

**ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU**



**Advisory Opinion No. 99**

A member of the City Council [Council] serves on the advisory board of a hospital without compensation. The advisory board merely makes recommendations to the hospital administrators on matters of operation and capital improvements. The administrators are not bound by the recommendations made by the advisory board. The application of the hospital relates to the construction of a clinic and a garage. The councilmember has no direct financial interest in the hospital because it is a nonprofit, private, charitable institution.

The question is whether the councilmember may vote on the application of a business for which he serves on an advisory board.

When the facts as stated above are applied to each of the standards of conduct in the Revised Charter of the City and County of Honolulu [RCH] and Revised Ordinances of the City and County of Honolulu [ROH], the Ethics Commission [Commission] finds that, except for two standards of conduct, none of the standards of conduct in the RCH and ROH appears to bar the councilmember from participating in the proceeding or application for a plan review use of the hospital because the councilmember is a member of its advisory board.

The Commission's decision is based upon the fact that, except for Sections 11-102.2 and 11-104, the standards of conduct concern the enhancement of one's personal financial interest or the representation of a private interest as its spokesman before any City agency. Under the facts of this case, the Commission finds that there is no enhancement of the councilmember's personal financial interest because he is not compensated for his services to the advisory board nor does he have any other financial interest in the hospital, which is a nonprofit, private, charitable institution. Moreover, he has not been retained by the hospital to represent its interests before the Council regarding its application.

The two exceptions are Sections 11-102.2, RCH, relating to disclosure of confidential information and 11-104, RCH, relating to fair and equal treatment. If the councilmember discloses confidential information for the benefit of the hospital that he has not given to others in the same situation, then a violation of Section 11-104, RCH, would occur. Consequently, the Commission cautions that he be mindful of the restrictions of Sections 11-102.2 and 11-104, RCH.

To summarize, the Commission concludes that the standards of conduct do not bar the councilmember's participation in Council proceedings regarding the hospital's application because the standards of conduct in the RCH and ROH concern the enhancement of his personal financial interest or his representation of a private interest before City agencies.<sup>1</sup> As to the two exceptions, which are Sections 11-102.2, relating to disclosure of confidential information, and 11-104, relating to fair and equal treatment, he may not disclose confidential information or give special consideration to the hospital.

The Commission also advises the councilmember that because, as a member of the Council, he will be participating in a matter of concern to an organization he assists in a private capacity, an appearance of a conflict of interest may be created. Because of this appearance, he may decide to abstain from participating in the application proceeding. However, if he desires to abstain, he will have to submit his request to the Council for its decision as to whether he may abstain. The Commission also points out that Section 3-108.1, RCH, states that a member of the Council has a right to vote. Further, Section 6-1.2(aX1), ROH, provides that even where a Councilmember has a financial interest in a business, such member is not precluded from voting so long as a timely disclosure has been filed. He has made such disclosure and, in addition, as pointed out above, he does not have a financial interest in the hospital. Accordingly, he may participate in this proceeding.

Dated: April 23, 1981

ETHICS COMMISSION  
Rev. William Smith, Chair

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<sup>1</sup>The Commission would advise the councilmember not to participate in the proceedings if he were an officer of the hospital, such as a member of its board of directors. As a director, he would have acquired a business interest which might be in conflict with the public interest as an elected public official. The foregoing statement is based on the fact that the hospital is a business regardless of whether it makes a profit or not under Section 6-1.1(a)(2), ROH, and if he were a director on its board, he would be making decisions rather than offering advice as a member of the advisory board.