

ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU



ADVISORY OPINION NO. 156

This advisory opinion is in response to a request for an opinion regarding whether right-of-way agents in the Department of Public Works may properly have outside employment as real estate sales representatives or brokers.

The facts are understood to be as follows:

1. Two employees joined the Department of Public Works as right-of-way agents.
2. One employee has a real estate sales license, and the other has a real estate broker's license.
3. The duties and responsibilities of a right-of-way agent include:
 - a. Responsibility for the negotiation and acquisition of all properties and rights contained in projects assigned from superior;
 - b. Responsibility for providing relocation advisory assistance to those displaced from the property acquired; and
 - c. Discretion to analyze counterproposals made by property owners and negotiate for suitable settlement.
4. In connection with these responsibilities, the right-of-way agent has access to appraisal reports, searches of title and other documents which are confidential or not readily available to the public.
5. The Department of Public Works has a long-standing practice to require right-of-way agents to inactivate their real estate licenses.

The standards of conduct applicable to this situation are Revised Charter of Honolulu 1973 (1983 Ed.) Sections 11-102.2 and 11-102.3 which state:

Section 11-102. Conflicts of Interest--No elected or appointed officer or employee shall:

...

2. Disclose confidential information gained by reason of his office or position or use such information for the personal gain or benefit of anyone.

3. Engage in any business transaction or activity or have a financial interest, direct or indirect, 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.

When the foregoing facts are applied to the specific Charter provisions mentioned above, the Ethics Commission finds that:

1. The employees' financial interest as evidenced by their real estate sales licenses could impair their independence of judgment in the performance of their official duties, especially that of negotiating on behalf of the City.
2. The right-of-way agents have access to information, such as appraisal reports, which is not readily available to the public and could be used by the agents for the personal gain of themselves or others.
3. The right-of-way agents should inactivate their licenses in accordance with their Department's policy.

Date: January 28, 1986

GILBERT A. GIMA
Chair, Ethics Commission