

OPINION NO. 523

A legislator asked the Commission to determine whether the ethics code would prohibit him from entering into settlement negotiations with the Department of the Attorney General when representing clients in personal injury cases on a contingent compensation basis.

The section of the ethics code relevant to the question the legislator raised was HRS §84-14(c), which states that

[n]o legislator or employee shall assist any person or business or act in a representative capacity before any State or county agency for a contingent compensation in any transaction involving the State.

After examining this provision of the ethics code in light of the legislator's question, the Commission concluded that HRS §84-14(c) would not prohibit the legislator from entering into settlement negotiations with the Department of the Attorney General when representing clients in personal injury cases on a contingent compensation basis.

The Commission concluded that HRS §84-14(c) applies only to situations where the state agency in question has jurisdiction over the particular matter brought before it. In personal injury cases, however, the legislator and the Department of the Attorney General would simply be adversaries, each attempting to secure the satisfactory settlement of a claim that is under the jurisdiction of the courts. HRS §84-3(9) excludes courts from the definition of a state agency for purposes of the ethics code. The Commission noted that in some instances settlement negotiations may begin before a complaint is filed in court. However, because the actual time of the filing of a complaint in court is only a technical matter, the Commission concluded that negotiations begun prior to filing a complaint in court would not be prohibited by HRS §84-14(c).

Although the Commission determined that HRS §84-14(c) would not prohibit the legislator from engaging in settlement negotiations with the Department of the Attorney General, the Commission informed the legislator that HRS §84-13, the fair treatment section of the ethics code, would prohibit him from using his official position to secure any special or favorable treatment for a client. The Commission also informed the legislator that he should not refer to his official position when dealing with the Department of the Attorney General as a private attorney. Likewise, the Commission pointed out that the legislator should not refer to any cases he might be involved in with the Department of the Attorney General when dealing with the department as a public official. Finally, the Commission told the legislator that settlement negotiations must not involve the use of state telephones, his state office, or his state address, since HRS §84-13(3) prohibits the use of state equipment or facilities for private business purposes.

The Commission told the legislator that it understood that all settlements exceeding \$2,000 entered into by the Department of the Attorney General must be approved by the legislature. Since voting on his own settlements would be prohibited by the ethics code, the Commission advised that the legislator refrain from voting when his own cases were before

the legislature. Although settlements are usually presented together in one bill, the Commission noted that it had been told that the Department of the Attorney General would, upon request, submit a particular settlement in a separate bill so that a legislator would be able to vote for the approval of settlements for cases in which he was not involved.

The Commission told the legislator that it appreciated his bringing this matter to its attention. The Commission has found that this kind of concern for ethical matters furthers public confidence in state employees and contributes to an improved ethical climate in state government.

Dated: Honolulu, Hawaii, January 19, 1984.

STATE ETHICS COMMISSION

Edith K. Kleinjans, Chairperson

Mildred D. Kosaki, Commissioner

Rabbi Arnold J. Magid, Commissioner

Note: Vice Chairperson Allen K. Hoe and Commissioner Gary B.K.T. Lee disqualified themselves from the consideration and preparation of this opinion.