

OPINION NO. 48

May a member of the state legislature, who is chairman of a committee through which most budgetary bills must pass, and also serves on other committees, participate in framing legislation, debating and voting on issues related to housing if he is a shareholder and or a director of a housing company?

The company is designed to provide low-cost homes for Hawaii under a program through which the State would make land available to developers and would provide a subsidy to individual home buyers. The State would control the profits from the development, the company's books being open to inspection.

We hold that participation in the deliberations and action of the committee which he chairs on such measures would violate the ethics law, chapter 84, HRS. Participating as a member of that body as a whole may not violate the ethics law, providing that he complies with disclosure and other rules of that body.

In Opinions Nos. 26, 27, and 28 we discussed limitations placed on the legislative action of a legislator by the ethics law when he has an interest affected by that action. We pointed out there that while section 84-14, the conflicts of interests section, does not apply to legislators, nonetheless, legislative action is subject to review under other sections of the ethics law. Thus, in Opinions Nos. 26, 27, and 28 we said that because of the importance of the Senate positions involved, any action the Senator there took on bills of importance to his clients may constitute a use of position in violation of section 84-13.

Here we are dealing not with a private paying client's interests, but with the personal business interests of the legislator involved. These are both purely personal interests, as opposed to interests of a segment of the public.

We are aware that bargaining and trading of votes between legislators occur in order to effect legislation. This is part of the legislative process and should, in most instances, achieve laws aimed at the greatest total public good. But, when a legislator commences bargaining to obtain legislation to benefit his private interests in contrast to those of his constituents, he is very likely using his position in violation of section 84-13. Once a legislator uses his position to obtain special treatment, the question posed to the legislator will be whether or not the treatment was not "unwarranted treatment."

Similarly, some members of the legislature occupy such powerful positions either within their committees or within the house of which they are members that their participation in the framing of legislation, debating and voting may violate this section.

As chairman of one of the most powerful of all committees of his house of the legislature, this legislator has effective control over legislation concerning expenditures by the State. Because of this power, "any action ... he should take, express or implied, on bills of importance [to his housing company] such as voting or processing within [this committee] may constitute a use of position in violation of section 84-13." [Opinions Nos. 26, 27, and 28, p.

18.] Accordingly, should any legislation relating to this new housing program come before the committee he chairs, he must disqualify himself from all participation in the framing of legislation, voting or debating.

However, when such matters come before the whole of the house of which he is a member, his participation, without more, will not constitute a violation of chapter 84. This opinion does not, of course, exempt the legislator from complying with the procedural rules of the house of which he is a member, such as disclosure of his interests and obtaining a ruling from the presiding officer on how those interests limit his participation under those rules. [See Opinion No. 1.]

Dated: Honolulu, Hawaii, November 25, 1969.

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