

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**



Advisory Opinion No. 63

This is in response to your written request of July 14, 1976 for an advisory opinion from this Commission relative to loans made to a City official by a condominium developer.

Following are the salient facts contained in your letter of July 14:

1. In 1973 the City official obtained a loan of \$1,000 from the developer.
2. In May 1974 the developer obtained appliances at a wholesale price for the City official amounting to approximately \$1,200, which to date has not been paid for by the City official because of unforeseen circumstances affecting his financial situation.
3. In October 1974 the developer paid approximately \$123 for finished cement used in constructing a patio for the City official. The City official and the developer first met sometime in 1970 and thereafter became friends and socialized frequently.
4. The developer co-signed a \$5,000 promissory note for the City official which was payable to the City Federal Credit Union.
5. The City official was paid the sum of \$1,100 as a script writer and coordinator for the sale and promotion of a film relative to the sale of apartments in the development constructed by the developer.
6. The City official, during 1970, was a deputy director of a City executive agency. This agency developed criteria for housing projects and sought developers for such projects. Subsequently, the executive agency was abolished and the City official was assigned to the Managing Director's office.

Based on the foregoing facts, the following provisions of the standards of conduct contained in the Revised Charter and the Revised Ordinances of Honolulu 1969, as amended, may be applicable:

1. RCH Section 10-102.1, relating to loans or gifts.
2. RCH Section 10-102.2, relating to disclosure of confidential information.
3. RCH Section 10-102.3, relating to acquiring a conflict of interest which may tend to affect his official judgment.

4. RCH Section 10-102.4 and R.O. 1969 Section 7-15.2(d), relating to compensation to the City official from sources other than the City.
5. RCH Section 10-102.5 and R.O. 1969 Section 7-15.2(c), relating to representation of private interests before any City agency.
6. RCH Section 10-103, relating to the requirement to disclose any interest which tends to create a conflict between the public and private interests of the City official.
7. RCH Section 10-104, relating to fair and equal treatment for all persons.

The preliminary investigative hearing conducted by this Commission resulted in the following findings:

1. The City official did receive the loans and assistance as mentioned herein above from the developer.
2. The City official, during 1970, had an opportunity to take official action relative to the development proposed by the developer, but did not. However, he did assist the developer in putting together a package for the proposed development for submission to the executive agency.
3. There was testimony by other City officials directly involved in administering the development that the City official did not personally appear or personally contact any of them.
4. There was no written document regarding mode and rate of repayment in the form of a promissory note.
5. With respect to the development proposals and development criteria, they were all public records and available to any person interested in such records. Also, staff was instructed to assist any person interested in submitting a proposal.
6. There was no testimony by any witness in this case that the City official exercised his judgment or gave rise to a situation where there was an incompatibility between the City's interest and the private interest of the City official.
7. There was no testimony by any witness indicating that the loans were considered to be compensation or a retainer for assistance given the developer in putting together a package for submittal to the executive agency administering the housing development.
8. The payment to the City official for script writing was made by other than the developer. However, the movie was made for the proposed project.
9. No disclosure was made of the loans made by the developer to the City official's appointing authority.

The foregoing findings were based primarily on testimony presented by former employees of the developer and officers and employees of the City directly involved in the development of Block G by the developer.

With reference to the applicability of RCH Section 10-102.1 there was no official action taken by the City official indicating that the loans were made for such purpose. (See findings nos. 1 and 2.)

With reference to RCH Section 10-102.2, the development criteria and all matters relating to the development were matters of public record. Moreover, the staff was instructed to assist any person who was interested in submitting a proposal. Consequently, no confidential information could have been divulged under such circumstances. (See findings no. 5.)

In connection with RCH Section 10-102.3, the City official did not acquire or possess a conflict of interest which would have impaired his judgment or created an incompatibility between his private interest and the City's interest. (See findings no. 6.)

With reference to the loans being a compensation, the provisions of RCH Section 10-102.4 and R.O. 1969 Section 7-15.2(d) appear to be applicable. However, there was no testimony indicating that the loans were considered to be a compensation or retainer. (See findings no. 7.)

RCH Section 10-102.5 and R.O. 1969 Section 7-15.2(c) related to appearance before any City agency on behalf of a private interest by a City official. With reference to said provisions, no personal appearance or personal contact was made by the City official on behalf of the developer. (See findings no. 3.)

With respect to the provisions of RCH Section 10-104 relating to fair and equal treatment, there was no appearance made by the City official before any City agency or no telephone contacts. Thus, there was no possibility of seeking special consideration or special treatment for the developer. (See findings no. 3.)

With respect to disclosure, the Commission believes that the City official should have filed a disclosure because of an appearance of a conflict of interest. In the instant case, there is an appearance of conflict of interest because the City official did assist the developer in putting a package together to be submitted to the City. The subsequent loans made by the developer appear to be additional compensation to the City official because of such assistance to the developer. However, as to actual conflict of interest or special consideration or treatment, findings no. 5 absolves the City official.

In view of the foregoing, we conclude that there were no proved violations of any of the provisions of standards of conduct contained in the Revised Charter or the Revised Ordinances of Honolulu 1969, as amended, but the City official should have filed a disclosure of the aforesaid loans because of an appearance of conflict of interest.

Therefore, we recommend that the City official be reprimanded in writing and such reprimand be placed in his personnel jacket.

Dated: Honolulu, Hawai'i, November 10, 1976.

ETHICS COMMISSION
Rev. William Smith, Acting Chairman