

OPINION NO. 59

May a legislator accept private employment under the following circumstances?

A professional association wants the legislator to perform three different functions: (1) consultation on organization; (2) assistance in dealing with the Legislature; and (3) assistance in dealing with state agencies. The legislator in this case is a member of the majority party and a member of a committee which acts upon matters of particular concern to the association.

We shall discuss each function mentioned above *seriatim*.

1. Consultation

One of the legislator's duties will be to provide the knowledge, know-how, time and skill to the Executive Committee of the association in setting up the organization of the group. The ability to provide this type of expert personal service is unrelated to his position as a legislator, and in performing this function, the legislator is not representing the organization before any body in an effort to attain its desired ends. We hold that he will not violate the ethics law in providing this consultation.

2. Legislative Action

May a legislator be employed by a private group to effect legislation in its favor?

He may not because this would violate HRS, §84-13, relating to the use of official position to obtain unwarranted treatment. In the consolidated summary of Opinions 26-28, we stated:

...[U]sing one's position as a Senator or Representative to effect legislation for the benefit of one's client, which legislation is unwarranted, would constitute a violation of [§84-13]. Unwarranted, in this instance, has reference to a result for a client which would not have been achieved without the use of his position by the legislator involved. This coincides with the intent of [§84-13] that the criteria for legislative action should be the merits of the issue and not the power of the man backing the legislation for private reasons.

In that opinion, however, we did not deal with the question of a legislator's being hired for the purpose of effecting legislation for his employer. We now hold that such employment would be a use of official position to obtain unwarranted treatment and will be in violation of HRS, §84-13.

A member of the Legislature is a servant and representative of the public which elected him. This public trust imposes upon him the duty to act to his best ability to promote the public interest. When he acts upon legislation which a private group has paid him to work for, he is using his official position to obtain unwarranted treatment; i.e., the compensation he

receives. He is being paid by the public to fulfill his trust in enacting the legislation with the highest public good; receiving further payment from a private group for this work is, in our opinion, "unwarranted" treatment.

3. Other State Agencies

Members of the Legislature are not automatically barred from appearance before other state agencies because of their legislative positions. In Opinion Nos. 26-28 we provided guidelines to determine whether such appearances were within the limits set by chapter 84, HRS.

Because the criteria set forth in that opinion depend upon the nature of the state agency involved, we cannot give a blanket opinion on the legislator's appearances for the association before all state agencies. Possible appearances before a "Board" of special interest to this association were specifically mentioned, so we shall apply the test only to appearances before that agency.

The legislator is of the majority party and is a member of a committee which passes upon a great deal of the legislation desired by the "Board" under discussion. His appearances, therefore, before the "Board" would be to effect discretionary action which may well be important to the public, involving as it does all state professionals in this field.

While the power of his position generally may not be as great as that of some other members of the Legislature, his membership on the committee before which all measures of interest to the association must pass is sufficient in itself to place pressure on the "Board" which a non-legislator, or a legislator not on the legislative committee affecting said "Board" could not place on it. We find that this would present a violation of HRS, §84-13. Moreover, because a legislator must serve the public, he violates that public trust when he accepts compensation from a special interest group to forward their interest in a capacity which his legislative position alone makes possible.

Dated: Honolulu, Hawaii, February 5, 1970.

STATE ETHICS COMMISSION
James F. Morgan, Jr., Chairman
Vernon F.L. Char, Commissioner
Margaret W. Smalley, Commissioner

Note: Vice Chairman S. Don Shimazu and Commissioner July Simeona were excused from the meeting at which this opinion was considered and adopted.