

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**



ADVISORY OPINION NO. 184

This is an advisory opinion from the Ethics Commission [Commission] in response to a request for an opinion concerning Ms. X, who is a member of a City commission and who has a friend who regularly has business before that commission.

Generally, the Commission does not believe Ms. X has violated any standard of conduct. However, Ms. X has created the appearance of a conflict of interest under Section 11-101, relating to personal relationships. In order to avoid such apparent conflicts, City personnel, including members of City commissions, should 1) publicly disclose relevant personal relationships, such as sexual, platonic, or business, on E-2 disclosure forms and abstain from official action¹ that directly affects friends, such as commissioners deliberating and voting on a matter concerning friends; 2) not conduct private investigations; and 3) abstain from any official action when a relationship is sufficient to warrant providing a character reference for a party concerned with official action of the member's commission.

The Commission understands the facts to be as follows:

Since (date), Ms. X has been a member of Commission Z. Commission Z has authority to enforce a category of laws. Ms. X's official duties include participating in deliberations and voting on matters before Commission Z. Ms. X has extended her duties to include conducting personal investigations of matters that may, or may not, be before Commission Z.

Ms. X is active in civic and cultural matters in Honolulu and is a member or officer of various nonprofit organizations. In that role she is frequently seen in the company of Mr. Y, who is also active in such organizations. Mr. Y also often has business before Commission Z.

In an appearance before this Commission, Ms. X admitted that she is a personal friend of Mr. Y. She also acknowledged that she and Mr. Y are frequent cohosts of social events

¹"Official act" or "official action" means a decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority. Section 6-1.1(8), Revised Ordinances of Honolulu 1978 (1983 Ed.).

concerning civic and cultural matters and nonprofit organizations.

The records of Commission Z meetings for (date) disclose that Ms. X did not abstain from deliberations and voting on a matter concerning Mr. Y. Commission Z's records also disclose that Ms. X has orally vouched for the personal character of persons who have business before Commission Z and who she knows through her civic and cultural activities. Ms. X has not vouched for Mr. Y when business concerning him has come before Commission Z.

These facts give rise to the following questions under Section 11-101, Revised Charter of the City & County of Honolulu 1973 (1984 Ed.) [RCH], relating to the appearance of impropriety:

- I. Friends
 - a. Should City personnel participate in official City action that directly concerns personal friends?
 - b. Should City personnel give character references for friends and acquaintances who have business before their agencies?
- II. Should personnel conduct personal investigations of matters that may be before their agencies?

The questions of friends and personal investigations are presented separately.

I. FRIENDS

- a. Should City personnel participate in official City action that directly concerns personal friends?**

The Commission believes that Section 11-103, RCH,² requires City personnel, including commissioners, to publicly disclose relevant personal relationships and that Section 11-101, RCH, requires them to abstain from official action affecting personal friends. Categories of personal friends may include but are not limited to 1) sexual, 2) platonic, and 3) business. The Commission therefore extends the present general rule to include this guideline.

²Section 11-103, RCH, states:

Disclosure of Interest -- Any elected or appointed officer or employee who possesses or who acquires such interests as might reasonably tend to create a conflict with the public interest shall make full disclosure in writing to such person's appointing authority or to the council, in the case of a member of the council, and to the ethics commission, at any time such conflict becomes apparent. Such disclosure statements shall be made a matter of public record and be filed with the city clerk. Any member of the council who knows he has a personal or private interest, direct or indirect, in any proposal before the council, shall disclose such interest in writing to the council. Such disclosure shall be made a matter of public record prior to the taking of any vote on such proposal.

The present general rule is that City personnel with authority to enforce the law should not have a sexual relationship with a party against whom the laws are enforced. Doing so creates the appearance of a conflict of interest and may influence personnel in the performance of official duties. In Advisory Opinion No. 65 [AO #65], the Commission derived this rule from Section 11-101, RCH, which states:

Declaration of Policy -- Elected and appointed officers and employees shall demonstrate by their example the highest standards of ethical conduct, to the end that the public may justifiably have trust and confidence in the integrity of government. They, as agents of public purpose, shall hold their offices or positions for the benefit of the public, shall recognize that the public interest is their primary concern, and shall faithfully discharge the duties of their offices regardless of personal considerations.

AO #65 is the only prior advisory opinion in which the Commission considered personal relationships. The question there was whether a relationship between a male inspector for the Liquor Commission and a female employee of a liquor licensed establishment gives rise to a conflict of interest. AO #65 states:

We [The Ethics Commission] understand that this request was prompted by Employee X's relationship with a **female employee** of a liquor licensed establishment. We further understand that you [the party who requested the advisory opinion] are of the opinion that the **close relationship** between Employee X and the **female employee** could deter Employee X from carrying out his duties and responsibilities as a liquor inspector against the liquor establishment which employs the **female employee**.

We concur with your opinion.

[Emphasis added] In AO #65, the Commission did not differentiate among different kinds of personal relationships, such as sexual, platonic, and business relationships.³ However, the use of the phrases "female employee" and "close relationship" implies a sexual relationship. Therefore, the Commission construes the precedent of AO #65 narrowly and believes personal relationships in general raise a question of first impression.

