

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**



Advisory Opinion No. 257

This is an advisory opinion in response to a letter requesting advice from the Ethics Commission as to whether a City officer ("A") is in violation of the City's future employment provisions and whether A would have a conflict of interest if he were to serve on the Board of Directors of a City agency.

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

A worked for the City and County of Honolulu for 25 years, retiring on January 31, 1995, as a deputy director of a department. Prior to his final position, he had served as the project manager for the rapid transit program.

On February 1, 1995, A began part-time work with a consulting firm ("XYZ"), a former subconsultant with the rapid transit program. At the time he accepted employment with XYZ, A made it clear that A could not work on any projects involving the City for a period of one year.

A has been appointed by the Mayor to serve on the Board of Directors of a City agency. The appointment is currently before the City Council for confirmation. If A serves on the Board, A has indicated that A would recuse himself or herself from any discussion or decision-making if XYZ should come before the City agency while A is employed by the company.

The ethical questions presented are whether A's employment with XYZ violates the City's future employment restrictions and whether a conflict of interest would be created if A were to serve on the Board.

The general rules in relation to your questions are found in the Revised Charter of the City and County of Honolulu 1973 (1994 Ed.) [RCH] and the Revised Ordinances of Honolulu 1990 [ROH]. Section 11-105, RCH, 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.

Section 3-8.3, ROH, contains a lengthy set of clarifications of the Charter provision quoted above. The full text of Section 3-8.3, ROH, can be found as part of the *Guidelines on Future Employment* that are attached to this opinion.

Based on the evidence presented, the Commission finds that A is not in violation of the City's future employment provisions. The Commission also finds that a conflict of interest would not be created if A were to serve on the Board.

The Commission wishes to point out, however, that if A serves as a member of the Board, A will become an officer of the City. In that capacity, A will not be able to do any work for private interests involving the City and County of Honolulu for the entire length of his service. Furthermore, for one year after completion of A's term on the Board, A would be prohibited from appearing before any City agency on behalf of private interests in relation to any case, proceeding or application with which A was directly concerned as a Board member. A would be required to submit to any City agency before which A appeared a sworn affidavit stating that A had not been involved previously with the matter on behalf of which he was making the appearance. A sample affidavit is included in the attached *Guidelines on Future Employment*. You also raised some questions about A's volunteer service for the City and the reimbursement of A's out-of-pocket expenses. The Ethics Commission does not have jurisdiction over that question, but it does note that Ordinance 95-14 establishing a Volunteer Services Program specifically provides for the reimbursement of out-of-pocket expenses.

Attachment

Dated: August 7, 1995

SAMUEL L. DOMINGO
Chair, Ethics Commission