

ETHICS COMMISSION

CITY AND COUNTY OF HONOLULU



Advisory Opinion No. 20

This is in response to your request for determination by this Commission whether or not the outside activities of Employees "X" and "Y" of your Department conflicts with their duties and responsibilities as employees of your Department.

We are of the opinion that there is a conflict of interest. Employees X and Y are employed as recreation specialists for your Department. The primary duties and responsibilities of Employee X is to publicize any and all activities of your department which may be of interest to the community and the primary duties and responsibilities of Employee Y is to coordinate and supervise any and all activities conducted in connection with water sports. Their primary functions and duties would enable them to have information regarding requests for water sport activities on public areas by private applicants. In short, they are in a position to be aware or have knowledge of most or any of all types of water sport activities which are conducted by private applicants using public areas.

We also understand that Employees X and Y receive stipend as coordinators of a surfing meet.

Section 10-102.2 of the Charter in pertinent part states:

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.

The cited provision indicates that no officer or employee of the City shall be in such a position to gain information which will be of advantage to such officer or employee in carrying out his duties and functions in a private capacity. In the instant case Employees X and Y, because of their primary duties and functions are in a position to use such information to their advantage. The advantage in this case is to either recommend to the City officer or employee who is in charge of clearing permit application for use of public areas, to diagnostic application, or to block out the public areas requested by private applicant for use by the private associations utilizing the services of Employees X and Y.

Because of such possibility we are of the view that there is a probable or appearance of conflict of interest.

Furthermore, under the circumstances of this case, the provisions of Section 7-15.2(c), R.O. 1969, could have been violated. Section 7-15.2(c) provides that:

No officer or employee of , the City, except as hereinafter provided, shall:

* * *

(c) Appear in behalf of private interests before any agency other than a court of law, nor shall he represent private interests in any action or proceeding against the interests of the City in any litigation to which the City is a party; provided, however, that a member of any board, commission or committee, whose board, commission or committee does not exercise either quasi-judicial or quasi-legislative power, may appear for compensation in behalf of private interests before agencies other than the one on which he serves and other than those agencies that have the power to review the actions of the agency on which he serves, or to act on the same subject matter as the agency on which he serves; provided further that no officer or employee shall be denied the right to appear before any agency to petition for redress of grievances caused by any official act or action affecting his personal rights, privileges or property, including real property . . .

The foregoing provision may have been breached because of the fact that Employees X and Y receive stipend as coordinators of surfing activities for the private organization and can appear before a City agency for compensation to benefit the private organization under which they are employed.

In view of the foregoing, we conclude that Employees X and Y are in a situation which give rise to a probable or appearance of a conflict of interest which may violate said Charter Section 10-102.2 and Section 7-15.2(c), R.O.1969. Accordingly, we recommend as follows:

1. That Employees X and Y forego their stipend provided that they may be paid out-of-pocket expenditures by the private organization for carrying out their duties and responsibilities as coordinators of the surfing meet;
2. That Employees X and Y do not hold any position in the private organization which places them in decision-making roles such as president or member of its board; and
3. The Employees X and Y do not appear before the Department of Recreation representing the private organization.

Dated: Honolulu, Hawaii, April 27, 1973.

ETHICS COMMISSION
Rev. Dr. Kenneth O. Rewick, Chairman