This question is whether personal relationships between City personnel and persons who

³The Commission believes Section 11-102.3, RCH, addresses business relationships. Section 11-102.3 states:

No elected or appointed officer or employee shall ... [e]ngage 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.

However, a business relationship and personal friendship may coexist, and the Commission therefore includes "business" as a category of personal relationship.

have business with their agencies could influence the personnel in the performance of their official duties.

The Commission believes personal relationships could influence an officer or employee. For example, if a close friend asks a favor, the request may be difficult to refuse. Absent a request, the mere existence of a relationship may influence the officer or employee. In any event, the friendship will create the appearance of a conflict of interest if the friend is subject to the discretionary authority of the officer or employee to enforce the law.

In this case, Ms. X and Mr. Y are frequent social companions and cohost civic and cultural events. Ms. X acknowledges that she and Mr. Y are personal friends. Given this friendship, other members of Commission Z may be hesitant to take official action that is adverse to Mr. Y's interests. Other persons who have business before Commission Z may believe Commission Z favors Ms. X's friend. And the public may lose confidence in the government of which Commission Z is a part. Therefore, when members of Commission Z have personal friendships with persons who appear or have business before Commission Z, the commissioners create for themselves the appearance of conflicts of interest, for which they are accountable.

In response to this issue, the City's administration has two basic options. On one hand, the City may prohibit personal relationships between personnel at City agencies and persons who routinely have business before such agencies. Although a prohibition may be construed as the price of City employment or appointment, the personnel at City agencies, including Commission Z, may view this approach as an unwarranted intrusion into their personal affairs. On the other hand, the City may require the personnel to disclose any relationships with parties who have business before their City agency and to abstain from official action that affects personal friends. Theoretically, the City uses this approach because the Commission distributes E-2 disclosure forms pursuant to Section 11-103, RCH, which requires public disclosure. However, in practice members of Commission Z have not filed E-2 disclosure forms.

Accordingly, the Commission extends the general rule to state as follows: City personnel should not have personal relationships, such as sexual, platonic, or business, with parties who regularly have business before their City agencies. If such a relationship exists, the personnel should abstain from official action concerning friends. Similarly, if friends on occasion happen to have business before their agencies, personnel should abstain from official action concerning the friends. Overall, at the time matters first come before City agencies, personnel should disclose relationships to supervisors and disqualify themselves from taking official action concerning friends.

Please note that general rules issued by the Commission are a **minimum** standard of conduct, and City appointing authorities or agencies may establish higher, or more restrictive standards.

b. Should City personnel give character references for friends and acquaintances who have business before their agencies?

If personnel do so, the Commission believes a real or apparent conflict may arise.

In this case, if Ms. X continues to provide character references for people who have business before Commission Z, the public may perceive that she is using her position to secure special treatment for friends, acquaintances, or associates. If the relationship is sufficient to warrant a commissioner providing a character reference, then it is also sufficient to warrant abstention from official action, such as deliberations and voting. Therefore, City personnel should abstain and physically absent themselves from deliberations and voting if they provide a character reference for a party who has business before their agency.

II. PERSONAL INVESTIGATIONS - Should personnel conduct personal investigations of matters that may be before their agencies?

For the purposes of this opinion, the Commission defines "personal investigations" as including but not limited to City personnel visiting people or businesses who may have matters before their agencies and doing so of their own accord and without their agencies' authorization.

In this case, when Ms. X visits such persons or businesses in order to conduct personal investigations, anyone who is present or who learns of the visit may perceive that she is using her City position to secure special treatment, such as complimentary goods or services. Consequently, City personnel, such as members of Commission Z, should be advised to cease conducting personal investigations.

In conclusion, the Commission believes that Ms. X and other members of Commission Z should be advised to refrain from the following activities: 1) having actual or apparent relationships with people or businesses who have matters before Commission Z; 2) providing character references for people who have business before Commission Z; and 3) conducting personal investigations. Therefore, the Commission offers the following advice specifically to all members of Commission Z and generally to officers and employees of other City agencies with authority to enforce laws:

City personnel with discretionary authority to enforce the law:

1. a) Should disclose relevant personal relationships on E-2 forms and abstain from any official action, including deliberations or voting, that directly affects friends, whether the relationship is sexual, personal, or business; and
- b) Should physically absent themselves from proceedings where deliberations or voting occurs concerning such friends.
2. Should not give character references to colleagues in City positions for friends, whatever the nature of the relationship, who will be directly affected by the colleagues' decisions, unless the personnel abstain and physically absent themselves from official action affecting the friends.

Adherence to these guidelines will enhance the public's confidence in City government by helping to eliminate situations in which an officer or employee has, or appears to have, a conflict of interest.

The Commission wishes to thank Ms. X for appearing before the Commission and for her candid responses to the Commissioners' questions.

JANE B. FELLMETH
Chair, Ethics Commission

Dated: April 8, 1988