

FORMAL OPINION NO. 81

The Ethics Committee of the Idaho State Bar has been solicited for its opinion by your Commission on the following question:

Is it a conflict of interest or other breach of ethical propriety for an Assistant Attorney General of the State of Idaho assigned to the Industrial Commission discharging the function of hearing officer for the Commission generally and concurrently acting as an advisor to the Commission in the administration of the Industrial Special Indemnity Fund?

The pertinent statutes regarding the referee are set out as follows:

"72-506. ACTS OF COMMISSION OR REFERENCE-- HEARING OFFICERS.--(1) Any investigation, inquiry or hearing which the commission has power to undertake or hold may be undertaken or held by or before any member thereof or any hearing officer, referee or examiner appointed by the commission for that purpose.

(2) Every finding, order, decision or award made by any member, hearing officer, referee or examiner pursuant to such investigation, inquiry or hearing, when approved and confirmed by the commission, and ordered filed in its office, shall be deemed to be the finding, order, decision or award of the commission."

The pertinent statutes respecting the Industrial Special Indemnity Fund are as follows:

"72-323. CREATION OF INDUSTRIAL SPECIAL INDEMNITY FUND.--A fund is hereby created to be known as the industrial special

indemnity fund, which shall consist of payments made to it as in sections 72-327 and 72-420, and as may hereafter be provided."

"72-324. INDUSTRIAL COMMISSION ADMINISTRATOR OF FUND.--The industrial special indemnity fund shall be administered by the commission without liability on the part of the state or the commission beyond the amount of such fund."

"72-325. STATE TREASURER CUSTODIAN OF FUND--DUTIES.--The state treasurer shall be custodian of the industrial special indemnity fund. He shall give a separate and additional bond in an amount and with sureties approved by the commissioner of insurance, conditioned for the faithful performance of his duty as custodian of said fund."

"72-330. LEGAL REPRESENTATION OF FUND.--The attorney general shall appoint a member of his staff, if requested by the commission, to represent the industrial special indemnity fund in any proceeding brought to enforce a claim against the fund."

"72-332. PAYMENT FOR SECOND INJURIES FROM INDUSTRIAL INDEMNITY FUND.--(1) If an employee who has a permanent physical impairment from any cause or origin incurs a subsequent disability by an injury to occupational disease arising out of and in the course of his employment, and by reason of the combined effects of both the pre-existing impairment and the subsequent injury or occupational disease or by reason of the aggravation and acceleration of the pre-existing impairment suffers total and permanent disability, the employer and surety shall be liable

functions retains the ultimate responsibility of decision. We cannot see where the knowledge that the attorney might gain as an advisor of the Commission in any particular case would cause conflict in his advising the Commission on matters concerning the fund, even if a case upon which the attorney is acting involves the same litigants. Rather, it would seem to us that the result of the attorney acting in both capacities might indeed be beneficial.

DATED this 8th day of October, 1974.