

**ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU**



**ADVISORY OPINION NO. 183**

This advisory opinion is in response to a request on a CC-8 disclosure form of Mr. X, a senior advisor to a member of the city Council [Council], for the Ethics Commission [Commission] to determine whether Mr. X's outside interests are proper under the City's standards of conduct.

Generally, the Commission believes that Mr. X's outside interests as 1) one of two partners in ABC, Inc., which provides consultation services, and 2) a director of DEF, a non-profit organization, are compatible with his official duties and are not in conflict with other standards of conduct.

The Commission understands the facts to be as follows:

Mr. X is a senior advisor to Councilmember Z. In this capacity, his official duties include advising Councilmember Z on matters before the City Council and access to confidential city information.

Mr. X is also one of two paid partners in ABC, Inc., Co. The firm's services include providing clients with advice in the form of surveys.

Given these facts, the question presented is whether an outside activity as a partner in a consulting firm is compatible with the official duties of a senior advisor to a councilmember.

The relevant general rules are that a City employee 1) may not represent private parties before city agencies, section 6-1.2(3), Revised Ordinances of Honolulu 1978 (1983 Ed.) [ROH]<sup>1</sup>; Section 11-102.5, Revised Charter of the city and County of Honolulu 1973 (1984 Ed.) [RCH]<sup>2</sup>; 2) may not participate in

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<sup>1</sup> Section 6-1.2(3), ROH, states:

No officer or employee of the City . . . shall [a]ppear in behalf of private interests before any agency other than a court of law, nor shall he represent private interests in any action or proceeding against the interests of the City in any litigation to which the City is a party.

<sup>2</sup> Section 11-102 (5), RCH, states:

No elected or appointed officer or employee shall . . . [r]epresent private interests in any action or proceeding against the interests of the city or appear in behalf of private interests before any agency, except as otherwise provided by law.

official action<sup>3</sup> directly affecting a business or matters in which he has a substantial interest or a matter for which a client has retained his outside firm, Section 6-1.2(1), ROH<sup>4</sup>; may not disclose or use confidential information gained in the course of city employment, Section 11-102.2, RCH<sup>5</sup>; or otherwise engage in business activities or have financial interests that are incompatible with official duties. Section 11-102.3, RCH.<sup>6</sup> "Business" includes for-profit enterprises.<sup>7</sup> "Financial interest" includes an employment for compensation and ownership of a business.<sup>8</sup> Also, the appearance of a conflict of interest is sufficient to warrant Commission advice to cease outside activities.<sup>9</sup>

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<sup>3</sup> "Official act" or "official action" means a decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority. Sec. 6-1.1(8), ROH; Am. Ord. 84-83.

<sup>4</sup> Section 6-1.2(1), ROH, states in relevant part as follows:

No officer or employee of the City . . . 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; or (B) by or for which a firm of which he is a member, an associate, or an employee has been engaged as a legal counselor advisor or consultant or representative in a matter directly related to such action. . . .

<sup>5</sup> Section 11-102.2., 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.

<sup>6</sup> 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 or which may tend to impair the independence of judgment in the performance of such person's official duties.

<sup>7</sup> "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), Revised Ordinances of Honolulu 1978 (1983 Ed.) [ROH].

<sup>8</sup> "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 insolvent business; (C) 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 of officership in a business. Section 6-1.1(6), ROH.

<sup>9</sup> Section 11-101, RCH, states:

Elected and appointed officers and employees shall demonstrate by their example the highest standards of ethical conduct, to the end that the public may justifiably have trust and confidence in the integrity of government. They, as agents of public purpose, shall hold their offices or positions for the benefit of the

Under the facts at hand and the relevant general rules, Mr. X has a financial interest in ABC, Inc., because he is a partner in a business and receives compensation for his services rendered. However, the financial interest is compatible with his official duties as a senior aide to a councilmember because at this time there is no relationship between his outside interests and his official duties as a senior advisor to a councilmember. If a relationship does arise, Mr. X should disclose the matter to his appointing authority, the chair of the Council, and file an E-2 disclosure form with the chair and with this Commission for the public record. In those instances, he should not be able to participate in official action, such as advising Councilmember Z in the related matter. In all instances, he may not represent clients of ABC, Inc., before City agencies, such as by making written or oral requests to the agencies, or disclose or use confidential information gained in the course of his City employment. In this manner, he would avoid real and apparent conflicts of interest with his official duties.

In conclusion, Mr. X is a senior aide to Councilmember Z. In addition to being a director of a non-profit corporation, he is one of two partners in ABC, Inc., a firm which provides business clients with consulting services, such as surveys. At this time, no real or apparent conflicts exist because there is no relationship between his outside interests and his official duties. To ensure the lack of conflicts, he should file an E-2 public disclosure form should a relationship arise and otherwise abide by the city's standards of conduct, as discussed above.

Dated: January 25, 1988

JANE B. FELLMETH  
Chair, Ethics Commission

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public, shall recognize that the public interest is their primary concern, and shall faithfully discharge the duties of their offices regardless of personal considerations.

The Commission interprets this standard of conduct to require City personnel to avoid even the appearance of impropriety or conflict of interest.