

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**



ADVISORY OPINION NO. 212

This advisory opinion is in response to an inquiry as to whether cabinet members and executive assistants to the Mayor should be required to resign from their City employment in order to become candidates for the City Council.

The ethical question presented is whether becoming a candidate for the City Council creates a conflict of interest for members of the cabinet or executive assistants to the Mayor.

The general rule in relation to this question is found in the Revised Charter of the City and County of Honolulu 1973 (1984 Ed.), Section 11-102.3, which states in pertinent part:

No elected or appointed officer or employee shall... [e]ngage 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. (Emphasis added)

According to the Revised Ordinances of Honolulu 1978 (1983 Ed.) [ROH], Section 6-1.1(6), "financial interest" includes "prospective employment for which negotiations have begun." The Ethics Commission has previously decided that being a candidate for elected office is a prospective employment for which negotiations have begun and therefore a financial interest.

In addition to the restrictions found in the Charter, the Ordinances prohibit City officers and employees from taking action on matters in which they possess a substantial financial interest. Section 6-1.2(1), ROH, states in pertinent part:

No officer or employee of the City...shall... [p]articipate in any official action directly affecting a business or matter in which...he [or she] has a substantial financial interest....

It is inconceivable to the Ethics Commission that cabinet members or executive assistants to the Mayor could completely avoid situations in which either the proper discharge of their official duties or their independence of judgment is impaired by their candidacy for the City Council. Conflicts of interest would be inevitable if they continued on the job while campaigning. It is also likely that such persons would find themselves in situations where they were required to participate in official action which in some way directly affected their candidacy, which would be a matter of substantial financial interest.

Nevertheless, the Ethics Commission believes that it would be unduly burdensome to require members of the cabinet or executive assistants to the Mayor to resign from their City employment in order to run for the City Council. The Commission believes that if during their campaigns such persons take paid or unpaid leave from their City employment during which time they refrain from performing any City work, conflicts of interest can be avoided.

In summary, the Commission finds that cabinet members or executive assistants to the Mayor need not resign from their City employment in order to become candidates for the City Council. However, such persons should take paid or unpaid leave from their City positions during the entire period of their campaigns. Furthermore, during such paid or unpaid leave they should not perform any work for the office from which they are on leave.

Dated: November 13, 1991

JANE B. FELLMETH
Chair, Ethics Commission