

OPINION NO. 92

This is in response to your letter of February 5, 1980, requesting an advisory opinion relative to the disclosure filed by Employee X.

Based on the facts of this case, we are of the opinion that there may be a violation of RCH Section 11-102.3 if our recommendation relative to the type of plans which would be reviewed by the employee is not accepted.

Based on the testimony of Employee X, we understand that:

1. Employee X is an electrical engineer and is assigned to your Electrical and Maintenance Services Division (hereinafter "the Division"). This division reviews and approves all street lighting work done for the City or private developers engaged in subdivision of land.
2. His outside employment is with Company Y, consulting electrical engineers.
3. This consultant does street lighting projects for the City which is subject to review and approval by the Division.

4. This consultant also does street lighting work on private subdivision which is subject to review and approval by the Division.

5. Employee X's duties and responsibilities involve reviewing and approving such projects. However, he stated that he will not be working on any City street lighting projects assigned to the electrical consultant.

6. Employee X, as a supervisory electrical engineer, reviews all lighting plans that are reviewed and approved by the Division, which had been initially reviewed by a subordinate electrical engineer.

RCH Section 11-102.3 states that:

No elected or appointed officer or employee shall:

Engage in any business transaction or activity or have a financial interest, direct or indirect, which is incompatible with the proper discharge of his official duties or which may tend to impair his independence of judgment in the performance of his official duties.

When the cited provision is applied to the facts of this case, we find that Employee X has a direct financial interest arising out of his off-hour employment with the electrical consultant. Additional facts based on his testimony, such as his statement that he reviews all electrical plans for City as well as private projects presented to the Division for its review and approval may place him in incompatible situations. For example, an electrical plan for a private subdivision of the electrical consultant is placed before him for his review and approval. This plan does not meet the standards established for lighting of subdivisions. His correct decision is to reject such electrical plans, but because of his private pecuniary interest with the electrical consultant, there is a possibility that he might approve the lighting plans for the subdivision despite the deficiencies. Because of the possibility that Employee X would be placed in such a position that he has to make a choice between the City's interest as compared to his outside employer's interest, his proposed outside employment may fall within the ambit of the cited provisions, if he is permitted to do so without specific restrictions.

Although Employee X will not actually work on the electrical plans for City projects or for private subdivisions for the electrical consultant, the public perception of his rela-

tionship with the electrical consultant would be that any electrical plans submitted by the electrical consultant might be subject to a favorable review regardless of whether such plans did contain a deficiency because of Employee X's relationship with the electrical consultant. Regarding public perception or an appearance of a conflict, this Commission has the duty to consider such perception or an appearance of a conflict so that the credibility of officers and employees may be protected and not subject to tarnishment by permitting officers and employees to continue any relations which give rise to negative public perception or an appearance of a conflict as in this case.

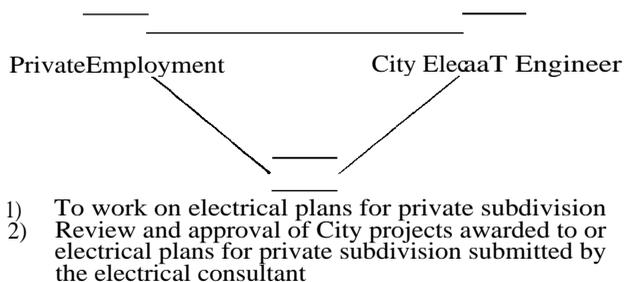
Based on the foregoing, Employee X may work for the electrical consultant during his off hours, provided that he does not:

- a. Work on any City lighting projects awarded to the electrical consultant;
- b. Work on any street lighting plans for private subdivision by the electrical consultant; and
- c. Personally review or approve any of the foregoing electrical plans.

However, he may work on:

Electrical plans for the electrical consultant which are not subject to review and approval of the Division but by other City agencies, such as the Building Department; or electrical plans subject to review by agencies of the neighbor island counties.

In closing, if we diagram the key facts of this case, perhaps you may be able to visualize the conflict.



Note the above triangle shows all blocks are linked together. However, the subsequent triangle will show a break between the blocks which would indicate no conflict.

