

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**



ADVISORY OPINION NO. 202

This advisory opinion is in response to a request for guidance from the Ethics Commission [Commission] concerning whether a conflict exists between a councilmember and the business interests of the chair of his campaign committee and whether he would be able to accept a paid position with a nonprofit, tax-exempt foundation.

The Commission understands the facts relative to the inquiry to be as follows:

The chair of the councilmember's campaign committee is Mr. A, who is currently a partner in the development of a retirement community on Oahu. His project is being financed by XYZ Corporation. At the invitation of the City, the corporation proposes to build a public building and its Plan Review Use application required Council approval

When Mr. A became chair of the councilmember's committee, the councilmember acknowledged that as a private businessperson he might occasionally be involved in activity which would require Council action. Consequently, the councilmember determined that as a matter of policy, they would not discuss their votes on any such issue. The councilmember has followed this procedure without exception.

Further, the councilmember has a personal interest in long-term care programs for the elderly. A local nonprofit, tax-exempt foundation for the purpose of providing lifetime care is presently in the process of being created. There is a possibility that the councilmember will be asked to serve in a paid position with that foundation in the future.

The general rule in relation to the councilmember's questions appears in Section 11-102.3, Revised Charter of the City and County of Honolulu 1973 (1984 Ed.) [RCH] which states in pertinent part:

No elected or appointed officer or employee shall...[e]ngage in any business transaction or activity or have a financial interest, direct or indirect, which is incompatible with the proper discharge of such person's official duties or which may tend to impair the independence of judgment in the performance of such person's official duties.

The ethical questions presented are: 1) whether a conflict of interest exists between the councilmember and the business interests of the chair of his campaign committee; and 2) whether the councilmember would be able to accept a paid position with a nonprofit, tax-exempt foundation established to provide lifetime care for the elderly, if it were offered to him. It should be noted that the councilmember submitted his inquiry and received an oral report of the Ethics Commission's opinion prior to the City Council's vote on XYZ Corporation's Plan Review Use application.

Based on the evidence presented, the Commission finds the connection between the financing of a business venture in which the councilmember's campaign committee chair is a partner in the parent company of XYZ Corporation and the requirement for City Council approval of XYZ Corporation's Plan Review Use application for its proposed public building to be sufficiently remote that it does not present a conflict.

Further, the Commission has previously held that since City Councilmembers are considered to be part-time employees, they reasonably can be expected to hold additional employment. For the councilmember to work with a nonprofit, tax-exempt foundation providing care for the elderly does not appear to create a conflict with the councilmember's City office. If, however, the councilmember were to work with the foundation and they appear before the Council, it would be mandatory that the councilmember file a Disclosure of Interest Statement as required by Section 11-103, RCH, prior to any vote in which the councilmember participates.

Dated: May 11, 1990

JANE B. FELLMETH
Chair, Ethics Commission