

**ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU**



**Advisory Opinion No.70**

This is in reference to the disclosure submitted by Employee X of the Board of Water Supply which was referred to this Commission by you for an advisory opinion.

We are of the opinion that, if Employee X confines his outside employment with consultants who have contracts with either the State of Hawaii or private property owners who are not involved with matters concerning BWS water service, there is no conflict of interest. However, we are of the opinion that, if Employee X is employed by a consultant who has a contract with the BWS, there may be an appearance of conflict of interest.

We understand the salient facts to be as follows:

1. Employee X is employed by the BWS as an Engineering Technician V, SR-19.
2. Employee X has supervisory functions over BWS employees in the support section of the engineering branch, which is part of the Division of Planning and Engineering of the BWS.
3. The primary duty and responsibility of Employee X is to conduct field surveys to obtain field data such as topography, cross section and profile for pipelines, reservoir sites and access roads to pumping stations and reservoirs. He also serves as chief of party by surveying for grade and alignment on construction projects for contractors for construction of water developments, pipelines and access roads; lays out and establishes grades for reservoirs, pumping stations and wells for construction purposes.
4. Such surveys are submitted to his immediate superior who is the section chief, who in turn submits such survey data to the chief of the engineering branch, and who in turn submits same to the head of the Division of Planning and Engineering.
5. In connection with outside employment, he intends to do survey work during weekends, holidays or on vacations.

The foregoing facts may involve RCH Sections 10-102.2, relating to disclosure of confidential information; 10-102.3, relating to incompatibility; 10-104, relating to fair and equal treatment; and RO 1969 Section 7-15.2(e), relating to competitive bidding.

None of the foregoing standards of conduct provisions will be breached if he is employed by consultants who have contracts with the State or private property owners and who are not involved with matters concerning BWS water service.

With respect to the appearance of conflict of interest, there may be situations wherein Employee X may be in a position to disclose confidential information to the consultant which may inure to the benefit of his outside employer. RCH Sec. 10-102.2. In the course of working for the consultant under the conditions mentioned herein, he may be in a situation in which his outside activity would be incompatible with the proper discharge of his duties as a supervisor of a survey team of the BWS. RCH Sec. 10-102.3. As to Section 10.104 relating to fair and equal treatment, Employee X may give precedence to the consultant over the BWS's assignment and thereby affect the BWS water program. Moreover, Employee X may be involved in a contract with the consultant who obtained his work from the BWS without competitive bidding, thereby giving rise to a possible charge that Employee X entered into a contract with a BWS official contrary to the provisions of RO 1969 Section 7-15.2(e), which exempts a contract acquired by way of public bidding.

In view of the foregoing, we conclude that Employee X may engage in work for consultants who have contracts with the State or private real property owners who are not involved with matters concerning BWS water service, but Employee X should not seek employment with a consultant of the BWS or the City because of an appearance of conflict of interest.

Dated: Honolulu, Hawaii, April 12, 1977.

ETHICS COMMISSION  
Nathaniel Felzer, Chairman