

**ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU**



**ADVISORY OPINION NO. 160**

The question is whether a City employee's outside position as an officer of a for-profit corporation conflicts with his duties in a City department whose employees have the responsibility to review the manner in which public funds are received and expended.

The Ethics Commission [Commission] has reviewed the conflict of interest form submitted by the employee and the attached materials provided by the City department.

The facts on which the opinion in this memorandum is based are the following:

1. The employee is responsible for reviewing the manner in which public funds are received and expended (Revised Charter of Honolulu 1973 (1983 Ed.) [RCH] Section 6-203(p)).
2. The employee is an "officer" within the meaning of RCH Article XIII, Section 13-101(4). Such officers must conform to standards of conduct as set out in Revised Ordinances of Honolulu 1978 [ROH] Chapter 6, Article
3. The subject corporation provides merchandise for sale to the public, including City departments. City purchases are made after submission to the City of sealed bids. The corporation has sold such merchandise to City departments which maintain an inventory of such merchandise. It conducts no field sales. All sales are made by request to the company by buyers.
4. The employee states that annual sales to the various City users total no more than 2% of the total sales volume for the company.

RCH Article XI, Section 11-102, states in part:

No elected or appointed officer or employee shall:

. . . .

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.

RCH Article XI, Section 11-104, states:

Section 11-104. Fair and Equal Treatment--No elected or appointed officer or employee shall use his official position to secure or grant special consideration, treatment, advantage, privilege or exemption to himself or any person beyond that which is available to every other person.

In addition, ROH Section 6-1.2(1) and (2) prohibits an officer or employee of the City from participating as an agent or representative of a City agency in any official action directly affecting a business or matter in which he has a substantial financial interest or from acquiring financial interest in business enterprises which he has reason to believe may be directly involved in official action to be taken by him.

However, based on the facts as presented herein, the Commission finds no violation by the subject employee of the applicable standards of conduct.

The employee's independence of judgment in the performance of his official duties is not and will not be impaired by his outside interest, nor is his position as an officer of the corporation incompatible with the proper discharge of his official duties. The total volume of sales by the subject company to the City is less than two percent of their total sales volume. In addition, all sales to the City are made by sealed bid, thus ensuring that no one, including the employee, may use "his official position to secure or grant special consideration, treatment, advantage, privilege or exemption to himself or any person beyond that which is available to every other person." RCH, Section 11-104.

In his official capacity, the employee does not have the requisite authority to take the "official act," as defined in ROH Section 6-1.1(8), involved in determining which of many bidders will be awarded the contract from the City for purchase of the merchandise. His duties involve reviewing and reporting on the integrity with which City funds are accounted for and the financial responsibility of officers and employees administering such funds, not with the expenditures of the funds themselves.

Dated: April 14, 1986

GILBERT A. GIMA  
Chair, Ethics Commission