

## OPINION NO. 70

Does the appearance of an attorney-legislator on behalf of private clients before county councils, lay boards and commissions violate the ethics law, chapter 84, HRS?

Section 84-13 of the ethics law prohibits use of official position to obtain unwarranted treatment. This prohibition applies, regardless of the source of the unwarranted treatment. Thus, this section prohibits use of position to obtain unwarranted treatment from a private source, or from a public agency, be it State or county.

We have repeatedly held that in some instances, because of the "aura of power" of the legislator involved, a legislator could not appear before certain state agencies without violating §84-13. The same reasoning applies to this situation. Counties in the State of Hawaii are creatures of the Legislature, and are in many ways dependent on the Legislature. For instance, the Legislature must make capital improvement and fiscal decisions of vital importance to the individual counties. The financing of airports, retaining walls, bridges, highways, streets, civic and community centers, storm drainage and sewage systems, government buildings, harbors, libraries, medical facilities, recreational facilities and schools in the counties are in large part controlled by the state Legislature.

Each specific case must be decided on its own facts. The power of the legislator, because of his position within the Legislature, vis-a-vis the agency involved, will be closely examined, as will be the level of the agency within county government and its dependence on legislative action. For instance, the Commission will more readily infer violation of §84-13 in the appearance of the chairman of a select committee before the council of the same county than in the appearance of a junior legislator from another island before a lay commission of the county.

The Commission will also consider other factors, such as, whether the appearance is to effect discretionary or ministerial action, the magnitude of the interest represented, the importance to the client of the state action requested, and the public significance of the requested action.

We, therefore, hold that under certain circumstances, a state legislator may not appear before a county council or board, as such action would be in violation of §84-13, and that each case must be decided on its facts.

Dated: Honolulu, Hawaii, May 25, 1970.

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

Note: Commissioners July Simeona and Margaret W. Smalley were excused from the meeting at which this opinion was considered and adopted.