

OPINION NO. 194

An attorney-legislator inquired whether he might represent two business organizations before a state agency without violating the state ethics law.

The legislator was a member of the state House of Representatives; he was a member of the minority party in the House. In the past legislative session, he served as minority spokesman for one House committee and was a member of several other committees.

The legislator had been asked to serve as counsel for two business firms before a state agency. We were advised that the law firm of which he was a partner had represented the two companies on a case-by-case basis since their formation. The legislator indicated that his parents had a financial interest in each of these firms. The compensation for the representation of these firms in the proceeding before the state agency would be based on an hourly rate rather than a contingency basis. He further informed us that as a legislator, he had not been involved in any legislation directly involving these firms nor had he in a private capacity been involved in the legislative concerns of them.

In Opinions Nos. 173 and 174, we advised a state legislator who was a member of the House of Representatives that he was not in probable violation of HRS §84-13 in his representation of a client before the Department of the Attorney General or the various courts of this state. We stated that his situation differed from that of the legislators in Commission Opinions Nos. 26-28, in which opinions we had advised the legislators that their appearance before certain state agencies on behalf of their clients was a violation of HRS §84-13 because the nature of their official positions under the circumstances of the cases was so overwhelming as to effectively preclude objective treatment of their clients' causes. The legislator involved in Opinions Nos. 173 and 174, unlike the individuals who were the subject of Opinions Nos. 26-28, was not a member of the legislative body which exercised confirmation power over the appointed officials with whom he would be dealing, and his review of the budgets of the Judiciary branch and of the Department of the Attorney General was a relatively minor part of the budgetary review of those agencies. Moreover, we were swayed by the consideration that the firm of which he was a partner had represented the client for about forty years.

In the instant case, based on the facts before us, we ruled that the legislator would not violate HRS §84-13 if he should represent the two firms in the proceeding before the state agency. He was a member of the House of Representatives, which does not have confirmation power over the members of the state agency. Also, we were cognizant that he was a member of the minority party in the legislature. Finally, we noted that the law firm of which he was a partner had represented the two companies since their establishment as business entities, which fact indicated that the clients did not seek him out because of his official position with the State.

We concluded, therefore, that under the circumstances a reasonable man would not infer that the legislator was using or attempting to use his official position to obtain unwarranted treatment or advantages for his clients in the agency proceeding. We did not believe that objective treatment of his clients' causes by the agency would be precluded in the case due to his public position. We stated, however, that we would have continued jurisdiction in any subsequent allegation of violation of HRS §84-13.

We brought to the legislator's attention HRS §84-14(d) (Supp. 1973). This statutory section states:

No legislator ... shall assist any ... 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 ... nor shall he assist any ... 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

As we stated previously in Commission Opinions Nos. 173 and 174, the intent of this provision appears to prohibit undertaking, assisting, or representing a private client when there is a reasonable probability that the legislator will be involved in the matter in his legislative capacity. We stated that it was our opinion that if after undertaking representation of a private client the matter did ultimately come before the legislator in his legislative capacity, HRS §84-14(d) would require his disqualification because he was prohibited from representing clients on a matter before the legislature. In this case, we had no evidence of a reasonable probability that the legislator would be involved in a legislative capacity on the issue that would be decided in the state agency proceeding.

We stated that we appreciated the legislator's concern for ethics of public officials and ethics in state government.

Dated: Honolulu, Hawaii, October 7, 1974.

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

Note: Commissioner Walters K. Eli was excused from the meeting at which this opinion was considered. There was one vacancy on the Commission.