

**ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU**



Advisory Opinion No. 253

This is an advisory opinion in response to your letter requesting advice from the Ethics Commission as to whether the City's Standards of Conduct were violated in regard to a series of hiring and promotion decisions by a City department ("Department").

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

On October 25, 1990, a position ("Position") with the Department was reallocated from Secretary III, SR-18, downward to Senior Clerk-Typist, SR-10, effective November 1, 1990. On that date, a City employee ("A") was laterally transferred from another City department into the Department position. On August 8, 1991, the Position was reallocated upward to Secretary III, SR-18, retroactive to June 16, 1991. Because the move to the Department was a lateral one, there was no advertisement of the opening in 1990, and because the position was held by an incumbent, there was no advertisement at the time of the upward allocation. Past and present Directors of the Department of Personnel have testified that the procedures followed by the Department in this case were consistent with Civil Service practices at that time. Downward reallocation is viewed as an aid to recruitment which saves the City money while a new person is learning a job. Upward reallocation is seen as appropriate once an employee has become competent in a new position. Advertisement was not required in the case of lateral transfers of existing City employees or when positions are upwardly reallocated if an incumbent remains.

The ethical question presented is whether the Charter's requirement for fair and equal treatment was violated in the process of hiring and promoting A in the Department.

The general rule in relation to your question is found in the Revised Charter of the City and County of Honolulu 1973 (1994 Ed.), Section 11-104, which states as follows:

Elected or appointed officers or employees shall not use their official positions to secure or grant special consideration, treatment, advantage, privilege or exemption to themselves or any person beyond that which is available to every other person.

Based on the evidence presented, the Commission finds that while the Department of Personnel permitted practices to occur which could be viewed as unfair by some, there was no violation of the Civil Service rules in effect at the time. The process of hiring and promoting A was not a unique occurrence in the City. Therefore, the treatment of A did not violate the Fair and Equal Treatment provisions of the Standards of Conduct of the City and County of Honolulu.

Dated: May 24, 1995

SAMUEL L. DOMINGO  
Chair, Ethics Commission