing the ethics code adopted by the Legislature. The Commission’s duties do not include creating or amending provisions of the State Ethics Code; the authority to legislate rests only with the Legislature.

The Commission in the past appears to have created “exceptions” to the law in certain situations to allow employees or former employees to assist and/or represent themselves or others before their state agencies or former agencies, respectively, where such assistance and/or representation was expressly prohibited under the State Ethics Code. In those situations, the Commission appears to have engaged in “legislating.” However, the Commission cannot impose or substitute its judgment as that of the Legislature’s without the statutory authority to do so.

Staff therefore recommends that the Commission revise its interpretation of the phrase “any person or business” to also include the legislator, employee, former legislator, or former employee.

¹⁶ See A. C. Chock, Ltd. v. Kaneshiro, 51 Haw. 87, 93 (1969) (court does not have statutory authority to usurp legislative power and enter into legislative field).

¹⁷ Haw. Const., art. XIV.

¹⁸ HRS Chapter 84 Preamble.

A. HRS section 84-14(d)

Under the revised interpretation, HRS section 84-14(d) would prohibit a legislator or employee from assisting or representing himself or herself or any business (e.g., a sole proprietorship solely owned and operated by the legislator or employee; the legislator's or employee's own limited liability company; or any other business entity) for compensation to secure passage of a bill or to obtain a contract, claim, or other transaction or proposal in which he or she has participated or will participate as a legislator or employee; and would prohibit a legislator or employee from assisting or representing himself or herself or any business on a bill, contract, claim, or other transaction or proposal before the Legislature or agency of which the legislator or employee is an employee or legislator.

In situations where an individual who owns and operates his or her own business submits a contract proposal to his or her state agency on behalf of the business, the individual's compensation derives from the financial benefit to be received by the individual from the agency if awarded the contract.

1. Revised Interpretation Would Bar "Personal Services" Contracts Between a State Agency and Employees of the Agency

In effect, the revised interpretation of HRS section 84-14(d), would bar a "personal services" contract between a state agency and an employee of the agency, and other types of contracts between a state agency and businesses that heretofore were considered for all intents and purposes to be contracts for the "personal services" of an employee of the agency. An employee's performance of a contract with his or her agency may be viewed as "assisting" or "representing" himself or herself before the agency because the agency must oversee and evaluate the employee's contract performance, which necessarily entails official/discretionary action on the part of the agency.

While the Commission in the past has stated it did not believe that HRS section 84-14(d) was intended to prohibit "personal services" contracts between a state agency and its employees, the Commission should keep in mind that the purpose of the law is to ensure that relationships made and influence gained as an employee are not used to unduly benefit oneself or others; i.e., the law is intended to prevent state employees from having an "inside track" with their agencies to further financial opportunities. Moreover, an employee's representation of only himself or herself (rather than a third party) may do more to undermine the public trust in that the employee stands to reap the full benefit of the influence he or she has with the agency and the inside knowledge he or she has as an employee of the agency.

Staff also notes that the State Ethics Code provides an exception to HRS sections 84-18(b) and 84-18(c), applicable to former legislators and employees. HRS section 84-18(d) specifically allows any state agency to contract with a former legislator

or employee to act on a matter “on behalf of the State.” Thus, HRS section 84-18(d) allows a state agency to contract with one of its former employees to act on a matter on behalf of the agency. However, the State Ethics Code does not contain any similar provision applicable to current employees that specifically allows a state agency to contract with one of its own employees.

Generally, a statute should be interpreted so that no sentence, clause, or word is superfluous or insignificant, to avoid a construction that implies that the Legislature was ignorant of the language it employed.¹⁹ The Legislature’s inclusion of HRS section 84-18(d) as an exception applicable to former employees indicates that, without this exception, the law prohibits a state agency from awarding a contract to one of its former employees. Any other interpretation of the law would render HRS section 84-18(d) superfluous. There is no similar statutory exception for current employees, and this supports Staff’s position that the State Ethics Code prohibits a state agency from awarding a contract to one of its own employees.

2. Personal Rights; Government Entitlements; Licenses; Certification, etc.

Although Staff construes HRS section 84-14(d) to prohibit an employee from contracting with his or her own agency, an employee may not be barred from transacting business with his or her own agency in all situations.

Staff does not construe HRS section 84-14(d) to deny an employee the right to appear before any state agency to petition for redress of grievances caused by official action affecting the employee’s personal rights, privileges, or property, or that of the employee’s spouse or minor children.

Staff also does not interpret HRS sections 84-14(d) to prohibit an employee from seeking government entitlements or other statutorily created benefits, such as workers compensation, unemployment benefits, or temporary disability insurance from his or her own agency. Because such benefits are established by specific statutes, a more general statute; i.e., the State Ethics Code, should not be applied to prohibit access to those types of benefits.²⁰

Moreover, Staff does not interpret HRS section 84-14(d) to prohibit an employee from seeking permission or approval from his or her agency to engage in a profession, trade, operation, or activity where governmental permission or approval is required and where there is an administrative process established by law that in effect requires one

¹⁹ See In re City & Cnty. of Honolulu Corp. Counsel, 54 Haw. 356 (1973).

