

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**



ADVISORY OPINION NO. 174

The question is whether a paralegal may pursue outside employment with a sales organization, but not in a sales capacity position, without violating, or appearing to violate, the City's standards of conduct.

The Ethics Commission [Commission] believes that such outside employment is compatible with the paralegal's official duties because he will not solicit sales or use City time, equipment, or material pursuant to such employment.

The Commission bases this opinion on the following facts:

The paralegal has requested on a CC-8 disclosure form approval by his appointing authority of his intended outside employment with a sales organization [Company X]. Company X's business purposes include selling stock, and some of its employees solicit stock sales free-lance¹.

The concern is that any City employee who sells goods or services free-lance, and whose outside income therefore depends on such sales, will be prompted to solicit sales using City time, equipment, or material.

In an appearance before the Commission, the paralegal responded to this concern when he stated that his employment would require him to supply support services to his spouse such as meeting with potential buyers his spouse has solicited, on his own time evenings and weekends; and 3) he will not solicit any sales whatsoever or use City time, equipment or material when he provides his spouse with support services.

¹ "Free-lance" as an adjective means "of, relating to, or being ... independent;" as a verb means "to produce and submit ... in the manner of a free lance;" and as a noun means "one who acts independently without regard to party lines or deference to authority" or "one who pursues a profession without long-term contractual commitments to any one employer." Webster's New Collegiate Dictionary 491 (9th ed. 1986).

The Commission also uses "free-lance" selling to differentiate from retail selling, which is selling within the structural confines of a place of business under supervision. A "free-lance" salesperson may solicit sales from anyone outside of such physical place of business and supervision. In contrast, a retail salesperson only sells during assigned hours inside the place of business to potential buyers who appear of their own accord.

The question presented is whether the outside employment stated above is compatible with official duties.

The general rule is that no City officers or employees may use City time, equipment, or material for private purposes because doing so is incompatible with official duties.² However, this rule does not apply to the facts at hand because the paralegal has stated he will not use such City assets in his employment. Therefore, the Commission believes his intended outside employment is compatible with his official duties.

In conclusion, a paralegal intends to work for a sales organization part-time. Some of its employees sell stock free-lance, and the concern is that he may also do so, using City time, equipment, or material. However, in an appearance before the Commission, the paralegal responded as follows: 1) his spouse is a financial planner with Company X who sells stock free-lance; 2) as a Company X employee, he will provide his spouse with support services, such as meeting potential buyers evenings and weekends; and 3) he will not solicit any stock sales whatsoever or otherwise use City time, equipment, or material in his outside employment. Therefore, the Commission believes that no ethical question should arise as a result of his outside employment.

Date: September 2, 1987

JANE B. FELLMETH
Chair, Ethics Commission

² In Advisory Opinion No. 115, the Commission advised a City employee as follows:

Our concern is whether or not you use City time, equipment or material to [conduct your outside business]. That is, do you have to respond to telephone calls during working hours made by the [outside employer] or prospective [clients]? Similarly, do you make use of City equipment or material in fulfillment of your [outside employment]? Examples of City equipment would be the telephone or a City typewriter, while examples of material would be City paper or stationery to correspond with the [outside employer] or prospective [clients]. If you are doing so, you may be in violation of **Section 11-102.3, RCH [Revised Charter of the City & County of Honolulu 1973 (1984 Ed.)], relative to incompatibility.**

(Emphasis added). Section 11-102.3, 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.