

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**



Advisory Opinion No. 242

This is an advisory opinion in response to a letter requesting advice from the Ethics Commission as to whether a conflict of interest with a City officer's ("A") position is created by A's prior employment with a private company ("XYZ").

The Commission understands the facts relative to this inquiry to be as follows:

A is employed by the City and County of Honolulu as a Civil Engineer VII. Prior to joining the City on August 31, 1993, A worked as a project engineer and project manager for XYZ for approximately four years. When A left XYZ, A's funds remained in that company's retirement account which is administered by American Consulting Engineers Council [ACEC] Retirement Trust. XYZ has made no contributions to A's retirement account since A left its employ, and A has had no financial connections with XYZ during that time.

In A's City position, A is sometimes called upon to participate in interviews in relation to consultant selection. XYZ periodically comes before A's department to be considered for the award of the non-bid contracts.

The ethical question presented is whether A's prior financial interest in XYZ creates a conflict of interest with A's City position. A specifically asks whether A may participate on review panels for the selection of department consultants for non-bid contracts when XYZ is one of the organizations under consideration.

The general rules in relation to A's question are found in the Revised Charter of the City and County of Honolulu 1973 (1994 Ed.) [RCH]. Section 11-102(c), states in pertinent part:

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.

Section 11-104, RCH, entitled *Fair and Equal Treatment*, states as follows:

Elected or appointed officers or employees shall not use their official positions to secure or grant special consideration, treatment, advantage, privilege or exemption to themselves or any person beyond that which is available to every other person.

Based on the evidence presented, the Commission finds that leaving A's XYZ retirement funds in the account administered by ACEC Retirement Trust does not constitute a financial interest which is incompatible with the proper discharge of A's official duties or which may tend to impair A's independence of judgment in A's City employment.

A's question in regard to participating in interviews for non-bid consultant contracts, however, raises a different issue. The Ethics Commission wonders whether a consultant who was unsuccessful in getting a contract which was awarded instead to XYZ, if A had been a member of the panel, could invoke Section 11-104 of the Charter, claiming that XYZ had received a special

advantage in the process. Possibly, a certain amount of time should elapse before an officer or employee should participate in the consideration of a former employer for a non-bid City contract. The Standards of Conduct are silent on that specific subject.

However, former officers and employees are required to wait one year after terminating their relationship with the City before being employed by private interests to work on any case, proceeding or application with which he or she previously was involved in any way on the City's behalf. Since it has been more than one year since A was employed by XYZ, the Ethics Commission believes that adequate time has elapsed to remove any appearance of a violation of the Fair and Equal Treatment provisions of the Charter if A were to serve on an interview panel for non-bid consultant contracts for which XYZ was being considered.

Dated: November 23, 1994

SAMUEL L. DOMINGO
Chair, Ethics Commission