

## OPINION NO. 500

An attorney-legislator asked the Commission for advice on the application of the State Ethics Code to his work as an attorney. He had recently been retained as the attorney for the creditors' committee of a finance company undergoing reorganization under chapter 11 of the bankruptcy laws. As the attorney for the creditors' committee, it was the attorney's duty to serve as the advocate for the entire class of unsecured creditors of the finance company to assure that as much money as possible was returned to the creditors. The Commission had been advised by the attorney that any action taken by him on behalf of his clients would be with the finance company and, therefore, it was not likely that the attorney would become involved with any state agencies. However, a state official was required by statute to take action that ultimately affected the members of the creditors' committee. It was possible, then, that the creditors' committee could have sought to influence the state official through legal action or by private settlement.

After reviewing the situation, the Commission first noted that HRS §84-14(b), which prohibits state employees and board and commission members from acquiring interests that may place them in positions of conflict, does not apply to legislators. The Commission also stated that the conflicts-of-interests section of the ethics code, HRS §84-14, permits legislators to represent clients before state agencies. The Commission noted, however, that such representation is subject to the fair treatment section of the ethics code, HRS §84-13, which reads in part as follows:

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 ....

In Advisory Opinion No. 485, the Commission reviewed its past advisory opinions concerning attorney-legislators' representation of clients before state agencies. Generally, the Commission had found it permissible for attorney-legislators to represent clients before state agencies when they did not serve on committees that had jurisdiction over the state agencies they appeared before. However, because an appearance of impropriety may arise when an attorney-legislator represents a client before a state agency he has jurisdiction over, the Commission also had found that such representation might violate this section.

The legislator served as a member of a legislative committee that reviewed the budget of the state official's office as well as all legislative bills that came within the purview of that office. As a general rule, therefore, the legislator normally would have been prohibited from entering into negotiations with the state official or from filing a suit to require the state official to take specific state action. After reviewing the legislator's situation, however, the Commission found that he would not be prohibited from serving as the attorney for the creditors' committee in this instance. The Commission recognized that as a matter of public record the state official had already taken the action required by the statute.

The legislator had stated that when he was formally approved by the federal bankruptcy court as the attorney for the creditors' committee, his appointment would be

retroactive to the time when the creditors' committee was first formed. As a result, the record would reflect the legislator's representation of the creditors' committee prior to the time that the state official made his decision. In the legislator's view, this may have lent credence to the suggestion of an unwarranted influence on the legislator's part vis-a-vis the state official. In the Commission's opinion, the record would indicate that the decision had already been made and this would largely diminish any suggestion that the state official's decision may have been influenced by the fact that the legislator served as the attorney for the creditors' committee. Furthermore, as a matter of record, the legislator, as the attorney for the committee, did not participate in any discussions with the state official, nor was he retained by the committee as its attorney at the time the state official made his decision. The Commission also noted that the legislator had represented to the Commission that it was extremely unlikely that the creditors' committee would take any further action to influence the state official's actions. If this was so, the Commission surmised that the legislator would have no direct or indirect contact with the state official or his representatives. Accordingly, the Commission concluded that under those circumstances it was permissible for the legislator to be retained as the attorney for the creditors' committee. The Commission advised the legislator to contact this Commission for further advice if the circumstances changed--for example, if any interaction with the state official or any of his legal representatives became necessary.

The Commission commended the legislator for his heightened sensitivity to the ethical considerations of his situation and appreciated his bringing this matter to the Commission's attention at an early time.

Dated: Honolulu, Hawaii, June 3, 1983.

STATE ETHICS COMMISSION  
Allen K. Hoe, Vice Chairperson  
Gary B.K.T. Lee, Commissioner  
Rabbi Arnold J. Magid, Commissioner

Note: Chairperson Edith K. Kleinjans and Commissioner Mildred D. Kosaki were excused from the meeting at which this opinion was considered.