

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**



Advisory Opinion No. 86

This is in reference to the disclosure filed by Employee X of the Department of Housing and Community Development [DHCD] for review by this Commission because Employee X has a real estate broker's license [broker's license] and an insurance salesman's license [insurance license]. We recommend that Employee X should inactivate both licenses.

We understand the salient facts to be as follows:

1. Employee X is a Rehabilitation Loan Specialist with the DHCD which is involved in real estate redevelopment projects.
2. In summary, his duties and responsibilities as a Rehabilitation Loan Specialist are:

Under the general direction and supervision of the Rehabilitation Loan Specialist II, the Rehabilitation Loan Specialist I, with broad latitude to exercise independent judgment, and with knowledge of lending practices, real estate and accounting, carries out responsibilities in counseling property owners to secure the most economical means of financing rehabilitation and improvement of properties in designated project areas by utilizing property owners' personal and conventional resources. . . .

3. The reason he retains his broker's license is to enable him to manage property owned by a hui, or which he is a member.
4. The State law requires that any person engaged in managing real property owned by another must have either a broker's or salesman's license.
5. The insurance license is retained to provide insurance coverage for the real property managed by Employee X, and to continue to receive commissions on any renewal of insurance which was sold to others by him prior to becoming an employee of DHCD.

Under the foregoing facts, it was appropriate that Employee X's initial disclosure as a new employee of the City was referred to this Commission for its review because the business interest held by Employee X falls within the ambit of RCH Section 10-103. That section provides that any officer or employee who has an interest, "as might reasonably tend to create a conflict with the public interest shall make full disclosure in writing to his appointing authority ... and to the ethics commission, at any time such conflict becomes apparent." (See M 78-56).

Another standard of conduct which requires consideration in light of the foregoing facts is RCH Section 10-102.3. That section states that no officer or employee shall:

3. 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.

When the duties of Employee X are analyzed in relation to RCH Section 10-102.3, we note that Employee X has to:

1. Have knowledge of real estate and lending practices;
2. Be responsible in counseling property owners to secure the most economical means of financing rehabilitation and improvements of property; and
3. Utilize property owners' personal and conventional resources.

When the elements of his duties and responsibilities are considered in relation to his broker's and insurance licenses, there is an inherent incompatibility because so long as Employee X has his broker's and insurance licenses he is in a position to take advantage of the situation for personal gain since he has knowledge of the personal resources of the applicant, including real estate market and financial conditions. Moreover, his insurance license also gives him an edge for sale of liability insurance to protect the interest of the City if a rehabilitation loan is granted to an applicant.

We do not question Employee X's integrity, nor do we mean to infer that his business interest would result in Employee X taking advantage of his employment situation. However, since the circumstances of this case give rise to a classic conflict of interest triangle with one exception,¹ we are of the opinion that Employee X should not be placed in a situation which may influence him to override the City's interest for the benefit of his business interest. So long as Employee X retains his broker's and insurance licenses that dotted line will remain. Therefore, to eliminate any type of line running from his business interest to the property he should inactivate his broker's and insurance licenses.

Although Employee X has stated, under oath, that he will not take advantage of his business interest, from the standpoint of the public it may not give credence to such sworn statement. Such skepticism concerning the credibility and integrity of public employees may be justified because of the latest notoriety involving government employees taking advantage of their public positions. Such examples are: (1) the Federal General Services Administration's [GSA] purchasing scandals relating to kickbacks and bribery between private contractors and

¹ The triangle will consist of his business interest, his official duty as a Rehabilitation Loan Specialist and the property which may be the subject of the loan, and the exception would be the line running from his business interest to the property which will not be a solid line but a dotted line until Employee X chooses to take advantage of his broker's and insurance licenses.

employees of the GSA, and (2) A congressman was found guilty of kickbacks and fraud, while another congressman was criminally indicted for kickbacks and bribery.

This Commission, we believe, has the duty to recommend appropriate action whenever it finds that the confidence and integrity of the officers and employees of the City as well as the City government may be affected by the business interest held by an employee in relation to his duties and responsibilities as in this instance. Admittedly, one may argue that a violation of RCH Section 10-102.3 by Employee X may be remote, but the active retention of his broker's and insurance licenses, under the circumstances, creates a situation which may affect the confidence of the public in the operation of DHCD, especially when the primary function of this department relates to development of real property and the preservation of buildings on real property. We further believe that the broker's and insurance licenses are not necessary for Employee X to carry out his duties and responsibilities as a Rehabilitation Loan Specialist.

In view of the foregoing, this Commission reiterates that Employee X should inactivate his broker's and insurance licenses because there is an inherent incompatibility between his duties and responsibilities as a Rehabilitation Loan Specialist and his business interest.

Dated: Honolulu, Hawaii, November 15, 1978.

ETHICS COMMISSION
Rev. William Smith, Chairman