

OPINION NO. 97

A legislator submitted the following facts to the Commission:

1. As the attorney for his father he negotiated for the development rights to several acres of land, presently zoned agriculture. The development rights were contingent upon rezoning and upon government approval of development for low and moderate income housing.
2. He is also the attorney for a foreign corporation which is interested in the development rights of substantial acreage of land in the same area of Oahu.
3. Both of the above clients are charged an hourly rate which we do not consider abnormal or unusual. The fees are not contingent upon the success of legislative action or any other contingency.
4. The legislator has further indicated that he may acquire a financial interest in the foreign corporation or in a corporation or partnership which his father may form.
5. He has informed this Commission that he has disclosed his interest in writing to the head of his legislative body and that he intends to make an appropriate public disclosure of his interest.
6. This legislator is a chairman of a committee and member of committees whose decision could affect the value and development of the lands of his clients. He has, therefore, requested an advisory opinion respecting his responsibilities under the State ethics law.

The Commission renders this opinion based upon the conditions and terms stated above.

He has indicated that he would excuse himself from participation and deliberation on matters related to matters which may enhance the value of the land. He has further indicated that pursuant to Opinions Nos. 1 and 66 he will not use or attempt to use his official position to secure special advantage for his clients or to effect special legislation by legislative activity for the primary benefit of his private interests or those of his clients.

It is our opinion that the course of action which he has suggested to (1) publicly disclose his financial interests in this case; and (2) excuse himself from participation in deliberations on matters which may affect the value and development of the land is proper under the section of the ethics law relating to fair treatment (HRS, §84-13). The fundamental purpose of that section of the law is to prevent a loss of public confidence in public servants by a use or appearance of use of official position to obtain a result which might not otherwise be obtained. This purpose is accomplished by public disclosure and excusing himself from participation in committees where appropriate. By this action, the public will be able to judge his legislative actions, and his colleagues and others with whom he has official contact will be able to act with full knowledge of his private interests.

We further advised that his interests are avoidable conflicts, as distinguished from those unavoidable conflicts which may coincide with the interest of a substantial number of his constituents or which coincide with his rights as a voter or taxpayer. In the case of avoidable conflicts, we suggested in Opinion No. 96 that a legislator may consider divestment, or he should refrain from taking official action directly affecting his conflicting financial interests.

We added that while the evil anticipated by HRS, §84-13, is possible whenever a legislator has such avoidable conflicts, violations thereunder are much less probable when the legislator voluntarily publicly discloses his private financial interests. Under similar circumstances our ruling might be different but for this commendable assurance by this legislator of immediate public disclosure.

This opinion was based in part upon Opinion No. 1, which we called to his attention; the fact that §84-14 does not apply to legislators; and the further consideration of the legislative responsibilities and obligations under Article III of the Hawaii Constitution.

As to his appearances before state and county agencies we generally referred him to the guidelines contained in Opinions Nos. 26-28 and 70. We recommend that he seek an opinion on the propriety of such appearances when an appearance before a specific agency should be required.

Dated: Honolulu, Hawaii, February 10, 1971.

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

Note: Commissioner Walters K. Eli was excused from the meeting at which this opinion was considered.