

## OPINION NO. 35

A member of a commission charged with the use classification of land in the State wishes to know whether he can enter into discussions before the commission concerning land use reclassification of areas which include his land.

This commission, which originally classified the land in the State into four use classifications, considers petitions by individual landowners for changes in district boundaries. Under the law, the commission also reviews the classification and districting of all land in the State every five years. Pursuant to this review, the commission hires consultants to make recommendations. The staff of the commission also makes recommendations to the commission.

In its five-year review, the commission considers the boundaries on each island by areas. For instance, on the Big Island, it may take the Waiakea area. Wherever changes are recommended or considered, the commission considers the parts of these areas more minutely on a parcel-by-parcel basis, if necessary. Thus, parcels where change is contemplated within the Waiakea area may be specifically discussed. After the entire island has been so considered, a vote on the whole is taken.

This member owns some acres of land presently classified Agricultural, which the consultants and staff of the commission have recommended be reclassified urban. He intends to disqualify himself from voting on the matter and specifically asks the State Ethics Commission whether, by entering into discussions on this proposed reclassification prior to the vote, he would violate the state ethics code, chapter 84, HRS.

The section of the code which applies to this situation is section 14. That section prohibits employee participation in any official action directly affecting a matter in which the employee has a substantial financial interest.

There is no question that this commission member has a substantial financial interest in the land involved. Because he has stated that he will disqualify himself from voting, the only question is whether the commission discussions on that land are official action directly affecting that land within the meaning of section 14.

Section 3(7) of the code defines official action as a "decision, recommendation, approval, disapproval, or other action which involves the use of discretionary authority." Discussions before the commission involve discretionary authority, although they are preliminary to commission action. There is nothing in the definition of "official action" limiting the term to final action; in fact, the definition expressly includes "recommendations." Furthermore, it is the intent of the conflict of interests section to encompass preliminary action, including discussion and recommendations made in discussion, especially in a case such as this where such preliminary discussion is an integral part of the decision-making process and thus directly affects that which is being discussed.

Thus, because even preliminary discussion is official action and directly affects the area being discussed, we hold that a member of the commission may not enter into discussions on the reclassification of his land. His disqualification should be from participation in any discussion of the smallest area to be discussed which includes his property. There is, of course, no reason why he cannot participate in discussions and vote on larger or regional areas which include his property. For instance, if he owned a parcel in Waiakea, Waiakea being the smallest area unit considered which includes his parcel, he should not participate in discussion, consideration, or vote on the Waiakea area or on his parcel within that area. He may, however, discuss and act on the larger Hilo district generally, on other districts, and on the entire island.

The member has said that in earlier discussions, he commented in favor of keeping this area in the present zone, and that the property is dedicated for agriculture. Every landowner is entitled to his opinion on the classification of his land, and when the commission is considering changing that classification, has a right to express his views before that body. Thus, he could discuss the change as a private citizen at a commission hearing, providing he made it clear that his appearance was in a private capacity. However, discussions with the commission as a commission member on his property are not permitted under the ethics code.

Dated: Honolulu, Hawaii, July 16, 1969.

STATE ETHICS COMMISSION  
Vernon F.L. Char, Chairman  
James F. Morgan, Jr., Vice Chairman  
S. Don Shimazu, Commissioner  
Margaret W. Smalley, Commissioner

Note: Commissioner July Simeona was excused from the meeting at which this opinion was considered and adopted.