

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**



ADVISORY OPINION NO. 171

The question is whether an engineer with a City agency which has the power to review and recommend may properly have outside employment as a consultant in the same field of engineering.

The Ethics Commission [Commission] believes the City agency and the engineer should ensure that the relationship between the engineer's official duties and his outside employment as an engineering consultant is kept to a minimum because real or apparent conflicts of interests may arise under the City's standards of conduct if he has official duties that give him access to confidential information his outside employers may find useful.

The Commission bases this opinion on the following information:

The engineer's current duties with the City agency do not include access to information private engineers might find useful. If he were assigned to another division of the agency, his duties would include access to such confidential information.

The engineer also has three outside employment interests. He is a consulting engineer for two firms, as well as for a private client.

The ethical question is whether a City employee's outside employment is incompatible with his official duties when confidential information gained in the course of employment may be useful to private employers.

The general rule is that no elected or appointed officer or employee may:

1. disclose confidential information gained by reason of such person's office or position or use such information for the personal gain or benefit of anyone, Section 11-102.2, Revised Charter of the City & County of Honolulu 1973 (1984 Ed.) [RCH], or
2. engage in any business transaction or activity or have a financial interest, direct or indirect, which is incompatible with the proper discharge of such person's official duties or which may tend to impair the independence of judgment in the performance of such person's official duties. Section 11-102.3, RCH.

In situations where there is a direct relationship between official duties and outside employment, real and apparent conflicts of interest may arise as a result of the relationship and the confidential information to which an employee has access. In the engineer's situation, his City assignment and his outside work would be related if he were assigned to a division of the City agency which involves engineering work that corresponds to the same work he does as a consultant. In the course of his official duties, he may have access to confidential information that may be useful to his outside employers or clients. Such access might give rise to allegations of conflicts of interests. In contrast, if his duties do not include such access, as his duties in his current assignment do not, then conflicts of interest would be less likely to arise. Therefore, the Commission believes that the engineer should not retain outside employment in the same engineering field as his City employment.

In conclusion, the Commission believes that the engineer's outside employment as an engineer may at some time give rise to conflicts of interest if the City agency assigns him to a division with similar interests. Such conflicts do not, however, seem likely as long as he is assigned to a division which is not related to his outside employment interests. Therefore, the City agency should not allow him to retain outside employment in the same engineering field should he be reassigned to a division with interests similar to the work he does as an outside consultant.

JANE B. FELLMETH
Chair, Ethics Commission

Dated: July 1, 1987