

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**



Advisory Opinion No. 72

This is in response to your written request of March 29, 1977, "regarding the advisability or necessity of disclosures of interest in regard to the high school a councilman had attended in relation to voting on matters relating to that school."

We understand that the foregoing question was raised because the St. Louis-Chaminade Education Center (hereinafter referred to as the "Center") submitted a request for a zone change from Residential to A-2 and a planned development housing (PDH) on real property situated at the foot of St. Louis Heights and on which Chaminade University and St. Louis High School are located (TMK: 3-3-01 por. of 6). We further understand that several councilmen are graduates of St. Louis High School or members of the St. Louis High School alumni. A PDH is a land use action generally characterized in planning circles as a "floating use." Under our CZC, an application for floating use cannot be entertained or considered by the Council unless the real property has been zoned to coincide with the "floating use." For example, in the instant case the real property would have to be first rezoned to A-2. Otherwise, a PDH floating use cannot be entertained or considered by the Council. The foregoing factual situation and land use action raises two basic issues. First, whether the action of the Council is quasi-judicial or quasi-legislative; and second, whether councilmen who are graduates of St. Louis High School or members of alumni have a private pecuniary interest.

In Op. No. 66-7, the Corporation Counsel's office discussed the distinguishing characteristics between quasi-judicial and quasi-legislative action of the Council. In that opinion, it was said that:

It is not always easy to determine just when a legislative body is acting in a quasi-judicial capacity, or in a wholly legislative capacity. In general, it may be said that such a body acts in a quasi-judicial capacity when it grants or denies a privilege or benefit, and in a legislative capacity when it prescribes a course of conduct. [Blankenship v. City of Richmond, 49 S.E.2d 321 (Va. 1948)]

Based on the statement of law in Op. No.66-7, we are of the opinion that the action taken by the Council with reference to the Center's real property is a quasi-judicial action. It is a quasi-judicial action because it bestows upon the Center a privilege affecting a single parcel of land, unlike the factual situation in said Op. No.66-7.

On the other hand, before we can conclude that disclosure would be required in the instant case, we have to determine whether or not councilmen who are graduates of St. Louis High School or alumni thereof have acquired a conflict of interest 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. (See RCH Sec. 10-102.3.)

The nexus of whether a councilman, under the facts of this case, has acquired a conflict of interest that would impair his judgment or have an interest which is incompatible with his duties as a councilman is financial interest as defined in Section 7-15.1(f), RO 1969.* As such, we recommend that the principle of law and statements contained in Advisory Opinion No. 50 of this Commission may be used as a guide to determine whether or not any councilman who is a graduate of St. Louis High School should submit a disclosure as prescribed in RCH Section 10-103 in this instance.

Dated: Honolulu, Hawaii, August 29, 1977.

ETHICS COMMISSION
Nathaniel Felzer, Chairman