

**ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU**



**Advisory Opinion No. 64**

By letter of July 14, 1976, you requested this Commission to issue an advisory opinion relative to the use of an apartment owned and developed by the developer of X Project by an officer in the executive branch.

Following are the salient facts involved in this case:

1. The City official returned to Hawai'i sometime in 1974 and requested certain real estate agents to locate a furnished apartment.
2. Since there was no response from the real estate agents, he sought the assistance of a member of the Mayor's campaign committee, who is an officer of a private corporation, not of the City, to find a furnished apartment.
3. The member responded a few days later and told him that there was a furnished apartment available.
4. The City official was unaware at the time that the building was developed and operated by the developer of X Project.
5. The City official sought to pay the rent, but he was informed that the rent payment was not necessary. Consequently, he assumed that the member was the owner of the apartment.
6. Sometime in late June a reporter called him stating that an officer of the development company informed him that the City official stayed in said apartment rent free.
7. When the City official learned that the member was not the owner, he sought to pay the rent. He finally received the statement from an officer of the development company and paid the rent.

Based on the foregoing facts, the following questions are raised:

1. Was the use of the apartment without payment of rent a gift to the City official which was intended to influence him in the performance of his official duties favorable to the member or developer. (RCH Section 10-102.1).
2. Was the use of the apartment rent free an incentive to the City official to disclose

confidential information gained in the course of his City employment for the personal gain of the member or the developer. (RCH Section 10-102.2).

3. Was the use of the apartment rent free an inducement to the City official to appear on behalf of the member or developer before any City agency. (RCH Section 10-102.5;R.O. 1969 Section 7-15.2(c)).

4. Because the City official had the use of an apartment developed and operated by the developer, did the City official use his position to gain special consideration or treatment for the developer which was not available to others. (RCH Section 10-104).

5. Was the use of the apartment rent free a retainer or compensation to the City official or a political contribution towards the City official's appointing authority in anticipation of a favorable action for the member or developer by the City official. (RCH Section 10-102.4;R.O. 1969 Section 7-15.2(d)).

6. In view of the foregoing facts, should the City official have disclosed the arrangement to his appointing authority because he may have acquired an interest which may be in conflict with the public interest. (RCH Section 10-103).

Our preliminary investigative hearing resulted in the following findings:

1. There was testimony that the member contacted another officer of the development company on behalf of the City official to locate an apartment, but not the developer.

2. The City official was not aware at the time he occupied the apartment that it was developed and managed by the developer.

3. He sought to pay the rent at the outset but was informed by a representative of the developer that it was not necessary. Therefore, he did not intend the use of the apartment to be a gift.

4. There was testimony that the developer only met the City official twice before the use of the apartment by the City official was publicized.

5. The City official took no official action on his part which was advantageous to the developer or the member in any manner.

6. There was no testimony that the City official had disclosed confidential information which would have been advantageous to the developer for X Project or the member.

7. There was no testimony that he appeared before any City agency on behalf of the developer or the member.

8. There was no testimony that the City official sought to gain special consideration or treatment for the developer or the member.

9. There was no testimony that the City official took favorable action or appeared before any City agency seeking such favorable action on behalf of the developer or the member because the use of the apartment could have been considered as a retainer or compensation to the City official or political contribution to the City official's appointing authority.

10. There was no disclosure made by the City official to the appointing authority because he believed that there was no conflict of interest.

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

With reference to the first question, findings nos. 2, 3 and 5 are applicable.

Findings no. 6 reveals that the City official imparted no confidential information which was favorable to the developer or the member.

With reference to appearing before any City agency or to seek special consideration or special treatment for the developer or member, it is clear that the City official took no such action. See findings nos. 7 and 8.

Findings no. 9 indicates that the use of the apartment was not considered to be a retainer or compensation to the City official or a political contribution to his appointing authority. Consequently, under such circumstances, R.O. 1969Section 7-15.2(d) is also not applicable.

Although there was no proved conflict of interest, the Commission believes that the City official should have filed a disclosure because of an appearance of conflict of interest. There is an appearance of conflict of interest because the City official, by the use of the apartment rent free which was subsequently paid, placed himself in such a position that he may have been requested not to carry out his official duties against either the member or the developer in the event either or both abrogated any law which the City official is required to enforce.

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 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