

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**



Advisory Opinion No. 15

This is in reference to your route slip regarding the activities of Employee X, a Division Chief of the Department of Parks and Recreation, regarding his private employment as a structural engineer.

We are of the opinion that an appearance of a conflict of interest exists between Employee X as an employee of the City and County of Honolulu and as a private consultant.

We are of the view that the activities of Employee X violate the provisions of subsection 3 of Section 11-101 of the Charter and subsection (e) of Section 7-14.2, R.O. 1961.

The reasons for the foregoing opinion are as follows:

1. Employee X, as a City employee and as a private consultant, is serving two masters. As a City employee, he is serving one of the masters, which is the City, and the other master is the individual who employs him as private consultant. As a private consultant it is very likely that his engineer's stamp is placed upon building and construction plans of his private employer which building and construction plans are reviewed by City employees. The conflict arises in this situation because the building plans of his private employer with Employee X's engineer's stamp is reviewed by a City agency. The appearance of Employee X's engineer's stamp on the building plan may give rise to special privilege or attention by City employees who know or are aware that Employee X is a fellow employee of the City. Additionally, City employees who're familiar with Employee X's engineer's stamp which is on Department of Parks and Recreation building and construction plans may more likely than not approve such private building and construction plans with Employee X's engineer's stamp thereon under the mistaken belief that such private building and construction plans belong to the Department of Parks and Recreation.

2. Patently, any work done for private employers by a professional engineer would be for people who are builders, contractors, developers and/or private citizens who contemplate construction of a structure. These are people who must obtain City approval before they proceed with their plans. The approval must be obtained from the various agencies with whom the employee is in frequent contact in the course of his City employment. This same prospective clientele is the part of our community which is most directly affected by building and construction projects of the Department of Parks and Recreation. For example, a probable situation which may give rise to a conflict of interest is when the

builders or contractors who do work for the Department of Parks and Recreation will have to submit their plans to Employee X, a Division Chief, for approval; and it may be very likely that one of the builders or contractors in such situation may be a prospective clientele or may have been Employee X's employer in his private capacity. This is not to say, however, that Employee X will favor the private builder or contractor against the interests of the City; but such a situation gives rise to appearance of a conflict of interest.

3. With reference to subsection (c) of Section 7-14.2, R.O. 1961, there may be a violation of said section because Employee X may be in effect appearing before another City agency in his private capacity. That is, when the private employer's building and construction plans with his engineer's stamp is submitted to the City agency, Employee X is in effect appearing before a City agency for approval of such building and construction plans based on his engineer's expertise. In connection therewith, should a conflict arise between his interpretation of City ordinances or construction and building codes, he may have to take a position which may be contrary to the City's interest.

In view of the foregoing, we recommend that the employee be directed to terminate or discontinue his outside employment in accordance with the provisions of your Directive No. 6, dated March 14, 1969.

Dated: Honolulu, Hawaii, May 12, 1971.

ETHICS COMMISSION

Very Rev. Robert R. Mackey, S.M., Chairman