

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**



Advisory Opinion No. 97

A member of the City Council [Council] filed a disclosure of interest form because he owned an interest in a business which sells fireworks during the yuletide holidays and a bill regarding fire works was before the Council.

The Ethics Commission [Commission] is of the opinion that the councilmember will be acquiring an interest which conflicts with the public interest. However, as to whether or not he should abstain from participating in any proceeding regarding Bill No.---, it is for the Council to make such a decision even though the council member may request abstention from participation with respect to Bill No. ---.

A proposed bill regarding the sale of fireworks was on the agenda of a meeting of a subcommittee of the Council. At that meeting, the members of the committee decided to introduce the proposed bill for first reading, with the bill to be referred back to the Finance Committee. The vote taken by the Committee of the Whole was unanimous. Since the action of the Committee of the Whole was procedural rather than based on the merits of the bill, the councilmember participated in the proceedings and voted thereon.

Any action that is taken by the Finance Committee is merely a recommendation to the Council. Final action on any item is taken by the Council. However, there will be discussions and probably considerations whether Bill No. --- should be recommended for adoption on second reading. In the course of determining whether or not to recommend adoption of Bill No. --- on second reading, there will be discussions on the merits of Bill No. ---.

The question is whether a council member may properly vote on a bill relating to fireworks when he owns part of a business that sells fireworks. The specific provision which is applicable under the facts of this case is Section 6-1.2(a)(I), Revised Ordinances of Honolulu 1978 [ROH], which states in pertinent part that:

No officer or employee of the City, except as hereinafter provided shall:

- (1) Participate, as an agent or representative of a City agency, in any official action directly affecting a business or matter in which . . .
 - (A) he has a substantial financial interest: . . . provided that a councilman

is not precluded from voting on such matter before the Council so long as a written disclosure has been made in the event there is a conflict of interest involving this subsection and relating to such matter.

When the cited section is applied to the facts of this case, the Commission finds that the councilmember will be participating in an official action as an agent of the City in which he has a substantial financial interest. That is, as an officer of the City he will be an agent (member of the Finance Committee and the Council), participating in an official action (recommendation of the Finance Committee and the adoption by Council) on Bill No. --- (fireworks) and the adoption of which will drastically reduce his income from the sale of fireworks. As such, from the standpoint of his financial interest, Bill No. --- would not be adopted.

Hence, the Commission concludes that the councilmember does have a conflict of interest and, therefore, should not participate in any of the proceedings relative to Bill No. ---.

On the other hand, ROH Section 6-1.2(a)(1) provides for an exception. That exception states that a member of the Council is not precluded from voting provided that a written disclosure is filed. Hence, the councilmember is not barred from voting on Bill No.---, despite the existence of a conflict of interest. Although he is permitted to vote, he may waive such privilege. However, in the instant case, he can only exercise such privilege if the Council permits him to abstain as provided in Rule 12 of the Rules of the Council. That rule states:

RULE NO. 12

VOTING

1. There shall be five methods of ascertaining the decision of the Council upon any matter:
 - 1st, by a call of the roll of the members and a record made by the City Clerk of the vote of each member;
 - 2nd, by viva voce vote;
 - 3rd, by rising;
 - 4th, by ballot; and
 - 5th, by unanimous consent.
2. Upon the request of any member of the Council, and on every bill and resolution, the City Clerk shall call the roll. Unless a member is excused from voting, his silence shall be recorded as an

affirmative vote. A member may use the 'kanalua' response but once and if repeated when polled again, his vote shall be recorded as an affirmative vote. The City Clerk shall record each vote in the Journal and report to the Presiding Officer, who shall announce the result of the Council.

3. No member shall refrain from voting unless excused by the Council.
4. Whenever the ayes and noes are called, no one, without the unanimous consent, shall be permitted to explain his vote; and after the announcement of the result, no one shall be permitted to vote or to change his vote.

To summarize, ROH Section 6-1.2(a)(1) precludes the councilmember from participating in any proceeding regarding Bill No.--- before the Finance Committee and the Council because he has a substantial financial interest in the outcome of Bill No.---

However, because of the exception in the cited provision, he may vote thereon, but to abstain from such proceedings, he will have to obtain the approval of the Council as prescribed in Rule 12 of the Rules of the Council.

Dated: March 12, 1981

ETHICS COMMISSION
Rev. William Smith, Chair