²⁰ Under the rules of statutory construction, when two or more statutes dictate conflicting results, a specific statute controls a general statute regardless of which came first.

to assist or represent himself, herself, or his or her own business in order to obtain such permission or approval.²¹

For example, Staff does not construe HRS section 84-14(d) to prohibit an employee from applying to the employee's own agency for a professional or vocational license, certification to conduct a business operation, or a permit to engage in a particular activity regulated by the agency; or from assisting or representing himself, herself, or her own business (e.g., the employee's own sole proprietorship or limited liability company) before the agency on matters relating to such license or certification. For example, an employee who has his own real estate business and receives a real estate license from his own agency should not be prohibited from appearing before the agency to defend a complaint made to the agency that affects his real estate license. Also, an employee with a limited liability company that conducts business operations regulated by his state agency should not be prohibited from working directly with his agency to ensure that the business operations are in compliance with the law.²²

B. HRS sections 84-18(b) and 84-18(c)

Under the revised interpretation, HRS section 84-18(b) would prohibit a former legislator, within 12 months after leaving employment, from representing himself or herself or any business (including a business solely owned and operated by the former legislator) for compensation on matters in which the former legislator participated as a legislator; or on matters involving official action by the Legislature. However, as previously discussed, a former legislator, on behalf of himself or herself, may enter into a contract with the Legislature or any other state agency to act on a matter "on behalf of the State."

Similarly, under the revised interpretation, HRS section 84-18(c) would prohibit a former employee, within 12 months after leaving state employment, from representing himself or herself (including a business solely owned and operated by him and her) for compensation on matters in which the former employee participated as an employee; or on matters involving official action by the employee's former agency or subdivision thereof. However, a former employee on his or her own behalf may enter into a contract with his or her former agency or any other state agency to act on a matter

²¹ An employee who transacts business with his or her own agency in these instances would be prohibited by HRS section 84-13 from using or attempting to use his or her position with the agency to obtain unwarranted benefits or preferential treatment for himself or herself. Others in the agency likewise would be prohibited from according the employee such benefits or treatment.

²² Moreover, the employee would not be barred from appearing before the agency on behalf of himself or his business if there is no "compensation" involved.

“on behalf of the State.”²³ For example, a state agency may contract with a former employee to perform the same or similar work that he performed while he was an employee of the agency, or other work he essentially would be performing in the capacity of a “representative” of the agency/State.

C. Revised Interpretation Supports Underlying Purpose of State Ethics Code

The underlying purpose of the State Ethics Code is to foster public confidence in state government. HRS sections 84-14(d), 84-18(c), and 84-18(d) prevent a legislator, employee, former legislator, or former employee from using influence derived from contacts, relationships, and associations made while in state government for personal gain or the benefit of others. These provisions also guard against a legislator’s, employee’s, former legislator’s, or former employee’s use of inside knowledge gained in state government to benefit himself or herself or others.

The law thus prohibits assistance and/or representation for compensation where is a reasonable inference that one’s status as a legislator, employee, former legislator, or former employee will give him or her or others an undue advantage. HRS sections 84-14(d), 84-18(c), and 84-18(d) underscore the importance of preserving the public interest in having action taken or decisions made by a state agency based on the merits and not due to influence based on relationships or “connections” developed, or inside knowledge or power gained, from state service. The revised interpretation of HRS sections 84-14(d), 84-18(c), and 84-18(d) is consistent with the underlying purpose of the State Ethics Code.

D. Impact of Revised Interpretation

The revised interpretation of the law will impact certain contracts and transactions that heretofore were not determined to be prohibited under the State Ethics Code. Under a revised interpretation, such contracts and transactions are likely to be prohibited under the State Ethics Code. The following are some examples of the impact of the revised interpretation of HRS sections 84-14(d), 84-18(b), and 84-18(c). These examples are illustrative only and are not meant to be exhaustive.

1. A legislator may not submit a proposal on behalf of his own business to the Legislature in response to a request for proposals to implement an IT project for the Legislature.

²³ While HRS sections 84-18(b) and 84-18(c) are intended to prevent former legislators and employees from using influence or inside knowledge to benefit themselves or others, the Commission has acknowledged that the post employment restrictions should not be so stringently applied that individuals are discouraged from state service.

2. A member of a Hawaii Health Systems Corporation (“HHSC”) board may not contract with HHSC²⁴ to provide services for a HHSC facility.
3. An employee of the Research Corporation of the University of Hawaii (“RCUH”), through RCUH, may not enter into a consulting contract with the University of Hawaii (“UH”). A UH employee may also be prohibited from entering into a consulting contract with UH through RCUH.
4. A UH employee may not enter into a joint venture project with the UH if the project would call for the employee to assist or represent a private business before the UH.
5. For 12 months after a former deputy attorney general leaves state service, he or she may not contract with his or her former division through a limited liability company to perform legal services on behalf of the State.²⁵

IV. Recommendation

Staff recommends that the Commission revise its interpretation of the phrase “any person or business” in HRS sections 84-14(d), 84-18(b), and 84-18(c) to also include the legislator, employee, former legislator, or former employee. Staff also recommends that the Commission apply the revised interpretation effective July 1, 2015; and not apply the revised interpretation retroactively to current, existing situations.

Recommended Motion:

- (1) Revise the interpretation of the phrase “any person or business” in HRS sections 84-14(d), 84-18(b), and 84-18(c) to also include the legislator, employee, former legislator, or former employee, and any business;
- (2) Apply the revised interpretation effective July 1, 2015; and
- (3) Not apply the revised interpretation retroactively to current, existing situations.

²⁴ Under the State Ethics Code, the term “employee” is defined to include a member of a state board or commission. HRS section 84-3.

²⁵ However, a former employee, on his or her own behalf, would not be prohibited from entering into a contract with his former agency to act on a matter on behalf of the State.