

**ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU**



**Advisory Opinion No. 85**

This is in response to your written referral of September 27, 1978 requesting an advisory opinion relative to a gift of financial interest in a land development hui to Employee X in the Office of Council Services from Employee's parent.

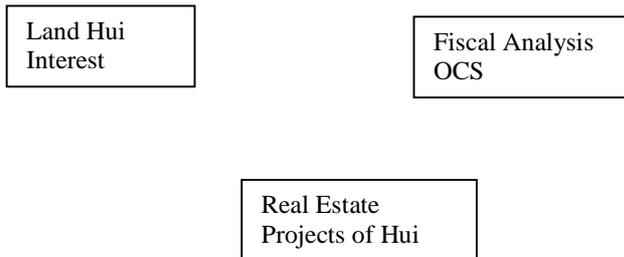
We are of the opinion that there is no conflict of interest nor any violation of any of the standards of conduct provisions under the present state of facts.

We understand the salient facts to be as follows:

1. The paternal parent of Employee X has a 3% capital interest in the land development hui;
2. The book value of the 3% capital interest amounts to approximately \$15,000, while the market value of that same interest amounts to approximately \$26,000;
3. One of the projects of the subject land hui is presently before the Department of Land Utilization for its approval under the Subdivision Rules and Regulations administered by that Department;
4. There are other real estate developments in which the land hui has an interest where approval of executive agencies will be required, such as grading and building permits for construction of improvement; and
5. According to the sworn testimony given by Employee X, he believes that there are no real estate development project which will require action by the Council.

Under the foregoing facts, Employee X has complied with the provisions of RCH Section 10-103 because he has filed a disclosure of a pecuniary interest which may "reasonably" tend to create a conflict with the public interest." We have construed the quoted phrase to cover potential conflict of interest. In the instance case, the conflict is potential because a real estate development in which the land hui may have financial interest may be placed before the Council for its approval. However, based on the testimony given by Employee X it appears that the potential conflict may not become a reality because none of the real estate development projects in which the hui has an interest require any Council action. On the other hand, if any of the real estate development projects should come before the Council, Employee X has been instructed to file a disclosure so that this Commission can reappraise the situation at that juncture. Another provision which was considered by the Commission under the facts of this case was RCH Section 10-102.3, which states that no officer or employee shall:

3. Engage in any business transaction or activity or have a financial interest, direct or indirect, which is incompatible with the proper discharge of his official duties or which may tend to impair his independence of judgment in the performance of his official duties. However, when we apply the classic triangle test, which is diagramed hereinafter, we conclude that so long as none of the real estate development projects require Council approval Employee X's status will not be within the ambit of said Section 10-102.3.



Note the absence of the link between Employee X's duties and responsibilities as a Fiscal Analyst of the Office of Council Services and the real estate projects in which the hui has an interest. In other words, Employee X will not be serving two separate interests which have jurisdiction over the real estate projects.

In view of the foregoing analysis, we conclude that Employee X may accept the gift from his donor provided that he submits a written disclosure if any of the real estate developments in which the hui has an interest are before the Council for its approval.

Dated: Honolulu, Hawaii, November 15, 1978.

ETHICS COMMISSION  
Rev. William Smith, Chairman