

OPINION NO. 41

A practicing attorney and a member of the state House of Representatives asks whether he would violate the state ethics law (chapter 84, HRS) by appearing as an attorney for a private client before a state Workmen's Compensation hearing officer or Appeals Board.

Hearing officers are appointed by the Director of the Department of Labor and Industrial Relations from the five applicants with the highest scores on the civil service examinations. These officers thus have civil service status and, pursuant to chapter 76, HRS, may be dismissed only in the manner provided by that chapter.

The Appeals Board is composed of three members who are nominated and, by and with the advice and consent of the Senate, appointed by the Governor. While terms are for ten years, the act creating the board declares that it is in the public interest to continue board members in office as long as efficiency is demonstrated. [Act 244, SLH 1969.]

The Commission enunciated guidelines for appearances by state legislators before state agencies in Opinions Nos. 26, 27, and 28. Applying these guidelines to the two agencies here, we find no violation in this Representative's appearances before these two bodies.

State Workmen's Compensation Hearing Officer

The purpose of chapter 76 is to establish a system of personnel administration based on merit principles, and to build a career service in government free from "coercive political influences" and to provide loyal personnel "to render impartial service" "according to the dictates of ethics and morality."

Hearing officers are insulated from political pressure by the civil service system in its provisions for examinations to obtain positions and by the right to appeal dismissals, suspensions or demotions to the Civil Service Commission. The Representative's appearances before such an officer must be viewed in this light. We apply some of the criteria of Opinions Nos. 26, 27, and 28.

The position within the legislature is one without great seniority. While the Representative is in the majority party, he chairs no committees. While the committees on which he serves are important, they are not the committees dealing most directly with this department.

The hearing officer is called upon to take discretionary action, but he is not subject to political confirmation or removal, and is largely insulated by our civil service law from possible legislative influence. Although the interests are, of course, great to the Representative's client, they are not large in magnitude to the public as a whole.

For the above reasons, the Representative's appearance as an attorney for a client before a state Workmen's Compensation hearing officer is not in violation of the State ethics law.

The Board of Appeals

The position in the legislature, the magnitude of the interest represented, the importance to the client, and the public significance of the requested action are the same here as in the hearing officer instance. While the legislator's appearance before the board requires discretionary action, the members of the board are not subject to confirmation by the House of Representatives.

Thus, because this board is not subject to confirmation by the House of Representatives, because the Representative is not on committees before which most of the board's legislation passes, because of the particular status of this Representative in the House, and because of the nature of the interests he represents, he would not violate the ethics code by appearing before the Appeals Board.

Dated: Honolulu, Hawaii, November 18, 1969.

STATE ETHICS COMMISSION
Vernon F.L. Char, Chairman
James F. Morgan, Jr., Vice Chairman
S. Don Shimazu, Commissioner
July Simeona, Commissioner

Note: Commissioner Margaret W. Smalley was excused from the meeting at which this opinion was considered and adopted.