

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**



Advisory Opinion No. 243

This is an advisory opinion in response to a letter requesting advice from the Ethics Commission as to whether a City officer ("A") violated the Standards of Conduct of the City and County of Honolulu when A permitted a private company ("XYZ") to use City space and equipment for its private patients.

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

In 1992 the City's Department of Health purchased a Spinoscope, a state-of-the-art system which provides information on spinal function. At that time the City owned the only such equipment in the state. The following year, XYZ, a private profit-making corporation, also purchased a Spinoscope.

Currently, those are the only two such systems in Hawaii.

In mid-1994, XYZ found it necessary to send its Spinoscope back to Canada for recalibration. As a result, a representative of an XYZ subsidiary contacted A to request permission to use the City's Spinoscope with his patients. Although XYZ is a profit-making corporation, the representative of the XYZ subsidiary did not offer to compensate the City and County of Honolulu for the use of the Spinoscope. Rather, the representative orally stated that the City would be able to use XYZ's Spinoscope if the City ever were to find itself in a similar situation. A consulted with the supervisor of the Examinations Section, City Department of Health, to determine the dates which would be most convenient for the City to permit XYZ to use the Spinoscope. A then agreed to permit the representative of the XYZ subsidiary and his staff to use the City's Spinoscope on June 3, 6, and 7, 1994. A did not consult with the Director of the Department of Health, the Department of the Corporation Counsel, or the Ethics Commission prior to entering into this oral agreement.

The ethical question presented is whether A's permission for XYZ's use of the City's Spinoscope and space in the Department of Health facility in Iwilei constituted the granting of special treatment to XYZ which is unavailable to other profit-making businesses in their relationships with the City and County of Honolulu.

The general rule in relation to the question is found in Section 11-104 of the Revised Charter of the City and County of Honolulu 1973 (1994 Ed.) [RCH] which states as follows:

Elected or appointed officers or employees shall not use their official positions to secure or grant special consideration, treatment, advantage, privilege or exemption to themselves or any person beyond that which is available to every other person.

Based on the evidence presented, the Commission finds that A violated the City's Standards of Conduct by permitting a private profit-making company to use City space and equipment without compensation or without securing any written agreement about future compensation, thus granting XYZ special treatment beyond that which is available to every other business. In

accordance with the provisions of Section 11-106, RCH, the Ethics Commission has recommended to Dr. Tom K. Taira, Director of the Department of Health, that a letter of reprimand be entered into A's personnel file as a result of this violation of the *Fair and Equal Treatment* provision of the City Charter.

Dated: December 21, 1994

SAMUEL L. DOMINGO
Chair, Ethics Commission