

ETHICS COMMISSION

CITY AND COUNTY OF HONOLULU

715 SOUTH KING STREET, SUITE 211, HONOLULU, HAWAII 96813-3091

Phone: (808) 527-5573 ☎ Fax: (808) 527-6936 ☎ EMAIL: ethics@honolulu.gov ☎ Internet: www.honolulu.gov/ethics

JEREMY HARRIS
MAYOR



CHARLES W. TOTTO
EXECUTIVE DIRECTOR & LEGAL COUNSEL

Advisory Opinion 2001-4

This responds to your request for an advisory opinion from the Ethics Commission (Commission) whether you have a conflict of interest between your public duties and your financial interest in your spouse's company (Company) that would preclude your being involved with personnel matters at your agency.

I. Summary

A city officer who has discretionary authority in managing personnel matters is not in a conflict of interest where the officer's spouse's company provides services to an organization, of which some of the employees of the Agency are members, in projects unrelated to the personnel matters.

II. Facts

You are a city officer with discretionary authority regarding personnel matters in an agency (Agency). Company provides services to an organization, some of the members of which work in the Agency, in a specific matter unrelated to issues in which you or the Agency may be involved. Your spouse is the majority owner of the Company and earns a substantial salary from the Company.

In a prior advisory opinion, the Commission concluded that there may be conflicts of interest between your private personal and financial interests in your spouse's ownership and salary from the Company and your public duties regarding personnel actions. In this case the Commission focused on whether the Company has provided services to the organization or its members employed by the Agency on any of the issues in which you or the Agency would be involved.

In your letter of [date], you state there are a wide range of personnel issues involving the relevant employees and then you cite two examples. [Discussion of examples.] You further state that no one at the Company has provided any type of assistance to the organization or its members involving these two matters.

III. Analysis

The potential conflict of interest in this matter arises from your personal and financial interest in your spouse's ownership of and salary from the Company. An officer or employee has a financial interest in a spouse's employment and business ownership. See, § 3-8.1, Revised Ordinances of Honolulu. All city officers and employees are required to fully disclose ". . . such interests as might reasonably tend to create a conflict with the public interest . . . at any time such conflict becomes apparent." § 11-103. Under § 11-102(c), Revised Charter of Honolulu (RCH), conflicts of interest may occur under circumstances where an officer or employee:

[Engages] in any business transaction or activity or [has] 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.

In addition, a conflict will arise if an officer were to "[p]articipate, as an agent or representative of a city agency, in any official action directly affecting a business or matter in which (1) such person has a substantial financial interest; . . ." Finally, an appearance of a conflict of interest under RCH § 11-101 is created in circumstances where a conflict of interest appears to exist, but no breach of the foregoing sections has occurred.

Under the facts as you have described them, the Company provides services to the organization in a matter unrelated to the two examples stated in your [date] letter. You state that the Company has not rendered services to the organization or any of its members employed at the Agency regarding the two examples discussed in your response to the Commission's questions, dated [date]. Based on this information, the Commission believes you will not violate the ethics laws should you be involved in the two matters described in the examples.

Because other facts were not provided, the Commission is unable at this time to respond regarding other personnel matters affecting the employees at the Agency. The Commission appreciates your efforts to contact it and explain the circumstances surrounding your duties in the light of the Company's business with the organization. We trust you will maintain heightened attention to the confidential nature of employment information you rely on in making personnel decisions.

Finally, should the facts not be as stated in this opinion, change over time or otherwise be or become inaccurate, you should immediately inform the Commission because the opinion may not be valid.

Dated: October 10, 2001

/S/
LOLINDA D. RAMOS, Chairperson
Ethics Commission