

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**



Advisory Opinion No. 298

This is an advisory opinion in response to your request for advice from the Ethics Commission in regard to whether a City employee may apply for a permit in order to discharge wastewater into City facilities.

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

The City employee in question ("A") works at the Department of Environmental Services [ENV]. He is also the sole proprietor of a business which performs two functions: pumping of cesspools or other wastewater facilities and operation and maintenance of private wastewater facilities. Private wastewater facilities fall under State regulation and therefore are not subject to any City permits or regulations. However, in order to discharge the wastewater that has been pumped into the City's collection system, a hauler must secure a permit from ENV.

The issuance of these permits by ENV is handled ministerially. If an applicant provides all of the necessary information to the department, the permit will be granted. The permit requirement allows the City to provide businesses with regulatory information and to track disposal activity.

A waste hauling business is subject to enforcement actions by the City if violations of the regulations occur. It is possible that a representative of a business could be required to make an appearance before ENV in responding to an enforcement action.

Three additional sole proprietors who are City employees currently have permits for wastewater hauling. They are all employed by ENV, but none work in the Regulatory Control Branch of the department.

The ethical question presented is whether a prohibited appearance before a City agency occurs when a City employee who is a sole proprietor applies for a liquid waste hauler permit or appears at an enforcement proceeding which is brought against his or her business.

The general rule in relation to your question is found in Revised Charter of the City and County of Honolulu 1973 (1994 Ed.), Section 11-102(e), which states in pertinent part:

No elected or appointed officer or employee shall...appear on behalf of private interests before any [City] agency....

To "appear" includes acting as an agent for or otherwise representing any other person or business in any formal or informal proceeding. To "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.

Based on the evidence presented, the Commission finds that neither A nor other City employees who are sole proprietors holding liquid waste hauler permits violated the Charter's restriction on appearing before City agencies, since they did not appear on behalf of another person or business.

They only represented themselves. If it were to happen that any of them would be required to appear before ENV in an enforcement action, the same rationale would apply.

Dated: June 15, 1999

FAY M. UYEMA
Chair, Ethics Commission