

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**



ADVISORY OPINION NO. 180

This advisory opinion is in response to a request for the Ethics Commission [Commission] to advise a City department whether an employee who is a real estate appraisal clerk may properly have outside employment as a real estate associate.

Generally, the employee has access to confidential information on real estate matters through his official duties. Because such access may give rise to the appearance that he has used, or may use, City information in his employment as a real estate associate, the Commission believes his appointing authority should require him to inactivate his real estate sales license.

The Commission understands the facts to be as follows:

The employee is a real estate appraisal clerk with a City department. His duties include having access to the following:

Information on 215,200 land parcels and 236,000 building records that must be reviewed and entered onto the new Real Property Mass Appraisal and Tax Administration computer system.

The employee is also a real estate associate with a real estate broker. A real estate associate is a salesperson who earns compensation in the form of commissions on sales.

Under the City's standards of conduct, the question presented is whether an employee may have outside employment as a real estate salesperson when he has access to City information relating to real property as part of his official duties.

The general rule is that a City employee may not disclose or use confidential information gained in the course of City employment. This rule appears in Section 11-102, Revised Charter of the City and County of Honolulu 1973 (1984 Ed.), which states:

No elected or appointed City officer or employee shall:

...

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

In addition, the appearance of a conflict of interest, such as disclosing or using confidential information, is sufficient to warrant that an employee not be allowed to pursue an outside interest or employment.

In this situation, the employee has access to City information relating to real property, and such access may create, or appear to create, a conflict of interest because he earns commissions on the sale of real estate in his outside employment. For example, if a real estate associate needs to compile data on a property, the employee may use City time and City records to compile the data. He may also use his position to obtain information that is not normally available to a real estate associate. In either situation, his access to information may benefit him and therefore create real or apparent conflicts. Therefore, the Commission believes he should inactivate his license while his duties relate to real property.

In conclusion, the employee is a real estate appraisal clerk with access to City information that may be useful to him in his outside employment as a real estate associate. Such access alone is sufficient to require him to inactivate his sales license because it creates the appearance of a conflict of interest. Therefore, the Commission believes his appointing authority should require him to inactivate his sales license while he has City duties relating to real property.

Dated: December 14, 1987

JANE B. FELLMETH
Chair, Ethics Commission