

ADVISORY OPINION NO. 159

The question is whether the outside activities of a campaign manager for a member of the City Council [Council] who is running for re-election would conflict with his duties and responsibilities when he is also the head of a nonprofit group which seeks Council approval of a proposed change in the Development Plan to develop a facility.

This opinion is based on the following information provided to the Ethics Commission [Commission].

1. The campaign manager has worked for the councilmember in earlier State elections and in his recent election to the Council. He does not receive any compensation for his work.

2. The campaign manager is also the head of a nonprofit community organization which hopes to develop a facility related to their interests.

3. It is the Commission's understanding that the area under discussion is currently designated "Public Facility" in the Development Plan. The nonprofit group has submitted to the Council proposed amendments to the Development Plan which would change the designation of a number of acres from "Public Facility" to "Park." Council approval of these proposed amendments is required by Revised Charter of Honolulu 1973 (1984 Ed.) [RCH] Section 5-412.

4. The councilmember has further informed the Commission that he has been on record in support of the facility for some time, at least as long as and predating the formation of the community group. He has also stated that he wishes to speak in favor of the proposed amendments to the Development Plan when they come before the Council for action at a meeting but fear that recent public allegations that this action would constitute a conflict of interest will jeopardize the success of the project.

RELEVANT AUTHORITY

RCH Article XI sets out the relevant standards of conduct applicable to an elected councilmember, in particular, Section 11-103, which reads:

Section 11-103. Disclosure of Interest--Any elected or appointed officer or employee who possesses or who acquires such interests as might reasonably tend to create a conflict with the public interest shall make full disclosure in writing to his appointing authority or to the council, in the case of a member of the council, and to the ethics commission, at any time such conflict becomes apparent. Such disclosure statements shall be made a matter of public record and be filed with the city clerk.

RCH Section 11-104 is also relevant to the situation presented. That section provides:
Section 11-104. Fair and Equal Treatment--No elected or appointed officer or employee

shall use his official position to secure or grant special consideration, treatment, advantage, privilege or exemption to himself or any person beyond that which is available to every other person.

Further, Revised Ordinances of Honolulu 1978 [ROH] Chapter 6, regarding Further Standards of Conduct, also applies to City Councilmembers, in particular, Section 6-1.2, which states:

No officer or employee of the City, except as hereinafter provided, shall:

(1) Participate, as an agent or representative of a City agency, in any official action directly affecting a business or matter in which (A) he has a substantial financial interest;

(2) Acquire financial interest in business enterprises which he has reason to believe may be directly involved in official action to be taken by him.

CONCLUSION

The Commission concludes that the facts as presented do not create a conflict of interest within the provisions of either RCH or ROH section for the following reasons:

1. Neither the councilmember nor the campaign manager derive any financial benefit nor will any such gain accrue to either of them from the Council's approval of the proposed amendments.

2. Neither the councilmember nor the campaign manager will secure any special consideration or treatment in regard to the development beyond that which is available to every other person. The councilmember is only one of nine, a majority of whom must agree to approve these amendments. He is not in a position to influence their vote, any more so than any other person who appears before the Council in support of or in opposition to this proposal.

3. Both RCH Section 11-103 and ROH Section 6-1.2 acknowledge that councilmembers will be involved in situations in which a possible conflict of interest will appear. These provisions require a councilmember to disclose in writing to the Council before any vote is taken on a subject that the member has or appears to have a conflict of interest. These provisions do not require the councilmember to divest whatever interest appears to be in conflict; in fact, the language permits him to keep these interests and to vote on matters affecting that interest before the Council. The only requirement of these provisions is that he indicate for the public record, in writing before the vote is taken, that he has such conflict.

Thus, providing that the councilmember complies with RCH Section 11-103 and ROH Section 6-1.2, there will be no breach of the standards of conduct pursuant to applicable RCH and ROH provisions.

Dated: April 15, 1986

GILBERT A. GIMA
Chair, Ethics Commission