

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**



ADVISORY OPINION NO. 120

The question is whether the standards of conduct applicable to the officers and employees of the City prohibit a member of a City commission that oversees the activities of a City department from selling goods to the department and its employees.

The Ethics Commission's [Commission's] response is negative, provided that such sale be subject to competitive bid.

The Commission understands that the commission member does business as ABC Company. Since he is able to provide the goods at a lower price than his nearest competitor, the department desires to purchase his product, subject, however, to the favorable decision of the Commission.

The Commission further understands that the commissioner desires to Sell the goods to employees of the department. These sales are to be paid for by the employees and not through City funds.

The standard of conduct which is applicable in this case is Section 6-1.2(5), Revised Ordinances of Honolulu 1978, as amended [ROH]. That section states, in pertinent part, that no officer or employee of the City shall:

Enter into any contract in behalf of the City with an officer or employee or with a business in which an officer or employee has a controlling or substantial financial interest, involving the furnishing of services, materials, supplies, and equipment unless the contract is made after competitive bidding. . . . [Emphasis added]

A reading of the cited standard of conduct indicates that no officer or employee of the City shall enter into a contract for the purchase of services, materials, supplies, or equipment, from a business in which an officer or employee has either a controlling or substantial financial interest, except when such purchase is based on competitive bid.

Regulations governing the purchase of equipment by the Director of Finance on behalf of the City are found in Section 9-301.3, Revised Charter of Honolulu 1973 (1979 Supp.) [RCH]. In subsection (b) thereof, it states that if a purchase of services, materials, supplies, or equipment exceeds \$500.00, it is subject to competitive bid. Since the total cost of the goods is in excess of \$500.00, the commissioner is subject to the provisions of Section 9-301.3(b), RCH.

With respect to the commission member's sales to individual employees, such sales are not subject to the provisions of Section 9-301.3, RCH, and Section 6-1.2(5), ROH, because no City funds are involved in the purchase by individual employees of the City department. That is, such purchases are made by individual employees out of their personal funds.

In view of the foregoing, the Commission concludes that the member of the City commission may sell his goods to the department because the sale will be subject to competitive bid. The sale of goods to individual employees is not subject to Section 9-301.3, RCH, and Section 6-1.2(5), ROH, because the purchase will be paid for by the employees rather than the City.

The Commission commends the commission member for seeking its advice before he completed the sale of his product to the department. The Commission appreciates his awareness and sensitivity in conflict of interest situations and believes his attitude and cooperation has enhanced the public confidence in the integrity of City government.

Dated: April 8, 1983

MAZEPPA K. COSTA
Chair, Ethics Commission