

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**



ADVISORY OPINION NO. 179

This opinion is in response to a request for the Ethics Commission [Commission] to advise a City department whether an employee may conduct a business as a notary public using his working hours or his City office.

In general, no City officer or employee may conduct an outside (non-City) business, whether or not for profit, using City time, equipment, or material because doing so is incompatible with the performance of official duties and therefore violates the City's standards of conduct.

The Commission understands the facts to be as follows:

The employee became a private notary public on his own after entering City employment. He is not a government notary public, and his official duties do not include being a notary public.

During regular City business hours, the employee has been notarizing documents at his City office for:

- 1) City personnel performing City business;
- 2) City personnel who need notarization for personal reasons free of charge;
- 3) Handicapped and elderly people who transact business with various divisions of the City Department free of charge; and
- 4) other members of the general public for a fee.

The employee has submitted a CC-8 form requesting approval of his plans to continue the activities listed above. If allowed to do so, he proposes that he repay the City each quarter for his business by cash refunds or vacation write-off.

The question under the City's standards of conduct is whether a City employee may pursue an outside business during his regular working hours or in a City office.

Without exception, the general rule provided in a score of prior advisory opinions is that City employees may not use City time, equipment, or material to conduct an outside business. Such use of City assets is incompatible with the employee's official duties under Section 11-102.3, Revised Charter of the City and County of Honolulu 1973 (1984 Ed.). Section

11-102.3 states in pertinent part as follows:

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.

"Business" includes a sole proprietorship, whether or not operated for profit,¹ and therefore includes a person working as a notary public. "Financial interest" includes employment.²

This general rule prohibits the employee's activities. He has been working as a sole proprietor providing notarial services, and such employment has been a financial interest to him. Although he has not charged certain categories of customers, his activity is still a business. This business and financial interest have conflicted with his official duties because he used City time, such as his working hours; City equipment, such as his office; and City material, such as pens or paper. Given this conflict, no City agency may properly allow an employee to continue an outside business using City assets, and an employee may not have a private agreement with his appointing authority to do so. Therefore, the employee should not be allowed to continue his business, and his appointing authority may also take such disciplinary action as is deemed appropriate.

The Commission understands that the employee's motives for providing notarial services were primarily to help the general public who had business with the City department and only secondarily to make money. Accordingly, the Commission also advises his appointing authority that he may have an employee designated by the Attorney-General as a government notary public in order to provide notarial services to 1) City personnel concerning City business or 2) the public who have business with the City. Alternatively, if other rules or regulations permit, he may select a private notary public as a concessionaire to provide services to the public for a fee.

In conclusion, the employee is a notary public but not a government one. He has provided

¹Section 6-1.1(2), Revised Ordinances of Honolulu 1978 (1983 Ed.) [ROH], states:

"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**.

(Emphasis added)

²Section 6-1.1(6), ROH, states:

"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 an involent business; (D) an employment, or prospective employment for which negotiations have begun; (D) an ownership interest in real or personal property; (E) a loan or debtor interest; or (F) a directorship or officership in a business.

(Emphasis added)

notarial services, sometimes for a fee, to City personnel and the general public in the building where he works. He has now submitted a CC-8 asking for approval to continue this outside employment during both his working and non-working City hours in his City office. In response, his appointing authority has requested an advisory opinion. The Commission believes the employee should not be allowed to conduct any outside business, whether or not for profit, on his City time or in his City office because doing so detracts from his performance of his official duties. In order to provide notarial services deemed necessary, the appointing authority may have an employee designated as a government notary public or contract with a concessionaire.

Dated: November 23, 1987

JANE B. FELLMETH
Chair, Ethics Commission