

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**



ADVISORY OPINION NO. 203

This advisory opinion is the Ethics Commission's response to a request for an investigation concerning whether an officer of the City [Mr. A] had a conflict of interest due to his investment in certain real property owned by XYZ Partners and to his actions in relation to that land.

The Commission understands the facts relative to the complaint to be as follows:

Mr. A became an investor in (date) in a land development project on Oahu. At approximately the same time, the initial investors reorganized themselves as XYZ Partners, and Mr. A became a member of the executive committee of the partnership. He had an agreement to help broker lots through ABC Corporation, his realty firm.

In (date) Mr. A became an officer of the City and County of Honolulu and named a replacement on the executive committee of XYZ Partners. At sometime after beginning his City employment, Mr. A had his real estate broker's license inactivated.

The partnership's efforts to rezone the property from agricultural to urban use were unsuccessful, and later efforts to develop a subdivision never received more than tentative approval by the Department of Land Utilization. In (date) XYZ Partners sold the subdivision and adjoining property to a developer.

Prior to the sale of the land, Mr. A met with at least one potential buyer in his office at the City and confirmed that the use the buyer had in mind was permitted.

In (date), Mr. A reactivated his real estate broker's license in anticipation of his retirement from public service.

The ethical questions presented are: 1) whether Mr. A's investment in XYZ Partners' land development project conflicted with his position as an officer of the City and County of Honolulu, and 2) whether it is a conflict of interest for an officer of the City and County of Honolulu who has access to confidential information relating to land to hold an active real estate broker's license.

The general rule in regard to both questions appears in Section 11-102.3 of the Revised Charter of the City and County of Honolulu 1973 (1984 Ed.) [RCH] which states:

No elected or appointed officer or employee shall...[e]ngage in any business transaction or activity or have a financial interest, direct or indirect, which is incompatible with the proper discharge of such person's official duties or which may tend to impair the independence of judgment in the performance of such person's official duties.

Based on the evidence presented, the Commission finds that there was no clear violation of Section 11-102.3, RCH, when Mr. A met with a potential purchaser of the real estate in question and explained certain zoning policies of the City. However, Mr. A's participation in such a meeting, which he has confirmed, certainly gives the appearance of impropriety to members of the public. Since the City's Standards of Conduct exist to promote trust in government, Mr. A is advised to refrain from any further meetings in his City office with persons with whom he might have the possibility of doing personal business.

The Ethics Commission issued *Guidelines on Real Estate Sales and Broker Licenses* to all City agencies on March 21, 1988. The general rule states that

City personnel who...have access in the course of City employment to confidential information regarding real estate on Oahu should not have active sales or broker licenses and therefore should inactivate such licenses.

In his position as an officer of the City, Mr. A undoubtedly has access to confidential information regarding real estate on Oahu, whether he avails himself of that information or not. Therefore, he is advised that he must either retire from City employment or inactivate his real estate license within thirty (30) days in order to be in compliance with the guidelines.

Dated: June 14, 1990

JANE B. FELLMETH
Chair, Ethics Commission