

**ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU**



**Advisory Opinion No. 45**

This is in response to your letter of November 8, 1974, requesting an advisory opinion from this Commission on the following questions:

- (1) Was there a necessity of filing a disclosure of a conflict of interest involving your status as Vice-President of ABC Corporation and the application of Y Developer in connection with a subdivision.
  
- (2) Was there a necessity of filing a disclosure of a conflict of interest involving your status as Vice-President of ABC Corporation and the acquisition of real property by eminent domain of real property which is owned in fee by A Estate and leased to X Developer? Our answer is no to your first question. We have been informed that you hold a position as Vice-President of ABC Corporation, and ABC Corporation is the representative of XYZ Corporation, a mainland corporation, which acts as the statutory agency for Y Developer. Y Developer has submitted an application for a subdivision on D Ridge. We have no other indication that there is any other business relationship between ABC Corporation and Y Developer.

Under the foregoing facts, the applicable provision is RCH Sec. 10-103 which, in pertinent part, provides that:

Any elected or appointed officer or employee who possesses or who acquires such interests as might reasonably tend to create a conflict with the public interest shall make full disclosure in writing to his appointing authority or to the council, in the case of a member of the council, and to the ethics commission, at any time such conflict becomes apparent .... Any member of the Council who knows he has a personal or private interest, direct or indirect, in any proposal before the council, shall disclose such interest in writing to the council.

Another provision of law applicable to the foregoing facts is RCH Sec. 6-1007.2. A reading of said section clearly indicates that an application for subdivision is subject to the approval by the Director of Land Utilization. The Director of Land Utilization is an official of the Executive Branch and subject to the general supervision of the Mayor and direct supervision of the Managing Director. Thus, it is clear that the Legislative Branch or the City Council does not have any general or direct control of the Department of Land Utilization and its department head. Moreover, any matter dealing with subdivision of land does not go beyond the scope of the Director of Land Utilization, except when there is a denial of an application for subdivision. In such case an applicant may appeal such action to the appropriate courts.

Upon application of the provisions of RCH Sec. 10-103 to the circumstances of this case, it is evident that you have not acquired an interest which might reasonably tend to create a conflict with the public interest, nor do you have a personal or private interest, direct or indirect, in any proposal before the Council.

Therefore, it is our opinion that it was not necessary for you to file a disclosure of conflict of interest in the Y Developer situation.

Our answer is no to your second question. We also understand that ABC Corporation, as the representative of XYZ Corporation, is also statutory agent for X Developer. However, our investigation has shown that on May 12, 1970 X Developer registered with the Department of Regulatory Agencies of the State of Hawai'i. Consequently, the indirect relationship through XYZ Corporation was terminated because service of process can be made directly on X Developer instead of ABC Corporation. Moreover, ABC Corporation has no business, trust or other legal relationship with X Developer.

We further understand that on January 15, 1974 you participated in approving the condemnation of two parcels of land for park purposes owned by A Estate which was leased to X Developer. Subsequent to such condemnation proceeding, A Estate submitted a proposed plan in lieu of the acquisition of the two parcels of land, which is the granting to the City of five perpetual easements in the vicinity of the subject land. This latter plan is still under study by the City Council.

Prior to 1970, it could be said that there was a thread of private benefit flowing to ABC Corporation because of the relationship between ABC Corporation and XYZ Corporation the statutory agent of X Developer. However, after 1970 there was no such relationship. Thus, when the City Council decided to condemn the two parcels of land situated in the K Subdivision, there was no relationship between you and X Developer which would give rise to a conflict of interest.

Therefore, we are of the opinion that it was not necessary for you to file a disclosure of conflict of interest in the above situation, as required by RCH Sec. 10-103.

Caveat: In the future, if you believe there is an "appearance" of conflict of interest arising out of your relationship as an officer of ABC Corporation and any business entity remotely or indirectly connected with ABC Corporation's operations involved in any case, hearing or proceeding before the City Council, we recommend that you file a disclosure of conflict of interest.

Dated: Honolulu, Hawai'i, December 18, 1974.

ETHICS COMMISSION  
Edward D. Sultan, Jr., Chairman