

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**



ADVISORY OPINION NO. 112

This advisory opinion concerns a request by a police officer to do off-duty work as a tour operator, when needed, for Company A.

The Ethics Commission [Commission] is of the opinion that the employee's off-duty activity does not contravene any applicable standard of conduct.

The following facts are germane to the applicable standards of conduct, discussion, conclusion, and recommendation of the Ethics Commission:

1. The employee is a police officer with the City.
2. His primary duties are to coordinate and direct activities of police officers assigned to the station where he works during his watch. If he performs his duties within the confines of the substation and does not perform as a field sergeant or supervisor on an assigned beat, he is not involved in the direct enforcement of any violation of any law which may occur on a police-beat.
3. He has been employed as a police officer with the City for the past fifteen years. This is his first request for Permission to engage in an off-duty activity.
4. The off-duty activity is with Company A. Company A is operated by a relative with one limousine. Company A is engaged in transporting tourists.
5. His spouse assists in the operation of Company A. He is to lend a hand whenever Company A requires additional help. He receives no pay for his work.
6. He has no financial interest in Company A, nor does his spouse have a financial interest therein.

The issues in this case are whether or not:

1. He "engages in any business transaction or activity or has a financial interest, direct or indirect" in Company A;

2. He has acquired a "financial interest" in business enterprises which he has reason to believe may be directly involved in official action to be taken by him; and

3. He may receive a gift from Company A in lieu of pay for his services.

With reference to the first issue, the facts show that the officer does not engage in any business transaction or activity because he is not the proprietor of Company A. Moreover, the facts show that he does not have a financial interest, direct or indirect, in Company A because he testified that neither he nor his spouse have a financial interest therein. Neither does he have any financial interest from the standpoint of compensation for his services, because he testified that he does not receive any pay. As to the second issue, based on the foregoing discussion regarding business or financial interests, he has not acquired a financial interest in a business enterprise. That is, there can be no incompatibility or official action taken because there is no private pecuniary interest in his favor to impair his judgment, or affect his official actions. Accordingly, the Commission concludes that Section 11-102.3, RCH, and Section 6-1.2(2), ROH, do not apply in this case.¹

Although the officer testified that he will receive no pay for his services, he may be presented with a gift by Company A for his services. Before he accepts such gift, he should determine whether or not the gift is in an amount or value which may cause the public to infer that the gift was intended to influence the performance of his duties as police officer. That is, the public may perceive that such gift was intended to influence him so that he will not enforce any traffic or other laws against the operator of a limousine belonging to Company A.

As to the remaining standards of conduct,² they do not refer directly to any business or financial interest, as in Section 11-102.3, RCH, or Section 6-1.2(2), ROH. However, some of the standards of conduct by implication may involve business or financial interests. For example, a business in which an officer or employee has a financial interest may participate in bidding for a City contract. However, the standards of conduct listed in Appendix "B" do not apply in this case because the employee's request does not include or generate facts which may require consideration of the standards of conduct listed in Appendix B.

Accordingly, the Commission concludes that the employee's request does not raise issues involving Section 11-102.3, RCH, relating to incompatibility, and Section 6-1.2(2), ROH, relating to official action involving financial or business interests. On the other hand, Company A may show in the form of a gift its appreciation for any assistance given by him. Depending upon the value or

¹ For full text of the applicable standards of conduct, see attached Appendix "A."

² For full text of other standards of conduct, see attached Appendix "B."

amount of the gift, the public may perceive that the gift was given to him to influence his duties as a police officer should Company A violate any traffic or other laws. His request does not raise issues involving the remaining standards of conduct in the RCH or ROH. He should not have any direct or indirect financial interest in Company A, nor should he receive any pay for his work from Company A so long as he is employed as a police officer with the City. The Commission therefore recommends that his request be granted.

Dated: January 25, 1983

ETHICS COMMISSION
Mazeppa K. Costa, Chair

ARTICLE XI*

STANDARDS OF CONDUCT

Section 11-102. Conflicts of Interest – No elected or appointed officer or employee shall:

1. Solicit or accept any gift, directly or indirectly, whether in the form of money, loan, gratuity, favor, service, thing or promise, or in any other form, under circumstances in which it can reasonably be inferred that the gift is intended to influence him in the performance of his official duties. Nothing herein shall preclude the solicitation or acceptance of lawful contributions for election campaigns.

3. 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.

Article 1. Additional Standards of Conduct.**

See. 61.2. Additional Standards of Conduct.

No officer or employee of the City, except as hereinafter provided, shall:

(2) Acquire financial interest in business enterprises which he has reason to believe may be directly involved in official action to be taken by him.

*Revised Charter of Honolulu, 1979 Supplement.

**Revised Ordinances of Honolulu, 1980 Cumulative Supplement

APPENDIX "A"

ARTICLE XI*

STANDARDS OF CONDUCT

Section 11-102. Conflicts of Interest – No elected or appointed Officer or employee shall:

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

4. Receive any compensation for his services as an officer or employee of the City from any source other than the City, except as otherwise provided by this charter or by ordinance.

5. Represent private interests in any action or proceeding against the interests of the City or appear in behalf of private interests before any agency except as otherwise provided by law.

Section 11-104. Fair and Equal Treatment – No elected or appointed officer or employee shall use his official position to secure or grant special consideration, treatment, advantage, privilege or exemption to himself or any person beyond that which is available to every other person.

*Revised Charter of Honolulu, 1979 Supplement.

APPENDIX "B"

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ARTICLE 1.

ADDITIONAL STANDARDS OF CONDUCT*

Sec. 61.2. Additional Standards of Conduct.

No officer or employee of the City, except as hereinafter provided, shall:

(1) Participate, as an agent or representative of a City agency, in any official action directly affecting a business or matter in which (A) he has a substantial financial interest; or (B) by or for which a firm of which he is a member, an associate, or an employee has been engaged as a legal counselor

advisor or consultant or representative in a matter directly related to such action; provided that a councilman is not precluded from voting on such matter before the Council so long as a written disclosure has been made in the event there is a conflict of interest involving this subsection and relating to such matter.

(3) Appear in behalf of private interests before any agency other than a court of law, nor shall he represent private interests in any action or proceeding against the interests of the City in any litigation to which the City is a party; provided, however, that a member of any board, commission or committee, whose board, commission or committee does not exercise either quasi-judicial or quasi-legislative power, may appear for compensation in behalf of private interests before agencies other than the one on which he serves and other than those agencies that have the power to review the actions of the agency on which he serves, or to act on the same subject matter as the agency on which he serves; provided further that no officer or employee shall be denied the right to appear before any agency to petition for redress of grievances caused by any official act or action affecting his personal rights, privileges or property, including real property.

(4) Accept a retainer, compensation, or election campaign contribution that is contingent upon action by an agency.

(5) Enter into any contract in behalf of the City with an officer or employee or with a business in which an officer or employee has a controlling or substantial financial interest, involving the furnishing of services, materials, supplies, and equipment unless the contract is made after competitive bidding; provided that this paragraph shall not apply to personal contracts of employment with the executive branch of the City as prescribed in subsections (g) and (h) of Section 6-303 of the Revised Charter or equivalent contracts with the legislative branch of the City as prescribed in subsection (f) of Section 6-304 of the Revised Charter.

(6) Order any person to violate, or aid or abet any person in the violation of, the provisions of Section 6-312.2 of the Revised Charter of the City, relating to prohibition on political activities of persons in the civil service. (Sec. 7-15.2, R.O.1969; Am. Ord. 4130)

*Revised Ordinance of Honolulu, 1980 Cumulative Supplement.

APPENDIX "B"