

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**



ADVISORY OPINION NO. 110

The question is whether an employee of a City agency where employees have power to review and recommend in matters related to land use may work in his off-duty hours as a private consultant in the same general field in which he works for the City.

The Ethics Commission [Commission] finds that there may be no violation of the applicable standards of conduct in this case, provided the employee does not enter into a contract as a private consultant for any client who is a land developer or who engages in the purchase or sale of land for development purposes (hereinafter "land clients").

The following facts were submitted by the employee when he testified before the Commission:

1. He is employed as a planner.
2. His official duty as a planner is to gather data. Thereafter, he analyzes such data and submits to his superiors a report which may be used in developing amendments to development plans.
3. He intends to go into business for himself as a private consultant, which consulting he will do after regular working hours. His objective is to obtain contracts from businesses to study their operations and make recommendations to increase their efficiency and productivity.
4. He is sensitive to the criticism regarding City employees who engage in businesses which may be incompatible with their official duties; and therefore he pledged not to do any consultant work for land clients.

At the outset, the following standards of conduct provisions found in Sections 11-102.3, relating to incompatibility; 11-102.2, relating to confidential information; and 11-104, relating to fair and equal treatment of the Revised Charter of the City and County of Honolulu 1973 (1979 Supp.), may apply in this case:

Section 11-102. 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.

2. Disclose confidential information gained by reason of his office or position or use such information for the personal gain or benefit of anyone.

Section 11-104. No . . . 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.

Section 6-1.2(a)(2), Revised Ordinances of Honolulu 1978, relating to official action, may also apply:

No officer or employee . . . shall:

(2) Acquire financial interest in business enterprises which he has reason to believe may be directly involved in official action to be taken by him.

So long as the employee does not have any land clients, the standards of conduct listed above probably will not be breached. The Commission's concern regarding land clients may be shown by the following hypothetical cases:

Example 1

Employee has a contract with X Corporation. X Corporation has a subsidiary corporation, which is primarily engaged in residential housing development. During the contract period, the subsidiary corporation filed an application for an amendment to the development plan to redesignate a specified number of acres of agricultural-zoned land to residential-zoned land. Employee's superior, not realizing that the employee has a contract with the parent corporation, assigns the application review to the employee. The employee is placed in a situation where he has two masters. One master is the City, and the other is the parent corporation. Under the foregoing argument, if he is concerned for his private welfare, he may tip the scales of his land use survey so that a favorable recommendation for redesignation may be justified.

Such result may be favorable to the employee from the standpoint of obtaining another contract or enlargement of the scope of the original contract. On the other hand, if he is concerned with the public interest as an employee of the City, he would return an unfavorable recommendation for redesignation because it would reduce prime agricultural acreage and burden existing public

facilities, such as the highway, sewer lines, water sources, and public utility services. The public facilities and utility services would be burdened because there are no major trunk lines within or along the proposed development area. If so, the employee is in an incompatible situation.

Example 2

The parties and facts are the same as in the first hypothetical situation.

The favorable recommendation based on the land use data was confidential. It was confidential because it was land use data compiled and analyzed by the employee to be used by his superiors in making their final decisions. Therefore, it is not a public record available to the public. To ingratiate himself to officers of the corporation for future business, the employee discloses such information to the officers of the subsidiary corporation. If so, he has breached this section.

Example 3

The parties and facts are the same as in the first hypothetical situation, except for the following facts:

- a. The employee was working on an application which was assigned to him before his land client's application was assigned to him;
- b. The employee's department has a "first in, first served" policy regarding applications, whenever possible; and
- c. Despite the rule and even though there is no good cause, the employee sets aside his first assignment and works on his land client's application. Under the foregoing facts, the employee would not be treating the first applicant fairly and equally.

Example 4

The parties and facts are the same as in the first hypothetical situation, except for the following facts:

- a. At the time the employee enters into a contract with his land client, he is informed that his contract may be extended to include the subsidiary corporation, which is primarily engaged in the business of land development;
- b. No application for an amendment to a development plan has been filed with the appropriate City agency;
- c. The employee's consultant contract is executed;

d. Six months later, the land client files an application for an amendment to the development plan; and

e. The land client's application is assigned to the employee.

Under the foregoing facts, the employee had sufficient knowledge to influence the review and recommendation regarding the amendment or application. Thus, he would fall within the privy of this section. The employee has acquired a business interest, which he has reason to believe might come before him for official action because he was informed that the subsidiary corporation was engaged primarily in land development.

To summarize: at the outset, it appears that the employee is engaged in business as a private consultant and may be in violation of the applicable standards of conduct because he may have land clients. These land clients may have to file an application for amendments to the General Plan or to the development plans for land development purposes. However, if he does not do any business with land clients – and he has pledged not to accept such clients – the possibility of violating the applicable standards of conduct mentioned herein may be remote. Therefore, to eliminate any conflict of interest or any appearance of conflict of interest or any action which may affect the public's confidence regarding the integrity of City officers or employees, the Commission submits the following recommendations:

1. That the employee refrain from doing any business with land clients;

2. That the employee submit an annual report to his supervisor listing his clients (by symbol and not by name) and including their business activities; and

3. That if, after entering into an outside business contract, he learns he has a land client, the employee shall file a disclosure with his supervisor and the same shall be transmitted to the Commission for an analysis.

Dated: December 16, 1982

MAZEPPA K. COSTA
Chairperson, Ethics Commission