

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**



ADVISORY OPINION NO. 114

This advisory opinion is in response to a request for a written determination as to whether or not a conflict of interest exists when a child of an investigator for a City agency (hereinafter "child") is the president and a director of Company A, to which the agency has granted a license.

There are no facts revealing any violation of the standards of conduct, but there exists a potential for a violation of a standard of conduct so long as the child remains a licensee and the parent continues as an investigator.

The Ethics Commission [Commission] submits the following facts as germane to the applicable standards of conduct, discussion of the standards of conduct with the facts, and its conclusion:

1. The child filed an application for a license on (date). The agency approved such application on (date).
2. The parent (hereinafter "employee") is employed as an investigator for the agency. He supervises two sections of the agency. The first section investigates applicants for licenses, while the second section enforces the rules and regulations of the agency (hereinafter "laws"). In both the sections, he has several subordinates who carry out functions of those sections.
3. According to the employee, when the application for a license was filed by his child, the assignment to investigate the background of the applicants was made by other than the employee. He did not review same nor attach his recommendation thereto.
4. The Commission understands that should a citation for violation of laws be issued to the child, such report will not be processed through the employee.
5. The employee, further, has informed the Commission that he has no direct or indirect financial interest in his child's business. Examination of the license application reveals he is neither an officer nor director of his child's business.

Under the foregoing facts, the issues are:

1. Whether or not there were facts which may have resulted in a violation of a standard of conduct had the employee chosen to do so; and

2. Whether or not there are facts which connote potential violation of a standard of conduct, so long as he refrains from taking certain action involving his child's license.

With respect to the first issue, if the employee had not filed a written disclosure with his appointing authority as he did on (date), he would have been in violation of Section 11-103, RCH.¹ Another action, which would have resulted in a violation of Section 11-104, RCH,² was if he had given favored treatment to his child's application for a license by taking advantage of his position as an investigator. The Commission concludes he did not because the facts indicate that he did not process his child's application. It was assigned directly to a subordinate for processing, bypassing the employee. Neither are there facts to show that the employee provided confidential information to his child in violation of Section 11-102.2, RCH,³ so that the agency would act favorably upon his application. An example of such information is the agency report which shows areas of the City which are or are not saturated with licensees. Nor did he represent his child's interest before the agency. If he had, he would have violated Section 6-1.2(3), ROH.⁴

With respect to potential violations, so long as the employee's child is a licensee of his agency and he is an investigator, the aforementioned standards of conduct may be violated by him. Therefore, he should exercise due care that he does not conduct himself in a manner which would undermine the confidence of the public in the licensing and enforcement of laws. In short, he must be circumspect in his relationship with his child regarding the license.

Inasmuch as he has no direct or indirect financial interest, nor is he an officer or director of the corporation, Sections 11-102.3, RCH, and 6-1.2(2), ROH,⁵ are not applicable to this case. In short, he has no business or financial interest in his child's license.

In summary, the Commission concludes that there were facts which would have indicated a violation of the standards of conduct if he had not exercised prudence as he has done by filing a written disclosure with his appointing authority in conformity with Section 11-103, RCH. Also, with respect to Sections 11-104 and 11-102.2, RCH, he would have violated those sections had he participated directly in processing his child's application. As to Sections 11-

¹ For full text of this standard of conduct, see attached, Appendix "A".

² See Appendix "A" for full text.

³ For full text of these Standard of Conduct provisions, see attached, Appendix "A".

⁴ For full text of these Standard of Conduct provisions, see attached, Appendix "A".

⁵ For full text of these Standard of Conduct provisions, see attached, Appendix "A".

102.3, RCH, and 6-1.2(2), ROH, they are not applicable because he has no direct or indirect financial interest, nor is he an officer or director in his child's corporation. Nevertheless, so long as he is an investigator and his child is a licensee, he may, by his actions, violate the aforementioned standard of conduct provisions. Therefore, the Commission recommends that he exercise due care whenever any matter involving his child's license comes before the agency.

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.**

Sec. 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"