

OPINION NO. 89

By letter of December 29, 1978, you requested an advisory opinion from this Commission as to whether there is a violation of the standards of conduct under the facts as stated hereinafter.

We are of the opinion that there was a violation of RCH Section 10-103, relating to disclosure of conflict of interest; but there are extenuating circumstances, which are discussed hereinafter and which were the basis of our recommendation rather than a more severe recommendation to the Council.

We understand the facts to be as follows:

1. As a member of the Council, you have knowledge of the amount appropriated for travel for the Council for the Fiscal Year 1977-78;

2. You acquired a financial interest in a travel agency doing business as Company X which was incorporated under the laws of the State of Hawaii in November, 1977;

3. At the time you acquired the one-third interest in Company X in November, 1977, you were a member of the Council;

4. You did travel during the Fiscal Year 1977-78, which was paid for by City funds;

5. In July, 1978, you booked passage for various mainland cities with Company X, but it was subsequently ascertained that Company X had no legal authority to accept your offer as it was not authorized to do business under the laws of the State of Hawaii and International Association of Travel Agents' [IATA] regulations. Therefore, the booking of your travel plans was done by Company Y and it retained the commission for its services;

6. There is no record of filing of a written disclosure by you when you acquired the one-third financial interest in Company X;

7. Neither was there a written disclosure filed by you when your travel request, related to Company X, was before the Council in 1978 for its action;

8. The Council's record does show that on December 29, 1978 you did file a disclosure regarding your one-third interest in Company X, together with a statement that you did not file a disclosure prior to this date because of the State

Ethics Commission's Advisory Opinion No. 240 [SAO 240] ;

9. SAO 240 held that the Manager of the Aloha Stadium was not in violation of the State standards of conduct provisions because he did not contract with the State agency. Instead, the contracting was done by the State agency with the travel agency in which he has a financial interest;

10. The Council has no express written policy for the officers and employees of the Legislative Branch to follow in arranging for travel plans paid for by City funds; and

11. By letter dated January 16, 1979, you have informed this Commission that your one-third share in Company X has been transferred to your brother.

The pertinent provision which is applicable under the facts of this case is RCH Section 10-103, which states that:

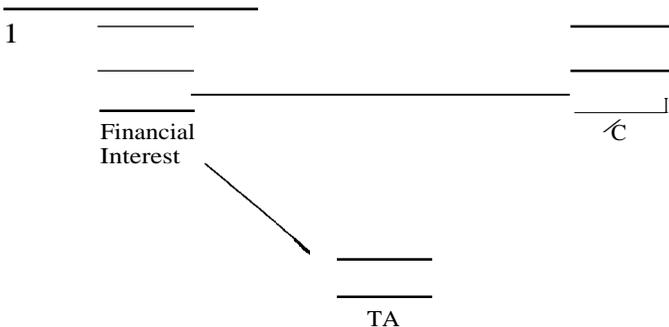
Any elected or appointed officer or employee who possesses or who acquires such interests as might reasonably tend to create a conflict with the public interest shall make full disclosure in writing to his appointing authority or to the council, in the case of a member of the council, and to the ethics commission, at any time such conflict becomes apparent. Such disclosure statements shall be made a matter of public record and be filed with the city clerk. Any member of the council who knows he has a personal or private interest, direct or indirect, in any proposal before the council, shall disclose such interest in writing to the council. Such disclosure shall be made a matter of public record prior to the taking of any vote on such proposal.

We are of the opinion that a disclosure of your interest in Company X should have been filed with the Council at the time you acquired a one-third interest in Company X. The facts that: (1) you are a member of the Council; (2) you have a financial interest in a travel agency; and (3) you had personal knowledge of the amount appropriated for travel for the Council, are sufficient to support a finding of potential conflict of interest. In M 78-56, the Deputy Corporation Counsel opined that a disclosure of conflict of interest should be filed where the situation gives rise to a potential conflict of interest. Using the triangle diagram used in M 78-56, there would be a broken line running from Councilman to travel agency to reflect the potential situation for a conflict of

interest.¹ Moreover, when your request for travel, alleged to have been arranged by Company X, came before the Council for its action, as a Councilman you were required to make a written disclosure as prescribed in RCH Section 10-103 or refer to an earlier written disclosure, if you had made it. Note that for members of the Council, RCH Section 10-103 requires two disclosures. At the outset, one, where there is a potential conflict; and two, an additional written disclosure when the subject matter is before the Council for its official action if a Councilman did not file an earlier written disclosure.

Based on the foregoing, we conclude that there was a violation of RCH Section 10-103, because you had acquired a financial interest "as might reasonably tend to create a conflict with the public interest." Therefore, you should have filed a disclosure with the Council.

Although you relied on SAO 240 and the facts were similar to your situation, the State statutory provisions were not similar to the Revised Charter provisions applicable in your case. However, we cannot fault you for relying on an opinion issued by the State Ethics Commission, because it would have been the natural and reasonable course to follow, especially when the facts were similar as in your case. Nor can we blame you for not having said opinion reviewed to determine whether the State standards of conduct provisions and the Revised Charter standards of conduct provisions were substantially similar. Such omission would, we believe, be the normal course taken by a layman not versed in analyzing the difference between statutory provisions.



In view of the foregoing, we face a dilemma. On the one hand, we cannot avoid the conclusion that there was a violation of RCH Section 10-103 requiring disclosures, but on the other hand, we cannot ignore SAO 240, with attendant publicity, as a mitigating factor. Therefore, from the standpoint of reasonableness and equity, we acknowledge SAO 240 to be a mitigating factor, without which our recommendation would have differed, and we will recommend to the Council that:

1. The findings of fact, conclusions of law and decision and recommendation be read into the record of the Council at one of its regular meetings from the floor of the Council's chambers by the Vice Chairman, and filed with the Clerk as a public record.

2. The Council adopt a written policy to guide officers and employees of the Legislative Branch in arranging travel plans for themselves.

3. The written policy should clearly state that no officer or employee shall do business with a travel agency under the following circumstances: (a) with any travel agency in which an officer or employee of the Legislative Branch has a substantial or controlling interest therein; (b) with any travel agency in which the spouse or children of an officer or employee of the Legislative Branch has a substantial or controlling interest therein; (c) with any travel agency in which the following blood relatives have a substantial or controlling interest therein: (i) parents; (ii) brother; (iii) sister; or (iv) the brother's or sister's children; and (d) with any travel agency from the standpoint of an appearance of a conflict in which the following relatives by marriage have a substantial or controlling interest therein: (i) parents; (ii) brother; (iii) sister; or (iv) the brother's or sister's children.

Dated: Honolulu, Hawaii, May 9, 1979.

ETHICS COMMISSION
Rev. William Smith, Chairman