

**ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU**



ADVISORY OPINION NO. 200

This advisory opinion is in response to a request for guidance from the Ethics Commission [Commission] as to whether a former employee can accept employment with an outside organization, assisting it in doing the same type of professional work as was performed for the City without violating the Standards of Conduct of the City and County of Honolulu.

The Commission believes that such employment would be in violation of Section 11-105, Revised Charter of the City and County of Honolulu 1973 (1984 Ed.) [RCH]. Further, the Commission has determined that Contract No. 0000 entered into between the City and County of Honolulu and the outside organization is void.

The Commission understands the facts relative to the inquiry to be as follows:

Until (date) the City employee had been employed by a City agency [Agency] doing professional field work and associated lab work for over ten years.

The Agency chose to stop handing the type of professional work the employee had been hired for and has decided to contract the outside organization to complete the remaining work.

On (date) the City signed Contract No. 0000 with an outside organization which called for professional work to begin on (date). Supporting documentation indicates that both the Agency and the outside organization signed the contract with the expectation that the former employee would go to work for the outside organization and assist it in fulfilling the contract.

The ethical question presented is whether the former employee would violate the City's restrictions on future employment if he/she were to work for the outside organization in connection with the project within less than one year after leaving City employment.

The general rule appears in Section 11-105, RCH, which states that:

No person who has served as an elected or appointed officer or employee of the city shall, within a period of one year after termination of such service or employment, appear for compensation before any agency of the city, or receive compensation for any services rendered in behalf of any private interests in relation to any case, proceeding or application with respect to which such person was directly concerned, or which was under such person's active consideration, or

with respect to which knowledge or information was made available to such person during the period of said service or employment.

The outside organization is a private interest, which would be compensating the former employee for rendering professional services in relation to the project. The Commission has previously decided that the phrase "case, proceeding or application" in Section 11-105, RCH, should be construed broadly to mean subject matter. Such professional work was clearly the subject matter with which the employee was directly concerned in his/her job with the Agency. Therefore, the proposed arrangement clearly violates the City's restrictions on future employment.

Further, as a result of the employee's inquiry, the Commission has determined that the contract entered into between the City and County of Honolulu and the outside organization is void. This ruling is based on Section 6-1.5(b), Revised Ordinances of Honolulu 1978 (1983 Ed.), which states that:

In addition to any other penalty provided by law, any contract entered into by the City in violation of Sections 11-101 through 11-105 of the Revised Charter or of this article is voidable on behalf of the City; provided that in any action to void a contract pursuant to this article the interest of third parties who may be damaged thereby shall be taken into account, and the action to void the official act or action is initiated within ninety days after the matter is referred to the Ethics Commission.

The Commission realizes that the employee is not specifically named in any portion of the contract. However, it is in possession of supporting evidence which clearly indicates that at the time it was signed, both parties were operating under the assumption that the former employee would be going to work for the outside organization to assist it in fulfilling the contract. For example, in a letter to a councilmember the statement was made in regard to the (\$ amount) contract between the outside organization and the City that the sum includes the hiring of the employee. Although the latter is not specifically stated, it is understood and desired by both parties.

In conclusion, it would violate the City's Standards of Conduct for the former employee to be employed by the outside organization if he/she participates in any professional work related to the project prior to (date). Further, the City's Contract No. 0000 with the outside organization to pursue such work is deemed void.

Dated: February 26, 1990

JANE B. FELLMETH  
Chair, Ethics Commission