

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**



Advisory Opinion No. 50

This is in response to your written request of December 24, 1975, for an opinion whether Councilman X is in conflict of interest under the facts stated hereinafter.

No, he is not.

We understand that Councilman X has filed a Disclosure of Interest Statement as provided in RCH Section 10-103. His disclosure stated that, in connection with the action relative to Bill No. 70 which grants to Y Company a planned unit development on land owned in fee by A Estate, there is a possible conflict of interest because the fee owner of the property, A Estate, operates, maintains and constructs the B Schools, which his children presently attend. He further filed a disclosure and made it a matter of public record before voting favorably on Bill No. 70. This disclosure did not state nor subsequent inquiry reveal that Councilman X had any financial interest in the two organizations. The absence of any financial interest in the two organizations indicates that Councilman X has no control over the two organizations which would permit him to participate in any financial benefits arising out of their operations.

The section of the Revised Charter which may be applicable to the foregoing facts is Section 10-102.3 which states in pertinent part that:

No elected or appointed officer or employee shall:

. . . .

3. . . . have a financial interest, direct or indirect, which is incompatible with the proper discharge of his official duties or which may tend to impair his independence of judgment in the performance of his official duties.

The facts show that there is no direct financial benefit to Councilman X. We apply the law in *pari materia* to determine what is meant by "indirect financial interest." Laws in *pari materia* shall be construed with reference to each other. What is clear in one statute may be called in aid to explain what is doubtful in another. (See HRS Sec. 1-16). Based on such rule, we look to the provisions of Section 7-15.1(f), R.O.1969, which, in pertinent part, state that:

'Financial interest' means an interest held by . . . his spouse, or minor children which is: (1) an ownership interest in a business; (2) a creditor interest in an

insolvent business; (3) an employment, or prospective employment for which negotiations have begun; or (4) an ownership interest in real or personal property.

The foregoing definition does not expressly state that it is an indirect financial interest, but as a matter of practice, it is a form of indirect financial interest when a spouse or minor child is expressly mentioned in the legal documents relative to the interest mentioned in said Section 7-15.1(f).

As noted in said Section 7-15.1(f), indirect interest is limited to financial interest held by a spouse or minor children of an officer or employee under the circumstances listed therein.* The facts reveal that Councilman X's wife or minor children do not have a direct interest in the subject property or in A Estate.

Apparently, to find whether or not there was in fact an indirect financial interest, there must be a direct financial benefit to the officer or employee. That is, even if the financial benefit takes a circuitous route, such financial benefit must ultimately be a direct financial benefit to the officer or employee. In **Application of Penny Hill Corporation**, 154 A.2d888 (1959), the court held that under the facts of that case there was no conflict of interest arising out of an indirect interest.

The officer involved was the chairman of the state liquor commission. He was the owner, along with his wife and others, of a shopping center. An applicant for a liquor license was a tenant in the shopping center owned by the chairman. Also, there was a statutory provision in which no liquor commissioner or employee was permitted to have any direct or indirect interest in any establishment involved in the manufacture, sale or dispensing of liquor.

In that case, the court held:

We interpret the words 'directly or indirectly' and 'any interest whatsoever' as referring to the manner in which that interest is held. Such an interest, we think, would not include that of owner and lessor under a lease such as exists in this case. Of course, it is conceivable that there could be a lease in which a landlord would have such a control over the business as to have an interest therein. But that is not true here. In this case the landlord has reserved no control; there is no acceleration clause; there is no clause providing for any participation in the profits. In the absence, therefore, of any default on the part of the tenant, the landlord's interest would be purely a reversionary one. [Citation omitted.] Under these circumstances, we conclude that the landlord's interest in this case is not such an interest as was contemplated by the Legislature in the statute.

Under the circumstances of this case, there is no direct financial benefit flowing to Councilman X arising out of the lease agreement between Y Company and A Estate. Neither does he wield

* This Commission will widen the scope of application of the term "indirect interest" if the facts of a particular case warrant such action; for example, if another blood relative or relative by marriage of an officer or employee is used as a coverup of a direct interest flowing to an officer or employee.

any control over A Estate or Y Company which will result in direct financial benefit to himself.

In view of the foregoing, we are of the opinion that there is no conflict of interest in the case disclosed by Councilman X.

Dated: Honolulu, Hawai'i, February 23, 1976.

ETHICS COMMISSION
Nathaniel Felzer, Chairman