

**ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU**



**ADVISORY OPINION NO. 173**

This advisory opinion concerns a request for the Ethics Commission [Commission] to determine whether a senior aide to a councilmember should become a partner in a private venture that would seek business with the City.

The Commission does not believe he should become a partner in this venture because doing so would create real or apparent conflicts of interest under several standards of conduct.

The Commission understands the facts to be as follows:

The senior aide is a research assistant and advisor to a councilmember. As such, he has access to confidential City information and advises the councilmember regarding matters before the City Council.

The senior aide is now considering whether or not to join a private venture where the partners would 1) construct buildings, which would require permits from the City, and 2) attempt to sell such buildings to the City, among other prospective buyers.

The ethical question is whether a City employee may engage in an outside business that relates to his official duties.

The general rule is that an employee may not:

1. participate in any official City action directly affecting a business in which he has a substantial financial interest;<sup>1</sup>

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<sup>1</sup> Section 6-1.2(1), Revised Ordinances of Honolulu 1978 (1983 Ed.) [ROH], states:

No officer or employee of the City, except as hereinafter provided, shall . . . [p]articipate, as an agent or representative of a City agency, in any official action directly affecting a business or matter in which (A) he has a substantial financial interest

. . . .

"Official act" or "official action" means a decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority. Section 6-1.1(8), ROH, Am. Ord. 84-83.

"Financial interest" means an interest held by an individual, the individual's spouse, or minor children which is: (A) an ownership interest in a business; (B) a creditor interest in any insolvent business; (C) an employment, or prospective employment for which negotiations have begun; (D) an ownership interest in real or personal property;

2. appear on behalf of private interests before any [City] agency;<sup>2</sup>
3. acquire financial interest in business enterprises which he has reason to believe may be directly involved in official action to be taken by him;<sup>3</sup>
4. have any outside business interest that is incompatible with official duties or that would tend to influence the employee in official duties;<sup>4</sup> or
5. use confidential information for private purposes.<sup>5</sup>

The Commission does not believe the senior aide should engage in this venture because real or apparent conflicts of interest may arise as a result of connections between the venture and his official duties. If he joins the venture, he would have a financial interest in a business at the same time he was advising the Councilmember and had access to confidential information. His advice might seem to be participation in a City action affecting his financial interest. If he sought to sell the venture's buildings to the City, he would be appearing on behalf of private interests before the City. If the confidential information to which he has access might be helpful to the

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(E) a loan or debtor interest; or (F) a directorship or officership in a business. Section 6-1.1(6), ROH, Am Ord. 84-83.

<sup>2</sup> Section 6-1.2(3), ROH, states:

No officer or employee, except as hereinafter provided, shall . . . [a]pppear in behalf of private interests before any agency . . . .

"Agency" includes (A) the City and County of Honolulu; (B) the Council and its committees; (C) all departments, offices, boards, commissions, committees; (D) all independent commissions and other similar establishments of the City government; and (E) any other governmental unit of the City. Section 6-1.1(a), ROH.

<sup>3</sup> Section 6-1.2(2), ROH, states:

No officer or employee of the City, except as hereinafter provided, shall . . . [a]cquire financial interest in business enterprises which he has reason to believe may be directly involved in official action to be taken by him.

"Business" includes (A) a corporation; (B) a partnership; (C) a sole proprietorship; (d) institutions; (E) trusts; (f) foundations; or (G) any other individual or organization carrying on a business, whether or not operated for profit. Section 6-1.1(2), ROH.

<sup>4</sup> Section 11-102, Revised Charter of the City & County of Honolulu 1973 (1984 Ed.) [RCH], states:

No elected or appointed officer or employee shall . . . [e]ngage in any business transaction or activity or have a financial interest, direct or indirect, which is incompatible with the proper discharge of such person's official duties or which may tend to impair the independence of judgment in the performance of such person's official duties.

<sup>5</sup> Section 11-102, RCH, states:

No elected or appointed officer or employee shall . . . [d]isclose confidential information gained by reason of such person's office or position or use such information for the personal gain or benefit of anyone.

venture, allegations that he used that information for the venture's benefit may arise. Therefore, the Commission believes he should not join this venture.

In conclusion, the senior aide is an advisor to a Councilmember. He proposes to become a partner in a private venture that would construct buildings and attempt to sell them to the City. If he pursues this venture, violations of the standards of conduct that might arise are 1) acquiring a financial interest in a matter concerning which he advises a Councilmember; 2) participating in an official action where he has a financial interest; 3) appearing on behalf of the private venture before City agencies; and 4) using of confidential City information for the benefit of the venture. For these reasons, the Commission believes he should not become a partner in this venture.

Dated: June 18, 1987

JANE B. FELLMETH  
Chair, Ethics Commission