

## OPINION NO. 34

An attorney-legislator asks whether he would violate the State Ethics Code, chapter 84, HRS, if he represented a car-dealer client before the State Motor Vehicle Industry Licensing Board, recently created by the legislature.

This board will replace the present County Motor Vehicle Dealers' Licensing Boards. The seven members of the board will be nominated and, with the advice and consent of the Senate, appointed by the Governor.

The attorney-legislator may appear before this board for a dealer-client to effect both discretionary and ministerial action, for which appearances he will be compensated on a time basis. The board passes on applications for dealers' licenses and their renewals, investigates complaints against dealers, and can suspend or revoke licenses for numerous reasons spelled out by law.

The legislator involved here is one of the leaders in the House of Representatives. While his position is certainly one of power, the House, of which he is a member, does not have jurisdiction over the appointment of members of this board. Nor is he in a position to vote in committee on legislation of importance to the licensing board.

We have held that in some instances, depending upon various criteria, the mere appearance by an attorney-legislator before state boards, without more, is a violation of section 13 of the code. [See Opinions Nos. 26, 27, and 28.] Of course, the appearance of any attorney-legislator before such agencies would be a violation of section 13 if that attorney-legislator actively used or attempted to use his official position to obtain unwarranted treatment for himself or his client.

Applying the criteria enumerated in Opinions Nos. 26, 27, and 28 regarding appearance before state agencies by attorney-legislators, the legislator is of the majority party and in a position of power within the House, although he chairs no committees. The appearance will be to effect both ministerial and discretionary action. His compensation will be on a time, and not on a contingent fee, basis.

Regarding the third criterion enumerated in the above-mentioned opinions, he is not a member of the Senate, which body passes upon these appointments. However, bills containing budgetary provisions for the staff of the board must pass the body of which he is a member. The fact that he can have some influence over the budget of the agency staff is not so overwhelming as to effectively preclude objective treatment by the agency of his client's cause. Thus, without more, the legislator's appearance before this board on behalf of his client does not violate section 13, in spite of the fact that the interest he represents may be large, that the action involved may be of great importance to his client, and that the regulation of dealers is of considerable interest to the public.

Dated: Honolulu, Hawaii, June 24, 1969.

STATE ETHICS COMMISSION  
James F. Morgan, Jr., Vice Chairman  
S. Don Shimazu, Commissioner  
Margaret W. Smalley, Commissioner

Note: All members of the Commission participating in this opinion concur. Chairman Vernon F.L. Char disqualified himself from consideration and preparation of the opinion. Commissioner July Simeona was excused from the meeting at which the opinion was considered and adopted.