OPINION NO. 110

A legislator inquired whether his participation on a controversial bill which would regulate certain behavior and activity of all citizens and businesses was a violation of chapter 84, HRS, relating to ethics standards for public employees.

The facts he submitted were as follows:

1. He is chairman of the committee to which the bill was referred.

2. He holds a directorship in a company which may have been affected by the bill.

3. He receives compensation of approximately $3,000.00 per annum as a director of the company which has a subsidiary which may also have been affected by the bill. He has a five-year loan in excess of $75,000.00 from the company and owns 300 shares in the company.

He also submitted the following documents to the Commission for consideration in this request for an advisory opinion: The bill which is the subject of this opinion, a news article regarding his action as a legislator, and all of his disclosures on file with the Commission.

During an intensive interview, he informed the Commission that he did not formally or informally discuss the bill with the officers or directors of the company of which he is a director, or its subsidiaries; nor was legislation discussed at any of the board meetings which he had recently attended. He stated that his directorship relationship with the company was known to his colleagues and that he believed, after discussion with a legislative attorney, that the bill affected the community generally. He also informed us that although his committee did not hold any hearings on the bill, it was his opinion that the changes made by his committee were made for the benefit of the general welfare.

This opinion was limited to the question whether the legislator had violated HRS, §84-13, relating to the use of official position to obtain unwarranted treatment, inasmuch as the section on conflicts of interest (HRS, §84-14) is not applicable to legislators. HRS, §84-13, states "No legislator or employee shall use or attempt to use his official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment for himself or others."

Based upon the facts presented to us, we did not find that he used his official position to secure or grant unwarranted privileges, exemptions, advantages, or treatment for himself or others.

We reached this conclusion based upon his disclosure that he has not formally or informally discussed the bill with any of the officers or directors of the company of which he is a director, or officers or directors of its subsidiaries, and the fact that his financial interests in the company were generally known to the public and his colleagues. It further appeared to us, on the basis of the interview, that he acted in good faith as a legislator and was not

primarily motivated by his private financial interests. For these reasons, there was insufficient evidence for us to find that there had been unwarranted treatment in this case.

Although we did not find a violation of HRS, §84-13, in this case, we were nevertheless concerned that there was an appearance of a violation of the ethics law.[†] The circumstances indicated that the appearance of violation was encouraged because of his directorship relationship with the company, and because his committee acted upon the bill without holding any public hearings upon a bill in which there was a large amount of interest and controversy. There was the appearance that he had acted more for his own private interests rather than the interest of the public.

Although decisions on bills ultimately rest upon the members of the legislature, the public has every right to feel secure that the decisions were based upon the merits of the legislation, and not upon the power of any individual legislator or upon his private motivations. Therefore, to preserve public confidence in legislators, we had recommended in Opinion No. 96 that legislators either divest themselves of interests where feasible, or at the very least, to refrain from taking action (discussion, drafting, voting or lobbying in committee) upon bills which are of special interest to themselves, clients, or businesses to whom they have responsibilities and obligations. We suggested that by following either course of action in the future, this legislator will be acting in accord with the spirit and intent of the ethics law.

Dated: Honolulu, Hawaii, July 2, 1971.

STATE ETHICS COMMISSION
Vernon F.L. Char, Acting Chairman
Gwendolyn B. Bailey, Commissioner
Walters K. Eli, Commissioner

Note: The vacancies created by the resignation of S. Don Shimazu and James F. Morgan, Jr. have not been filled.

[†]The legislative history of the ethics law indicates that a primary objective of the law was to avoid even the appearance of unethical conduct. In SCR 367, 4th Legislature, 1st Session (1967), p. 3, the House Judiciary Committee stated that "If public confidence in government is to be maintained and enhanced, it is not enough that public officers avoid acts of misconduct. *They must also scrupulously avoid acts which may create an appearance of misconduct.* (Emphasis added.)