

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**



Advisory Opinion No. 294

This is an advisory opinion in response to your letter requesting advice from the Ethics Commission as to whether two Commissioners violated the City's Standards of Conduct. The Commission understands the facts relative to your inquiry to be as follows:

In May 1997, the Commission first considered the application of a prospective licensee (the "Club") at a preliminary hearing. The applicant was a club, located within a restaurant ("XYZ"). One of the two subjects of your request was a sitting Commissioner ("A") as of this date.

At a Commission meeting in June 1997, the Commission administrator announced that he had received from your office a petition signed by 313 residents against granting a license to the Club. Since it was submitted at 4:30 on the afternoon preceding the meeting, there had not been time to verify the signatures. However, other protest letters and testimony were considered that day. The Commission voted to close the hearing, but gave the Commission administrator time to verify the petition signatures. This was the first meeting for another Commissioner ("B").

At a 1997 meeting, the Commission administrator announced that signatures of 56% of the residents had been verified. The lobbyist for the Club, asked the Commission to reconsider its decision to close the hearing, based on new information. The Deputy Corporation Counsel assigned to the Commission advised that it was appropriate to reconsider based on new evidence. The lobbyist stated that residents were misinformed about the Club and that some had signed the petition without knowing what it was about.

At that meeting, the lobbyist informed the Commission that she had sent faxes or letters to each member. The administrator stated that he had received letters from her for Commissioners stating that she planned to request that the hearing be reopened, but that he had not distributed them. The Deputy Corporation Counsel indicated that while the faxes and letters were technically *ex parte* communications, they did not prejudice the proceeding because they were reported at a public meeting, providing a chance for others to respond to them. In July 1997, the Commission did vote to reopen the hearing on the Club's application. Commissioners A and B supported the motion.

Later in July, a newspaper wrote a story about Commissioner A. The interview for that article was conducted at the Club. The Club's president confirms that Commissioner A paid \$25 for the food and beverages consumed there by both himself and the reporter.

At another Commission meeting in July 1997, Commissioner A recused himself

from this matter, neither participating in the discussion nor voting. Three commissioners approved the granting of a license to the Club, one opposed it, and Commissioner A abstained. Prior to the vote, Commissioner B publicly stated that she had been to the Club "to check it out." Immediately afterwards, another commissioner stated that he/she personally visited every applicant's establishment before voting on a license.

In an August 1997 meeting, Commissioner A and one other Commissioner were absent and excused from the meeting. You submitted a motion that the Commission reconsider its earlier decision to grant a license to the Club. The motion for reconsideration died because it did not receive the required majority of votes.

The ethical question presented is whether Commissioner A and Commissioner B violated the Fair and Equal Treatment provisions of the Standards of Conduct during the process of the granting of a license to the Club in 1997.

The general rule in relation to your question found in the Revised Charter of the City and County of Honolulu 1973 (1994 Ed.), Section 11-104, which states as follows:

Elected or appointed officers or employees shall not use their official positions to secure or grant special consideration, treatment, advantage, privilege or exemption to themselves or any person beyond that which is available to every other person.

Based on the evidence presented, the Commission finds that neither Commissioner A nor B violated the Standards of Conduct during the process of the granting of a license to the Club in 1997.

Dated: December 17, 1998 FAY M. UYEMA
Chair, Ethics Commission