

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**



Advisory Opinion No. 44

This is in reference to a conflict of interest disclosure filed with this Commission on April 18, 1974 relative to the employment of Employee X of your Department as a consultant for another county of this State.

We are of the opinion that there is no violation of standards of conduct provisions either in the Revised Ordinances or the Revised Charter in the instant case.

We understand that Employee X is a member of your Zoo staff, and he has been employed as a consultant by another county. The consultant work relates to the planning and designing of a zoo. We further understand that he is to do such consultant work during off-duty hours or during administrative leaves. Moreover, the ultimate result of Employee X's consultant work will not be subject to review by any official or agency of the City and County of Honolulu.

The foregoing facts indicate that the consultant work to be done by Employee X is similar to situations which we categorize as "outside employment" which is done after the end of an 8-hour work period or during weekends by other employees of the City. In the normal "outside employment" situation the Commission focuses its attention on whether or not such outside employment benefits the employee because of special consideration, treatment, advantage, privilege or exemption enjoyed by the employee. For example, an employee of the City who works as an engineer may do consultant work as an engineer for an outside concern and such work is reviewed by a City agency before any building or grading permit is issued. In such case there is an appearance of conflict of interest because his status as a City employee may give him special preferential treatment or consideration by employees in the agency reviewing his work.

Another example is where a City employee in the Department of Land Utilization who is a planning expert is employed as a consultant by a private developer to develop a subdivision. The subdivision plan is subsequently submitted to the Department of Land Utilization for its review and approval, and the employee in question is responsible for reviewing such plans. Thus, there is a definite conflict of interest in the second example.

The consultant work to be done by Employee X in this case is not subject to review by any City agency and it is, we understand, to be done either on his off-duty hours or during administrative leave granted by you. Moreover, the granting of administrative leave to an employee of the Department is not considered to be within the jurisdiction of the Ethics Commission, as it does not involve any violation of standards of conduct provisions in the Revised Ordinances or the Revised Charter. It is solely within the jurisdiction of the appointing authority or the employee's superior whether or not administrative leave is granted to an employee.

Any reflection upon the performance of the employee relative to his regular employment as a result of any outside employment is a determination to be made by the appointing authority and not by this Commission. In short, such determination does not involve ethical considerations.

In view of the foregoing, we conclude that Employee X may be employed as a consultant under the circumstances of this case.

Dated: Honolulu, Hawai'i, May 13, 1974.

ETHICS COMMISSION
Edward D. Sultan, Jr., Chairman