

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**



Advisory Opinion No. 291

This is an advisory opinion in response to your request for advice from the Ethics Commission in regard to the appointment of an individual ("A") to the Building Board of Appeals [BBA].

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

A is an architect registered to practice in the State of Hawaii. A has no employees. A's practice includes both commercial and residential work. A must regularly telephone, write, or physically appear before persons in various city departments in relation to the architectural work A is doing in behalf of A's private clients.

The Revised Ordinances of Honolulu 1990, Section 16-1.1(6), establish the nine-member BBA. The legislation specifies that "[f]our members shall be currently registered as engineers or architects with the State of Hawaii...." A was recently appointed by the Mayor and confirmed by the Council as a member of the BBA. It is A's understanding that A is the first architect to serve on the BBA for several years.

On August 14, 1998, the Corporation Counsel opined that "[a] person appears in behalf of private interests' before a city agency when he or she acts as an advocate of the interests of a non-governmental party or entity in the proceedings of an office, department, board, commission or other unit of the city government." It was noted that according to the Revised Charter of the City and County of Honolulu 1973 (1994 Ed.) [RCH], Section 13-101.1, "[e]xcluded from the definition of 'agency' is the city council and any commission specifically excluded by the Charter."

The ethical question presented is whether A's service as a BBA member prohibits A from appearing before city agencies in behalf of private clients.

The general rule in relation to your question is found in RCH, Section 11-102 (e), which states in pertinent part:

No elected or appointed officer or employee shall....[r]epresent private interests in any action or proceeding against the interests of the city or **appear in behalf of private interests before any agency...** (emphasis added).

Based on the evidence presented and relying on the opinion of the Corporation Counsel, the Commission finds that as long as A is a member of the Building Board of Appeals, A may not appear before any city agency in behalf of private interests. A may, however, appear before city agencies in behalf of work that A performs for any governmental party, since it would not be a **private** interest.

Dated: October 22, 1998

FAY M. UYEMA
Chair, Ethics Commission