

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**



Advisory Opinion No.77

The disclosure of interest of Employee X of the Division of Engineering of the Department of Public Works dated October 5, 1977, was submitted to the Ethics Commission for an advisory opinion because his appointing authority concluded that there may be a conflict of interest, a decision in which the Managing Director concurred.

We are of the opinion that there is no conflict of interest.

We understand the salient facts to be as follows:

1. Employee X is employed in the Highway Section of the Division of Engineering of the Department of Public Works of the City.
2. His duties and responsibilities are as an Engineering Drafting Technician IV.
3. He has no authority to take official action regarding the drafts he does or reviews.
4. He is employed as a draftsman for a private engineering company after regular working hours with the City.
5. As a draftsman for the private engineering company, he translates or transcribes the engineering data onto construction drawings.
6. The private company has a contract with a private land development company which is developing land in Wahiawa.
7. As such, drafts done by Employee X for the Mililani Town Subdivision are reviewed by the Division of Engineering of the Department of Public Works, which has the duty and responsibility to review subdivision, grading, drainage, sewer, and road construction drawings for a subdivision.

RCH Section 10-102.3 states that no employee shall:

Engage in any business transaction or activity or have a financial interest, direct or indirect, which is incompatible with the proper discharge of his official duties or which may tend to impair his independence of judgment in the performance of his official duties.

Furthermore, if Employee X finds himself in a situation as stated in the foregoing section, he must file a disclosure of interest as prescribed in RCH Section 10-103.

Employee X has filed a disclosure pursuant to the provisions of RCH Section 10-103, but whether or not he has acquired a financial interest which is incompatible with the proper discharge of his official duties or which may tend to impair his independence of judgment in the performance of his official duties is problematical.

At first blush, it may be argued that there is an appearance of a conflict of interest because Employee X's drafts as an employee of the private engineering company which has a contract with a private land development company for Mililani Town Subdivision are subject to review by the Engineering Division of the Department of Public Works, which also employs Employee X. However, upon closer examination, we find that he is at a level of responsibility within the Division of Engineering in which he has no authority to exercise official action* in the process of reviewing construction drawings that are submitted by land developers for a subdivision and making recommendations thereupon to his superiors. Such review is conducted by licensed engineers who are employees of the Division.

Accordingly, we advise that Employee X may continue to be employed by the private engineering company in his present capacity with the City; provided that you and Employee X develop an identification mark for his drafts so that such identification will give notice to the employees of the City reviewing the draft that it was done by Employee X.

Dated: Honolulu, Hawaii, February 14, 1978.

ETHICS COMMISSION
Rev. William Smith, Chairman

*HO 1969 Section 7-15.1(h) defines "official action" as "any act or action which involves the use of discretionary authority or the ultimate authority to contract or to grant or deny permits or approval on an application."