

OPINION NO. 130

A legislator inquired whether he may represent a professional association which is the duly authorized exclusive bargaining agent for a group of state employees in a particular state department.

He has represented this client as their legal counsel and chief negotiator of collective bargaining agreements for a number of years and he has participated in their negotiations with several private employers in the State. He is paid a monthly retainer, and on a time basis for specific services rendered beyond general advice and counsel.

In addition to the foregoing information which he provided us, we reviewed HRS, chapter 89, relating to collective bargaining in public employment. It was our understanding that under this law, all government employees are divided into various bargaining units, each with an exclusive agent who may negotiate with the public employer with respect to wages, hours, and other terms and conditions of employment. It was our further understanding that the cost items in the agreement must be submitted to the legislature for appropriate action and that the entire collective bargaining process is subject to the supervision of the Hawaii Public Employment Relations Board which members are subject to the advice and consent of the Senate. We also noted that this legislator's representation might involve appearances before the state collective bargaining representatives and the Hawaii Public Employment Relations Board and perhaps even the legislature itself.

It was our opinion that the factual situation strongly indicated a probability of a violation of HRS, §84-13, which states in part that "No legislator ... shall use or attempt to use his official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment for himself or others."

We stated in Opinions Nos. 26-28 that there may be a probable violation of HRS, §84-13, when a legislator uses his position, such as taking action on bills of importance to their clients, to effect legislation for the benefit of their clients. There, we stressed the position, power and influence of the legislators in committee and in the legislature as a body. Realistically, however, each individual legislator on any particular issue or matter has political power and the ability to influence the course of legislative action and such power is not to be discounted, even when the legislator is a member of the minority party. In this case, the legislator was in a position where he may take some type of legislative action upon the very contract he may negotiate for his client. To take legislative action on a private matter in which he has been a party and which is so directly related and peculiar to an interest of his client would be the use of position to obtain unwarranted treatment for his client.[†] Furthermore as a legislator he may act upon collective bargaining contracts of other public employees which may have a direct precedential effect on the contract he may have negotiated for his client.

We were cognizant that his attorney-client relationship was one of long standing. It was appropriate in this case to state again as we did in Opinions Nos. 26-28 that:

[†]We did not mean by this decision that a legislator could not ultimately vote on a bill on the open floor after complying with the applicable rules of disclosure to the presiding officer.

While our decision may seem unduly restrictive of legislator-attorneys' private practice, we reiterate that the public service is a public trust, in the case of legislators, sought from and granted by the people. Legislators, while they are "part-time officials" now receive substantial compensation for their public service. As guardians of the public trust, these members of the legislature have accepted a unique opportunity to set the very highest example of ethical conduct. To this group, the temptation to take advantage of their power must be amongst the strongest, and high ethical conduct is most praiseworthy where the temptation to "bend just a little" is strongest.

Neither the State Constitution nor the State ethics law adopted the concept that a legislator should be allowed free reign in his private activities since he is a part-time official and elected by constituents who may vote him out of office. The underlying philosophy of the State Constitution and the State ethics law provides that legislators and state employees are public trustees who should be restrained in their private and public activities pursuant to stated standards. It was with this in mind that we rendered this opinion. To permit legislators complete freedom in their private or public activities would be to ignore the ethics provision in the State Constitution which was adopted by the people and to abdicate our responsibility under the statute which was enacted by the representatives of the people.

Dated: Honolulu, Hawaii, March 15, 1972.

STATE ETHICS COMMISSION
Vernon F. L. Char, Chairman
Walters K. Eli, Vice Chairman
Audrey P. Bliss, Commissioner
Fred S. Ida, Commissioner

Note: Commissioner Gwendolyn B. Bailey abstained from voting on this opinion.