

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**



Advisory Opinion No. 252

This is an advisory opinion in response to a letter requesting advice from the Ethics Commission as to how the City's post-employment restrictions apply to a former city officer ("A") in A's current work situation.

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

A served as a city officer from January 19, 1993 through November 15, 1994. Since leaving, A has been employed by a local firm ("XYZ") which recently was awarded a contract along with another business to provide consultant services to A's former department in regard to revision of the Development Plans for the Primary Urban Center [PUC] and for East Honolulu.

While A served in A's former position, A participated in developing a request for proposals [RFP] for consultant services in regard to revising the Development Plans for the PUC and East Honolulu. However, before proposals could be received and acted upon, A had left the City's employment. A's successor withdrew the RFP that had been developed under A's administration and developed an entirely new one to which A was not privy to any information not available to the public. The contract awarded to XYZ is based on the RFP with which A had no personal involvement.

The ethical question presented is whether A would violate the City's post-employment restrictions if A were to participate in XYZ's project to consult with the City on revision of the Development Plans for the PUC and East Honolulu prior to November 15, 1995.

The general rule in relation to your question is found in the Revised Charter of the City and County of Honolulu 1973 (1984 Ed.) , Section 105, which states as follows:

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.

This rule is further developed in the Revised Ordinances of Honolulu 1990 [ROH]. Section 3-8.3(c) provides in pertinent part that:

A former officer...of the city may, within a period of one year after termination of city service...and for compensation: (1) appear before any city agency in any case, proceeding or application, with respect to which knowledge or information in relation to such case, proceeding or application, was made available to the former officer...during the term of...service; or (2) assist another person or

business, including but not limited to one in which such person is an officer or employee, in any official act or action by the city; provided, that in either instance the former city officer...shall first file an affidavit as provided below.

Such former officer...of the city shall file a sworn affidavit with the city agency involved stating that the former officer...(1) was not directly concerned with, (2) did not actively consider, (3) did not participate in, and (4) was not given access to knowledge or information not readily available to the public during the period of said active service...with respect to such case, proceeding or application or other matter before the city agency....

Section 3-8.3(d), ROH, further explains that

[f]or the purposes of this section, the term "appear before any city agency" includes acting as an agent or attorney for, or otherwise representing, any other person or business in any formal or informal appearance. "Appear" also includes making any oral or written communications, including letters or telephone calls, to any city agency or personnel with the intent to influence on behalf of any other person or business. The date of termination of city service...shall be defined as the date upon which a person's resignation, dismissal or retirement takes effect.

Based on the evidence presented, the Commission finds that A would not be in violation of the City's post-employment restrictions if A participates in XYZ's project to consult with the Planning Department on revision of the Development Plans for the PUC and East Honolulu, provided that A submit the required affidavits.

Dated: May 30, 1995

SAMUEL L. DOMINGO
Chair, Ethics Commission