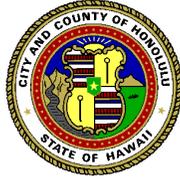


**ETHICS COMMISSION**  
**CITY AND COUNTY OF HONOLULU**

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KIRK CALDWELL  
MAYOR

JAN K. YAMANE  
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**ADVISORY OPINION 2016-2**

**I. SUMMARY**

Based on testimony and for the reasons stated below, the Commission advises that there is no conflict of interest for a City computer programmer to have outside employment as an Uber/Lyft driver under the City's ethics laws. This is a matter of first impression.

**II. FACTUAL BACKGROUND**

The City employee ("Employee") is a Computer Programmer for the Honolulu Police Department ("Department"). The Employee's work hours are Monday-Friday, 7:45 a.m. - 4:30 p.m. The Employee's job duties include, but are not limited to, the following:

- Developing programs for information technology and electronic data processing systems to process and present data;
- Analyzing hardware, software, and enhancements;
- Creating application programs for specific departmental or division needs;
- Designing and evaluating practices and procedures relative to the information needs of specific programs and activities; and
- Assisting with preparing needs analysis, program design, testing, maintenance, optimization, quality assurance, and documentation.

Uber Technologies Inc. ("Uber") is an American multinational online transportation network company. It develops, markets, and operates the Uber mobile "app," which allows consumers with smartphones to submit a trip request, which the software program then automatically sends to the Uber driver nearest to the consumer, alerting the driver to the location of the customer. Uber drivers use their own personal cars. The Uber app automatically calculates the fare and transfers the payment to the driver.

Similarly, Lyft also works by using a mobile-phone application to facilitate peer-to-peer ridesharing by connecting passengers who need a ride with drivers who have a car. Lyft launched as an on-demand ridesharing network for shorter trips within cities.

### **III. ISSUE AND SHORT ANSWER**

Whether the Employee's outside employment to be an Uber/Lyft driver is a conflict of interest with the Employee's official City duties as a computer programmer, in violation of RCH Sec. 11-102.1(c)?

No. Being an Uber/Lyft driver would not be a conflict of interest with the Employee's official City duties because no reasonable person would believe that being an Uber/Lyft driver would affect the Employee's impartiality in performing the Employee's official City duties as a computer programmer.

### **IV. ANALYSIS**

City officers and employees are prohibited from engaging in any business activity or having any financial interest direct or indirect that is incompatible with the discharge of the employees' official City duties or which may tend to impair the independence of judgment in the performance of the employees' duties. RCH Sec. 11-102.1(c) <sup>1</sup>.

Historically, the Commission has determined that sworn HPD patrol officers whose duties are to enforce traffic laws are conflicted from having outside employment such as operating taxicabs, shuttle services, and limousines. Advisory Opinion Nos. 67 (Feb. 15, 1977), 73 (Dec. 21, 1977), and 112 (Jan. 25, 1983). In these cases, the Commission identified the conflict caused by the split duty of loyalty between the officers' own financial interest in the transportation business and their duty to the public to enforce traffic laws fairly.

For example, in Advisory Opinion No. 67, two HPD sergeants appealed the Police Chief's denial of their request to be chauffeurs for a private company ("Company"). The appellants were sergeants in the uniform patrol division under field operations and were required to enforce all laws, ordinances, and rules and regulations of the State and City, even during off-hours. The Company provided limousines and chauffeurs for VIP tourists. The Commission upheld the Chief's decision to deny the request. The Commission stated that this type of outside employment would be incompatible with the sergeants' duties because the sergeants may be reluctant to enforce the laws against their VIP passengers and traffic violations against other Company drivers because it may negatively affect their own private pecuniary interests.

Further, HPD had a policy not to provide "special protection" for any member of the public without good cause. The public may believe that the patrons of the Company are receiving special protection because they hire police officers as chauffeurs. Advisory Opinion No. 67. *See also* Advisory Opinion No. 73 (upholding the Chief's denial of uniform patrol division officer's request to be a shuttle bus driver for airline crew members due to presumption of lack of impartiality in enforcing traffic laws against private employer.) *But see*, Advisory Opinion No. 101 (finding that City investigator could be federal customs inspector because jurisdiction and basic functions of the

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<sup>1</sup> RCH Sec. 11-102.1(c) provides: "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 such person's official duties or which may tend to impair the independence of judgment in the performance of such person's official duties."

jobs did not overlap).

The circumstances in the above-referenced cases are distinct from the present case. Unlike the officers in the uniform patrol division, the Employee is a civilian employee who has no authority to enforce the traffic laws. The Employee's City job as a computer programmer does not give the Employee any power to grant clients special privileges.

**V. CONCLUSION**

The Employee's outside employment as an Uber/Lyft driver would not create a conflict of interest with the Employee's official City duties because no reasonable person would believe that being an Uber/Lyft driver would affect the Employee's impartiality in performing the Employee's official City duties as a computer programmer under RCH Sec. 11-102.1(c).

/s/Victoria S. Marks  
VICTORIA S. MARKS, Chair  
Honolulu Ethics Commission

DATED: November 25, 2016

APPROVED AS TO FORM AND LEGALITY:

/s/Jan K. Yamane  
JAN K. YAMANE  
Executive Director and Legal Counsel  
Honolulu Ethics Commission

DATED: November 25, 2016