

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**



Advisory Opinion No. 274b

This is a partial advisory opinion in response to your letter requesting advice from the Ethics Commission as to your future employment options upon leaving your position with the City and County of Honolulu. Those of your questions not answered here were addressed in the advisory opinion dated November 18, 1996.

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

You have been the director of the Department since 1994. Prior to that time you served as deputy director of another Department from 1992-93. In your current position, you make the final decision on the award of all non-bid contracts by the Department.

Representing the City, you played a critical role in negotiating the terms of a Consent Decree it entered into with a federal agency in 1995. The agreement requires that the City submit its plan for implementing the Decree by 1999 for the program which will run for 20 years.

You have created a corporation under which you intend to provide consulting engineering services. You do not plan to become an employee of any firm in Honolulu once you leave your City position.

The ethical questions which are covered in this opinion are whether within one year of leaving your City position you may be hired as a consultant: by a firm awarded a non-bid City contract which is partially-funded by the Department, but which is selected and administered by another City department; or by a firm hired by the City to work on matters related to the Consent Decree. The general rules in relation to these questions are found in the Revised Charter of the City and County of Honolulu 1973 (1994 Ed.) [RCH] and the Revised Ordinances of Honolulu 1990 [ROH]. Section 11-105, RCH, states as follows:

No person who has served as an elected or appointed officer or employee of the city shall, within a period of one year after termination of such service or employment, appear for compensation before any agency of the city, or receive compensation for any services rendered in behalf of any private interests in relation to any case, proceeding or application with respect to which such person was directly concerned, or which was under such person's active consideration, or with respect to which knowledge or information was made available to such person during the period of said service or employment.

Section 3-8.2(c), ROH, states in relevant part:

A former officer...of the city, may within a period of one year after termination of city service...and for compensation: (1) appear before any city agency in any case, proceeding or application, with respect to which knowledge or information in relation to such case, proceeding or application, as made available to the former

officer...during the term of...service; or (2) assist another person or business, including but not limited to one in which such person is an officer of employee, in any official act or action by the City; provided, that in either instance the former city officer...shall first file an affidavit as provided below.

Such former officer...of the city shall file a sworn affidavit with the city agency involved stating that the former officer...(1) was not directly concerned with, (2) did not actively consider, 3) did not participate in, and (4) was not given access to knowledge or information not readily available to the public during the period of said active service..., with respect to such case, proceeding or application or other matter before the city agency....

And, Section 3-8.3(g), ROH, states in relevant part:

This section shall not prohibit any city agency from contracting with a former officer...to act on a matter on behalf of the city within the period of limitation stated herein and shall not prevent such officer...from appearing before any city agency in relation to such employment.

Based on the evidence presented, the Commission finds that within one year of leaving your City position, you may work as a consultant for a firm awarded a non-bid City contract which is partially funded by the Department, but selected and administered by another department. Also, you may accept employment as a consultant to a firm hired by the City to work on matters related to the Consent Decree. However, in either case you must submit a sworn affidavit as required by ROH Section 3-8.2(c), prior to making any appearances before any city agencies. Enclosed is a copy of the Ethics Commission's *Guidelines on Future Employment* which provides detailed information on the required affidavit.

Despite its decision that you *may* consult for a firm hired by the City in relation to the Consent Decree, the Commission strongly recommends that you be hired directly by the City for that work since such an arrangement poses no ethical problems because it is explicitly permitted in Section 3-8.3(g), ROH. Additionally, the Commission is concerned that the City be protected from the appearance of impropriety in the selection process. Therefore, if within a year of leaving your City position you wish to serve as a consultant to a firm awarded a non-bid contract by the City, the Commission strongly recommends that you refrain from accepting employment until after the contract has been awarded.

Enclosure

Dated: December 3, 1996

GOLDIE D. BRANGMAN-DUMPSON
Chair, Ethics Commission