

**ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU**



Advisory Opinion No. 256

This is an advisory opinion in response to your letter requesting advice for the Ethics Commission as to whether a conflict of interest would be created if you were confirmed to serve on the Planning Commission of the City and County of Honolulu.

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

You have been appointed by the Mayor to serve on the Planning Commission of the City and County of Honolulu. You are currently employed as an executive director of a fund where you represent both management and labor. In the past, you have testified before the City Council in support of certain construction projects, and you would like to be able to continue to do so. Additionally, you now serve as chair of a neighborhood board. You have run for reelection to the board and are awaiting those results.

In general, the Planning Commission makes advisory recommendations to the City Council, which has the ultimate decision power. However, when determining approval for a special use permit, the Planning Commission exercises quasi judicial power since it exercises its discretion and it issues a final and binding order affecting the rights of specific persons after holding a hearing for which notice was given. Decisions on special use permits represent a very small portion of the work of the Planning Commission.

The ethical question presented is whether your financial interest as executive director of a fund or your position a member of the neighborhood board would create a conflict of interest with your service on the Planning Commission.

The general rule in relation to your question is found in Section 11-102(c), Revised Charter of the City and County of Honolulu 1973 (1994 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.

Additionally, Section 3-8.2(c) of the Revised Ordinances of Honolulu 1990, provides in pertinent part that

a member of any board, commission or committee, whose board, commission or committee does not exercise either quasi judicial or quasi legislative power, may appear for compensation in behalf of private interests before agencies other than the one on which such person serves and other than those agencies that have the power to review the actions of the agency on which such person serves, or to act on the same subject matter as the agency on which such person serves; provided further, that no officer or employee shall be denied the right to appear before any

agency to petition for redress of grievances caused by any official act or action affecting such person's personal rights, privileges or property, including real property.

Furthermore, Section 13-119, RCH, specifically includes the following provision:

No person shall hold more than one public office or position under the city, except that city officers and employees **shall not be precluded from membership on a neighborhood board.** (emphasis added)

Based on the evidence presented, the Commission finds that no conflict of interest will be created if you continue to work as executive director of a fund while serving as a member of the City's Planning Commission as long as you comply with three conditions. First, you must recuse yourself from discussion of and decision-making about any matter that comes before the Planning Commission which affects the workers represented by the fund or their management. Second, you must refrain from presenting any testimony to the City Council on any matter other than that which affects your personal rights, privileges or property as long as you serve on the Planning Commission, since the Council has the power to act on the same subject matter as does that Commission. Finally, if any matter that is being considered by the Planning Commission comes to a neighborhood board on which you are serving, you must recuse yourself from any discussion of or decision-making about that matter.

Dated: July 7, 1995

SAMUEL L. DOMINGO  
Chair, Ethics Commission