

## OPINION NO. 90

This is in response to your letter of November 28, 1979, asking the Ethics Commission for an advisory opinion regarding your subordinate Employee X, Recreation Specialist II [employee] , business interest.

We are of the opinion that your employee's duties and responsibilities as a Recreation Specialist II and his business interest may be incompatible.

Based on the testimonies of your employee and others, the following facts were established:

1. Your employee is the President and Director of Company X and President and Secretary of Company Y. These corporations were established to provide ocean recreation services for tourists. The employees of these corporations gather the tourists from various hotels who have signed up for the ocean recreation services provided by these corporations. The tourists are taken to the public beach areas and the employees of these corporations furnish them with beach chairs, beach towels, beach umbrellas, surfboards and snorkeling equipment.

2. As a Recreation Specialist II, your employee's primary duties and responsibilities are to coordinate the City's ocean recreation program.

3. Your employee is hardly in the office which is housed in a single-family dwelling unit located in Kapiolani Park along with other employees of your Department.

4. Whenever he is not at his desk, he either calls or tells other employees that he will be at Extension 4521, which is Mr. Y's telephone extension.

5. Due to his absence from his desk, the other employees are required to take his phone calls and leave messages for him.

6. Many of the phone calls were unrelated to his duties as an ocean recreation specialist because the messages left for him related to cancellation of services or requesting time of pick up of patrons or the number of patrons for a particular group.

7. The majority of the individuals who came to see your employee at the office were not generally individuals who were employees of the Parks Department or the City.

8. Your employee was a subject of a news interview for

KITV, Channel 4 regarding his business interest and the same newscast showed the employee at Magic Island which we understand was during working hours.

Based on the foregoing facts, we are of the opinion that your employee may fall within the ambit of the provisions of Revised Charter of Honolulu 1973 [Rai] Sections 11-102.3 and 11-104. RCH Section 11-102.3 states that:

No elected or appointed 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.

while Section 11-104 provides that:

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.

As an officer of a corporation, he has a business interest. Moreover, his primary duties and responsibilities as an ocean recreation specialist for the City and the business interest primarily relating to ocean recreation prima facie establishes an incompatible situation with the proper discharge of his official duties.

The additional facts such as absence from his station, the type of telephone calls, the kind of people that ask for his whereabouts at his assigned station and the period in which the TV interview and pictures were taken all point to the fact that his business interest tend to impair his independence of judgment in the performance of his official duties. In other words, he may be devoting time and energy to his business interests during hours he is expected to be fulfilling his duties and responsibilities as an employee of your Department.

Assuming arguendo, the Commission may be basing the foregoing analysis on facts which the employee had no opportunity to rebut. This commission has the duty to the public that it should minimize any perceived violation of standards of conduct by City officers and employees. In the

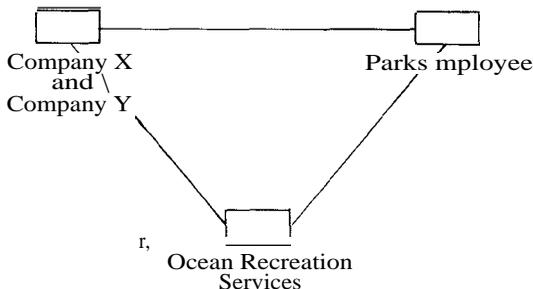
instant case, such perception may be the rule rather than the exception in light of the facts we have gleaned so far.

With reference to RCH Section 11-104, relating to fair and equal treatment, we have no testimony which may be of probative value but due to the similar activity between the employee's official duties and responsibilities as an ocean recreation specialist and the fact that the employee's business interest is to provide ocean recreation services, we may perceive as well as the public that your employee could use his official position to secure or grant special consideration, treatment, advantage, privilege or exemption to himself which is not available to others.

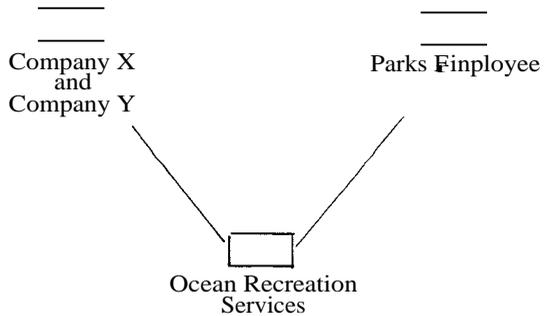
Based on the foregoing, we recommend that your employee divest his financial interest and relinquish any office or directorship in both corporations. We consider our recommendation to be justified under the circumstances because we have the duty to allay any public perception that he may be taking advantage of his position as an Ocean Recreation Specialist for the City for the benefit of both corporations which provide ocean recreation services.

Caveat: Please be advised that if your employee is permitted to continue without divesting his financial interest or to continue his business activity, you may be charged with violating RCH Section 11-104, relating to fair and equal treatment. You may be subject to such charge by another subordinate in your Department because he or she is not permitted to have a financial interest and a business activity as the employee in this case.

In closing, we commend your employee for submitting a disclosure of his business interest in two private corporations because such disclosure was in order as there is a conflict of interest. This can be readily shown by diagramming such conflict as follows:



Note the links between the blocks which complete the triangle. If there was no conflict, there will be a gap between two blocks and an incomplete triangle. This can be seen in the following diagram if your employee resigns as an officer and director from both corporations:



Dated: Honolulu, Hawaii, March 17, 1980.

ETHICS COMMISSION  
Rev. William Smith, Chairman