

OPINION NO. 170

A legislator-attorney inquired whether he may represent a client in a claim against the State for injuries inflicted upon a proposed client by persons acting under state authority.

It was our understanding based upon the statutes relating to suits against the State, as well as telephone conversations with this person, that any judgment obtained from the court or through negotiation with the Attorney General would have to be funded by the legislature.

The private activity of a legislator may be restricted by the following provisions of the ethics law: HRS §84-13, relating to fair treatment; and HRS §84-14(c) and (d), relating to certain types of prohibited assistance or representation.

We first discussed section 84-13 and section 84-14(d) since they are related to the question as to whether or not a legislator is prohibited from representing this particular client.

The former provision, HRS §84-13, may be violated under circumstances in which a reasonable man could infer that a legislator is using or has attempted to use his official position to obtain unwarranted treatment. For example, the circumstances may be so overwhelming that it would be reasonable for a man to conclude that objective treatment of a client's cause by a public body is precluded due to the public position of the person appearing before it. In Opinions Nos. 26-28 for example, we indicated that while there was no litmus paper test as to whether the appearance of a particular member of the legislature before a governmental body would be in violation of HRS §84-13, we indicated that some of the considerations would be the position occupied by the legislator, whether or not the appearance is to affect discretionary or ministerial action, the level within government of the person being dealt with, the nature and magnitude of the interest the legislator represents, the public importance of the issue, the public significance of the requested action, disclosures made by the legislator, and the persons with whom the legislator is associated.

Although the state courts are excluded from definition of a state agency under HRS §84-3(9), appearances before the court are not necessarily excluded from consideration under §84-13 since the provision makes no reference to state agency. Moreover, court cases involving the State also involve appearance or representation before the Office of the Attorney General which is an executive agency. Therefore, the considerations discussed in Opinions Nos. 26-28 were relevant in this instance.

We ruled that the legislator was not prohibited under HRS §84-13 from accepting the client in this instance. This ruling was based upon the fact that this legislator did not chair a committee of strong significance to his proposed client, that the potential amount involved was relatively small, that the legislature will not be involved in deciding the liability or the amount of liability of the State and finally the issues involved have limited public significance.

HRS §84-14(d) states that "No legislator or employee shall assist any person or business or act in a representative capacity for a fee or other compensation to secure passage of a bill or to obtain a contract, claim, or other transaction or proposal in which he has participated or will participate as a legislator or employee, nor shall he assist any person or business or act in a representative capacity for a fee or other compensation on such bill, contract, claim, or other transaction or proposal before the legislature or agency of which he is an employee or legislator."

It was our understanding that if he were to succeed in this claim against the State, the legislature would have to appropriate the necessary monies to cover it. Having represented a client on a claim which becomes the subject matter of a particular bill, he will then be placed in a position as a legislator of assisting the person in obtaining passage of the appropriation bill in the legislature. It was our judgment that §84-14(d) would prohibit him from participating on such a bill.

We added that his employment relationship should be disclosed under HRS §84-17 since it was an employment relationship and transaction which may be affected by a state agency.

Finally, we called his attention to HRS §84-14(c) relating to contingency compensation. The situation here was similar to that in Opinion No. 153. We therefore ruled that since this claim will involve representation before the Office of the Attorney General, an executive agency, he should not represent the client on a contingency basis.

We thanked him for his concern for ethics in government.

Dated: Honolulu, Hawaii, November 29, 1973.

STATE ETHICS COMMISSION
Vernon F.L. Char, Chairman
Gwendolyn B. Bailey, Vice Chairman
Audrey P. Bliss, Commissioner

Note: Commissioner Walters K. Eli was not present at the meeting when this opinion was considered. There was one vacancy on the Commission.