

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**



ADVISORY OPINION NO. 198

This advisory opinion is in response to a request for an opinion concerning whether a Liquor Commissioner [Ms. A] has violated Section 11-102(1) and (3) of the Revised Charter of the City and County of Honolulu 1973 (1984 Edition) [RCH] relating to conflicts of interest.

In general, the Commission believes that Ms. A has not violated Section 11-102(1) and (3), RCH.

The Commission understands the facts relative to the complaint to be as follows:

Ms. A is by occupation an agent, selling all types of insurance. She was engaged in this business prior to her appointment as a Liquor Commissioner.

Ms. A has approximately X number of accounts of which Y number are liquor associated. Of those Y number, only four became her clients after she became a member of the Liquor Commission. One of those new clients is a part-time agent who works for Ms. A. Another has been acquainted with Ms. A for over ten years. A third was already being provided insurance by Ms. A for another business that the client owned. The final one was referred to her through another client of Ms. A's. When any of these clients have appeared before the Commission, Ms. A has disclosed any relationship and refrained from voting on the matter.

Mr. B is an insurance client of Ms. A's, and the two are also close personal friends. It is not unusual for Ms. A to receive a complimentary order of some dish when she eats at Mr. B's restaurant. If that occurs, Ms. A covers the cost of the free food in the amount of tip she leaves, since Mr. B will not let her pay for it.

The ethical questions presented are: 1) whether by having Y number of liquor associated insurance accounts in a clientele of approximately X number, Ms. A is engaged in business activity incompatible with the proper discharge of her official duties or which may tend to impair her independence of judgment as a Liquor Commissioner, and 2) whether Ms. A has accepted free food and drink from Mr. B's restaurant under circumstances in which it can reasonably be inferred that the gift is intended to influence her in the performance of her duties.

The general rule in regard to the first question appears in Section 11-102.3, RCH, which states as follows:

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.

Further, the Charter anticipates Ms. A's situation, for it also provides a procedure for the disclosure of occasional conflicts of interest. Section 11-103, RCH, states in pertinent part:

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 to such person's appointing authority ... 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.

Ms. A's testimony and the disclosure statements on file with the Ethics Commission indicate that she complied with Section 11-103, RCH, when it was applicable. Ms. A also stated that she refrained from voting on matters involving her clients. By so doing, she has not violated Section 11-102.3, RCH, because she discharged no official duties relative to any of her clients.

The general rule in regard to the second question appears in Section 11-102.1, RCH, which states in pertinent part:

No elected or appointed officer or employee shall ... [s]olicit 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 the officer or employee in the performance of such person's official duties.

While it may show poor judgment on Ms. A's part that she has continued to be a patron of Mr. B's restaurant, it cannot reasonably be inferred that the gifts of food are intended to influence her in the performance of her duties. Each time that Mr. B's restaurant has appeared before the Liquor Commission, Ms. A has disclosed her conflict of interest and abstained from voting on the matter. Since Ms. A does not vote on any Liquor Commission matters involving Mr. B's restaurant, she has no official duties that could be influenced.

In conclusion, based on the evidence before the Ethics Commission, Liquor Commissioner Ms. A has not violated Section 11-102 (1) or (3), RCH.

Dated: October 30, 1989

JANE B. FELLMETH
Chair, Ethics Commission