

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**



Advisory Opinion No. 268

This is an advisory opinion in response to your letter requesting advice from the Ethics Commission as to whether an individual ("A") has a conflict of interest which would preclude A from serving on the Building Board of Appeals [BBA].

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

A is a structural engineer. A is not an officer of the firm, nor does A own a financial interest in it. The Mayor has appointed A to the BBA to fill a position as a registered engineer.

In the past five years, A's employer has received a total of about \$100,000 in fees as a structural engineering consultant on construction contracts awarded by the City and County of Honolulu. In each case, the firm was a sub-contractor to an architect.

At the present time, all projects of A's employer are submitted with the engineer's stamp of one of the partners of the firm. A is only an employee, so A does not use A's engineer's stamp in A's work.

The ethical question presented is whether A's employment with A's employer creates a conflict of interest with A's potential service on the BBA.

The general rule in relation to your question is found in the Revised Charter of the City and County of Honolulu 1973 (1994 Ed.) [RCH], Section 11-102 (c) 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.

Based on the evidence presented, the Commission finds that no conflict of interest will be created if A serves on the BBA as long as A is an employee of the firm and not in a decision-making role. However, A must be recused from any BBA decision that involves A's employer.

Additionally, A must refrain from using A's professional engineer's stamp on any document that is submitted to any agency of the City and County of Honolulu as long as A serves on the BBA.

Section 11-102 (e), RCH, states in pertinent part:

No elected or appointed officer or employee shall... [a]ppear in behalf of private interests before any agency [of the city]....

The Ethics Commission has previously determined that the use of a professional engineer's stamp on documents constitutes an appearance for the purposes of this section of the Charter.

Dated: April 12, 1996

SAMUEL L. DOMINGO
Chair, Ethics Commission