

ETHICS COMMISSION  
**CITY AND COUNTY OF HONOLULU**

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**Advisory Opinion No. 2001-06**

**I. Summary**

A conflict of interest would result if a city employee entered into a contract to work outside of the City and County of Honolulu with a company whose clients are regulated by the section which the employee supervises and the company owns a business which the employee's section regulates.

**II. Facts**

On May 22, 2001, you requested that the Ethics Commission determine whether the conclusions stated in Advisory Opinion No. 300 (July 14, 1999) regarding an employee ("A") are still valid in light of present circumstances. A supervises a section (Section) within a city department.

The primary function of the Section is to regulate private companies' use of a city system. This is accomplished through a program requiring the installation and maintenance of certain equipment to meet standards required by the city. The Section develops and enforces these standards. The latest standards were approved by the department in July, 2001.

In addition to his city employment, A runs a private consulting business. A would like to be available to contract with a vendor ("ABC") outside of O'ahu. Among other things, ABC supplies and installs the equipment used to meet the city's standards by the users of the city system. After our prior opinion was rendered, ABC purchased a company now known as ("XYZ"). XYZ provides services to customers to meet the city standards. The department states that ABC represented that it supplies 90 per cent of the equipment and XYZ 70 per cent of the services used on O'ahu.

The Section regulates the businesses that provide services, including XYZ, to the users of the city system. A notes that XYZ has a city permit, issued by the Section, but that he would exclude himself from participating in any matters involving XYZ. The

department director, stated that he believed, to avoid a conflict of interest, A would have to exclude himself from so much work that it would impinge on A's ability to meet his responsibilities as the Section supervisor. A portion of the services offered by XYZ are not yet regulated by the department, but under a bill would be regulated by the Section.

Neither party requested a hearing on the matter and, therefore, the Commission must render its opinion based on the information before it, subject to its discretion to obtain more facts. ROH § 3-6.7(c).

### **III. Question presented**

The issue is whether A would be in a conflict of interest should he contract with ABC while he is employed in his current city position.

### **IV. Analysis**

There are three ethics laws dealing with conflicts between the public duties of an officer or employee and that person's private financial, business or personal interests. § 11-102, Revised Charter of Honolulu (RCH), states:

No elected or appointed officer or employee shall:

(c) 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.

Second, § 3-8.2(a), Revised Ordinances of Honolulu (ROH), prohibits an officer or employee from "[participating], as an agent or representative of a city agency, in any official action directly affecting a business or matter in which [ ] such person has a substantial financial interest; . . ." Finally, RCH § 11-101 has been interpreted by this Commission to prohibit even the appearance of a conflict of interest by city personnel.

It is apparent that A's regulatory responsibilities and duties in his city employment now directly impact ABC and XYZ. ABC appears to be the dominant provider of equipment in this industry. Similarly, XYZ has limited effective competition in the service provision side of the industry. Although the Section does not directly regulate ABC, the Section's responsibility to set standards for and enforce compliance by ABC's clients is likely to impact ABC. Also, the Section now directly regulates XYZ.

If A were to contract with ABC for his services, it is likely that a real conflict of interest would occur between A's job duties and his financial interest in his contract with ABC. Under these circumstances, a reasonable person could conclude that his independent judgment would tend to be impaired, contrary to RCH § 11-102(c). We note that A has wisely removed himself from any involvement between the Section and XYZ. However, given that ABC owns XYZ, he would have to recuse himself from any work that may reasonably affect either company. Such a restriction on his work would likely diminish his effectiveness in his city job. Furthermore, recusal would not remove the appearance of a conflict of interest that would result from his work for ABC outside of the jurisdiction.

## **V. Recommendation**

As a result of the findings of fact and the conclusions of law above, the Commission recommends that A not contract with ABC or any of its related companies for work at any geographic location. Anything stated to the contrary in Advisory Opinion No. 300 is hereby rendered invalid. Should either the department or A request a review of the potential for conflicts of interest based upon changed circumstances, they should make such a request to the Commission.

Pursuant to ROH § 3-6.5(e), the appointing authority is required to report the action that will be taken to the Commission within 15 days of the receipt of this opinion.

Dated: October 24, 2001

/S/  
LOLINDA D. RAMOS, Chairperson  
Ethics Commission