OPINION NO. 105

A legislator described three different situations and asked us to comment on the ethical considerations under chapter 84, HRS, raised by each circumstance.

1. Utilization of legislative office for private business.

This legislator's private office is within walking distance of the State Capitol. He has found it convenient to accept business calls at his legislative office and to interview clients there during hours when the State Capitol is open but committee meetings not generally held. He indicated that his office referred private business calls to both his private line in his State office and his State Capitol number; that he allegedly sees clients at the State Capitol only when there is urgency and that he further uses his legislative office to study certain business matters and to give dictation to his secretary. He further disclosed that communications between his private office and the State Capitol were carried by the office messenger.

He inquired whether utilizing his legislative office in this manner is in conflict with his position as a state legislator.

The problem raised has been considered by this Commission in Opinions Nos. 12 and 17. We have held that a legislator should avoid the practice of using public equipment for private profit and that a legislator should not appropriate for his private purposes state paid-for telephone and answering service. We did not think it proper for a private office to refer private business calls to the state number inasmuch as that line should be kept available for legislative communication. To use the State Capitol line regularly for private business purposes would be using one's official position to obtain unwarranted privilege for oneself in violation of §84-13, HRS.

State equipment and facilities are primarily for the use of the public and public servants in carrying out their public responsibilities. To appropriate state facilities or staff for private purposes on a regular basis or at regular hours, as here, was, in our judgment, a violation of HRS, §84-13. We, therefore, recommended that this legislator's business be conducted at his private office. We recognize that emergencies occasionally arise in private affairs. At such time, the use of state facilities would be permissible.

Studying legal matters or dictating into one's own machine or to one's legal secretary who remains in one's legal office would not constitute a violation of law since these activities are incidental and do not appropriate or give the appearance of appropriation of state facilities for private purposes. Moreover, it is in the public interest that a legislator be readily available to his constituents.

2. Representation of a former client in the legislature.

The legislator has informally withdrawn as an agent for some clients for whom he submitted a resolution. He has already disclosed his interest to the appropriate committee chairmen and to the head of his legislative body; and has further indicated that he will abstain

from debate on matters relating to the subject before the committees; and that he will not vote on this measure in committee or on the floor. He has further disclosed, however, that he has testified on a related matter as former retained counsel before a committee of the other legislative body.

He has asked for a ruling on this matter.

We thought that the drafting and introduction of a resolution which is of particular interest to a client is a case of giving unwanted treatment to a client with whom he has a financial relationship and interest. For this reason we thought it was improper for him to introduce the resolution. We ruled that he should refrain from participation in both houses of the legislature in matters of special interest to his client.

3. Introduction of bill for client.

He has disclosed that he represents a corporation which sought to have legislation introduced which would give them a statutory exemption on a particular matter. He indicated that he had drafted the bill and had it introduced by another legislator. He has disclosed this interest to the head of his legislative body and the chairman of the appropriate committee. He has indicated that he will abstain from debates on the bill if it is considered in committee. As above, we thought he should not actively assist clients in introducing bills of special interest to them (See Opinions Nos. 26-28, 48, and 66). With respect to his future participation we thought that he had taken the appropriate action on this matter.

Dated: Honolulu, Hawaii, April 8, 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. This opinion was reconsidered and clarified in Opinion No. 118.