

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**



Advisory Opinion No. 95

This is in response to your request dated September 9, 1980, asking for an opinion as to whether or not Employee X (hereinafter referred to as "employee") as a Landscape Architect I for the Parks Department and his real estate salesman's license is contrary to any standards of conduct established in the Revised Charter of Honolulu 1973 [RCH] or Revised Ordinances of Honolulu 1978 [ROH].

We are of the opinion that there are no facts to indicate actual violation of any of the standards of conduct, but his duties and responsibilities give him access to your Department's future acquisition of park sites which might tend to create a conflict with the public interest or an appearance of a violation of the standards of conduct, specifically RCH Sections 11-102.2 and 11-102.3.¹

The salient duty and responsibility of the employee which is applicable to our conclusion is:

Assist in the preparation of . . . reports for new parks
[Emphasis added]

Presumably, in the course of carrying out his duties in furnishing a report for a new park, he has access to information to which the public is not privy, and, therefore, confidential. Such access to confidential information, in the eyes of the public, may appear to give your employee an opportunity to benefit his personal financial interest. That is, armed with such confidential information he may, through his real estate broker, purchase the surrounding real property and subsequently sell same when the new park becomes a reality. Thus, from the public standpoint, there is a possibility that he might violate the provisions of RCH Section 11-102.2, relating to confidential information.

Another provision which may be applicable to the facts of this case is RCH Section 11-102.3, relating to incompatibility due to the employee's real estate salesman's license which may be incompatible with his duties as a Landscape Architect I. That is, the employee's access to confidential information as to where a new park site is to be located and the real estate salesman's license might impair his independence of judgment and cause him to utilize the confidential information for his financial benefit. Thus, the employee is in an incompatible situation because his position provides him the option of

¹ See Appendix A for the full text of RCH Sections 11-102.2 and 11-102.3.

either taking advantage of the confidential information, or not, regarding the new park site.

Based on the foregoing, we conclude that your employee's retention of his real estate salesman 's license and his duties as a Landscape Architect I may appear to the public that he may take advantage of the confidential information and places your employee in an incompatible situation which may impair his independence of judgment. Therefore, we recommend that he inactivate his real estate salesman's license so long as he remains as a Landscape Architect for your Department.

Dated: Honolulu, Hawaii, November 25,1980.

ETHICS COMMISSION
Rev. William Smith, Chairman

APPENDIX A

Section 11-102.2 states that:

No elected or appointed officer or employee shall:

Disclose confidential information gained by reason of his office or position or use such information for the personal gain or benefit of anyone.

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.