

**ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU**



**Advisory Opinion No. 78**

This is in reference to the disclosure of interest submitted by Employee X of your department regarding his employment with Company Y as a supervisor of the testing of wet and dry standpipes and other fire extinguishing systems in high- and low-rise buildings.

We understand the facts to be as follows:

1. Ordinance No.4598 amended Section 16-1.1 of the Building Code by adding thereto a new Section 3808 (109A). This ordinance requires that all fire extinguishing systems [systems] of buildings may be subject to annual inspections. It further provides that qualified private individuals, partnerships or corporations may conduct such inspections. The provisions of this ordinance are to be enforced by the Fire Chief.
2. That Employee X is employed by Company Y during his off duty hours, which company is authorized by the Fire Chief to inspect systems under Ordinance No. 4598.
3. That Employee X's employment with the City is as a Fire Captain with rescue squad 1.
4. That Employee X's supervisory functions with Company Y deal with knowing how to test the wet and dry standpipes and other systems by utilizing pressure gauges and knowledge of other testing devices which were acquired as a fireman on the job and by attending special classes.
5. That Employee X's primary function for Company Y is to train and advise other employees of Company Y to properly utilize the testing equipment to determine whether or not the wet and dry standpipes and other fire extinguishing equipment are in working order.
6. That the culmination of such testing is the issuance of a certificate to the owner of the building that all systems are in working order signed by an inspector who is also an employee of the Fire Department of the City.

Based on the foregoing facts, the primary issue is whether the non-City employment requested by Employee X is incompatible with his duty as a member of the Fire Department. We are of the opinion that it is.

RCH Section 10-102.3 provides that no officer or 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.

Another provision which may be applicable in the instant case is RCH Section 10-104, which reads as follows:

No elected or appointed officer or employee shall use his official position to secure or grant special consideration, treatment, advantage, privilege or exemption to himself or any person beyond that which is available to every other person.

We do not question Employee X's integrity nor do we mean to infer that the offer of employment with Company Y was meant to influence Employee X against the proper discharge of his duty. However, we believe that it is reasonable to presume that this outside employment could be incompatible with the proper discharge of Employee X's official duties or could tend to impair his independence of judgment in the performance of his official duties. The effect of any impropriety could adversely affect the City and County as Employee X's principal employer and your department as the firefighting agency for this City.

The foregoing statements are based on the fact that Employee X is working for two masters in connection with a system over which the Fire Department has a duty to inspect (see Section 6-4.2, RO 1969) and to enforce the provisions of Ordinance No.4598; while on the other, Company Y has been authorized to test whether such system is in working order under the provisions of said Ordinance No.4598. Under the foregoing circumstances, Employee X, as an employee of Company Y, may find himself in the following situations which may be 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:

(1) Under Section 190 of the Rules and Regulations Governing the Fire Department, Employee X may be required to inspect systems located in buildings which fall within the purview of Ordinance No.4598, while on the other hand, Employee X, as an employee of Company Y, is employed to teach other employees in the use of certain instruments to test whether or not the system in a private building is in working order and to supervise such testing. Since Employee X, as an employee of Company Y, has knowledge of the systems which his company has tested, he may be in a position to make a cursory inspection of such systems or request another employee to make a cursory inspection and as a result fail to pick up any defects of the system.

(2) Because the Fire Chief has been given the duty to enforce the provisions of Ordinance No.4598, Employee X has the same implied duty as the Fire Chief's subordinates to see that the provisions of Ordinance No.4598 are enforced. On the other hand, as an employee of Company Y, he may be supervising the activities of the employees of Company Y, including their training, while they are conducting the testing of a system of a particular private building pursuant to Ordinance No.4598. He may be placed in a position where he may have to condone cursory testing of the system at the behest of his employer, Company Y, so that it can maximize its profit

by cursory testing rather than by minute and thorough testing which would entail more expense for Company Y. When placed in such a position, Employee X would have to make a choice whether to be an employee of the Fire Department and properly enforce such testing work, or to permit shoddy testing of such system in view of his pecuniary private interest in the form of a salary from Company Y.

(3) Since an employee of your department has worked in conjunction with the private company regarding the testing of the system in a private building, should such system fail during a fire, the City may find itself as a defendant in a lawsuit because Employee X trained and supervised the employees of Company Y to conduct such tests. If the private pecuniary benefit derived by Employee X under the circumstances overrides Employee X's concern of the possible legal proceedings and attendant costs against the City because of his private employment, then it follows that his private pecuniary benefits may have impaired his independence of judgment.

(4) Section 246 of the Rules and Regulations Governing the Fire Department states that:

No member shall, on or off duty, use the uniform, badge, or prestige of the Department for the purpose of personal gain.

This Commission is concerned that private companies engaged in testing systems pursuant to Ordinance No.4598 may be employing members of your Fire Department to enhance their prestige to obtain more business by employing your subordinates, which would give the public the impression that Company Y, which has a fireman training and supervising its employees, is superior to companies without such arrangement. Thus, Employee X may be treading on the prestige established by his uniform and badge as an employee of your department and his judgment may be impaired by the private pecuniary benefit received as an employee of Company Y.<sup>1</sup>

Perhaps Employee X has never considered his private employment as viewed by this Commission. However, he may now realize that his private employment may be incompatible with his duties and responsibilities or may result in an impairment of his judgment in carrying out his official duties. On the other hand, Employee X may take the position that he in no way will compromise his employment with the Fire Department regarding the manner of inspection of the systems or the enforcement of the provisions of Ordinance No. 4598, but from the standpoint of this Commission, he is still in a situation, as an employee of Company Y, which may be incompatible with his duties and responsibilities or which may impair his judgment in the performance of his official duties because the system is within the jurisdiction of the Fire Department as well as Company Y. To permit such private employment to continue may undermine the confidence of the public in your department and thereby adversely affect the operations of your department from the standpoint of your department's duty to inspect systems and to enforce the provisions of Ordinance No. 4598.<sup>2</sup>

In view of the foregoing, we advise that Employee X should terminate his employment with Company Y. This advisory opinion is also applicable to any employee of the Fire Department who is involved in similar employment as in this case.<sup>3</sup>

Dated: Honolulu, Hawaii, February 14, 1978.

ETHICS COMMISSION  
Rev. William Smith, Chairman

---

**1** See letter from Hawaii Fire Protection Industry Association dated January 13, 1978, of which you have a copy.

**2** In connection with this aspect, the likely public impression is that the Fire Department of the City and County of Honolulu is endorsing the work of Company Y or any other company which has employed members of your department to train and supervise the testing crews of Company Y or any other private company similarly situated. Such implied endorsement should be avoided because it may adversely affect the operations of your department.

**3** See also Op. Nos. 60-43 and 68-25.