

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**



Advisory Opinion No. 60

This is in reference to your letter of May 24, 1976, calling to our attention an elected official's involvement in connection with a development project.

The following allegations were made in the letter addressed to Councilman X which was attached to your letter of May 24:

1. The elected official, as a member of a real estate firm, obtained a commercial lease within the development project complex.
2. That he has failed to disclose the acquisition of the foregoing lease.
3. That the subject realty firm obtained a lower-than-normal lease rental for the leased premises.
4. That the purpose of the lease was to arrange for a "sandwich" lease.

Based on the foregoing allegations, we are of the opinion-that the following provisions of the standards of conduct contained in the Revised Charter and the Revised Ordinances of Honolulu 1969, as amended, should be taken into consideration:

1. RCH Section 10-102.3, relating to incompatible business transactions.
2. RCH Section 10-103, relating to disclosure.
3. RCH Section 10-104, relating to fair and equal treatment.
4. R.O. 1969 Section 7-15.2(b), relating to financial interest in business enterprises.
5. R.O. 1969 Section 7-15.2(c), relating to appearance before any agencies.
6. R.O. 1969 Section 7-15.2(e), relating to contracts with the City.

Our preliminary inquiry resulted in the following findings:

1. The development project is a private development because the City, who is the fee simple owner of the real property, leased the property to the City agency authorized to undertake such development. That City agency, in turn, leased it to a private

corporation. Consequently, with reference to the actual development, there is no involvement by the City.

2. The project's development and lease agreements were approved by the Council in 1972.
3. The elected official was an officer of a corporation which was formed in September of 1975 to secure commercial leases in on-going building projects within the downtown area.
4. That the elected official's initial capital contribution amounted to \$334.00.
5. The corporation was successful in obtaining a commercial lease covering approximately 9,000 sq. ft. in the development project.
6. The lease rental assessed for the area is at an average rate for comparable property situated in the central business district. This is supported by an appraisal report of another comparable property wherein the rates for commercial lease rental within the central business district are mentioned.
7. The commercial lease was obtained through a real estate broker who had the brokerage rights to negotiate commercial leases for the development project.
8. While the elected official was an officer and stockholder of the corporation, his contact regarding the commercial lease did not involve an officer or employee of the City because the commercial lease negotiations were handled by a real estate brokerage firm for the developer.
9. Before finalizing said commercial lease, the elected official withdrew as an officer and stockholder of the corporation in November of 1975; and his initial capital contribution was reimbursed.
10. The Council's Resolution No. 115 to conduct the investigation of the development project was adopted by the Council on April 14, 1976.

With reference to the provisions of RCH Section 10-103 relating to disclosure of interest, findings nos. 2, 9 and 10 indicate that no disclosure was necessary. No disclosure was necessary because there was no matter involving the development project before the Council for its action. Findings no. 2 reveals that the development and lease agreements were approved by the Council in 1972, while the elected official obtained the commercial lease sometime after September, 1975. Moreover, findings no. 10 indicates that the investigation for the development project was adopted by the Council after the elected official had withdrawn from the corporation which obtained the commercial lease within the development project. Thus, there was no matter with reference to the development project which required council action which would have resulted in a conflict of interest requiring disclosure.

Findings nos. 2, 9 and 10 reveal that the elected official did not acquire a financial interest, direct

or indirect, or enter into a business transaction which would have been "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." RCH Sec. 10-102.3.

The foregoing findings indicate that the provisions of RCH Section 10-104, relating to fair and equal treatment, were not applicable because the elected official entered into a transaction as a private individual with a private concern. In short, the transaction did not concern any public project under the direct supervision or control of a City official. See findings nos. 1, 7 and S.

The provisions of R.O. 1969 Section 7-15.2(b) are not applicable in the instant case because the development was not involved in official action by the Council at the time the commercial lease was negotiated. See findings nos. 1, 2, 7, 8 and 10.

In connection with R.O. 1969 Section 7-15.2(c), there is no City agency involved in this incident. Therefore, the cited section does not apply. See findings nos. 1, 2, 7, 8 and 10.

Findings nos. 1, 2, 7 and 8 indicate that no officer or employee was involved in the approval and execution of the lease agreement for the commercial area with the private corporation which obtained the lease. Consequently, R.O. 1969 Section 7-15.2(e) is not applicable.

In view of the foregoing, we are of the opinion that there is no violation of the applicable provisions of the Revised Charter and Revised Ordinances of Honolulu 1969 relative to standards of conduct.

Dated: Honolulu, Hawai'i, June 29, 1976.

ETHICS COMMISSION
Nathaniel Felzer, Chairman