

ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

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Advisory Opinion 2005-6

I. Summary

A supervisor who ordered work-related supplies from his live-in girlfriend, who followed procurement procedures and who informed his supervisor of a potential conflict of interest created both an apparent conflict of interest and an appearance of favoritism, thereby violating Section 11-102(c) (financial conflict of interest), Section 11-103 (disclosure of conflict of interest) and Section 11-104 (fair and equal treatment policy), Revised Charter of Honolulu (RCH). Because the supervisor attempted to conform to the ethics laws by informing his supervisor of the fact that he would need to order supplies from his paramour and because he followed all procurement procedures, the Honolulu Ethics Commission does not recommend any discipline.

II. Facts

The Commission received a complaint alleging that, in the course of his city employment, [name] an employee ("Employee") had purchased chemical supplies for a [name] Wastewater Treatment Facility. The purchases were made through his girlfriend with whom he lived at the time and fathered a child. His girlfriend, [name], was the salesperson for a vendor to the facility, [name].

The Department of Environmental Services (ENV) investigated whether Employee's purchases through his girlfriend were reasonable and necessary. In a report dated March 22, 2002, ENV concluded that the purchases were appropriate in quantity and price. It took several months to confirm that ENV did not examine whether there was any impropriety resulting from the fact that the purchases were made through Employee's paramour.

After several letters to Employee went unanswered, staff issued a Notice of Possible Violation of the standards of conduct on November 26, 2003 and a Second Notice on November 24, 2004. By memorandum dated December 24, 2004, Employee asked for a meeting with staff, which occurred on January 5, 2005. In addition, staff contacted the person who supervised Employee during the time he ordered the supplies.

The supervisor corroborated Employee's statement that Employee had been temporarily assigned as a section head. In that capacity, on occasion Employee was required to submit

purchase requests for materials and chemicals to help run the facility. When first assigned to this new role, Employee raised the issue to the supervisor that it may be inappropriate for him to originate purchase requests that ultimately would be transmitted to and filled by his girlfriend and her employer. He asked his supervisor whether there was a problem with his making such requisitions and was told that, as long as he followed the established procurement procedures, there should not be a problem.

The ENV investigative report noted that Employee “appeared to have followed standard operating procedures” for purchases. Out of nine supply requests processed during his temporary assignment as [title], only three requests originated with him. The ENV report concluded that there were “no unusual increase in purchases” during the relevant time and the materials were used in the normal course of operations. The total purchases initiated by Employee were valued at about \$2,600.

Employee did not ask for hearing in this matter. Therefore, the Commission may render an opinion based on the information available to it through staff’s investigation. Section 3-6.7(c), Revised Ordinances of Honolulu.¹

III. Questions

Three questions arise from these facts. First, did Employee have a financial interest in his girlfriend’s employment that may have tended to impair his independent judgment in carrying out his duties to order supplies, in violation of RCH Section 11-102(c)?² Second, if Employee had a conflict of interest, did he properly notify his appointing authority and the EC as required by RCH Section 11-103?³ Third, did Employee use his city position to obtain an unwarranted

¹ Section 3-6.7. Requests by third parties.

(c) Where no hearing is requested by the officer or employee involved, the commission shall render its opinion on the basis of the information available; provided, that the commission may request for additional information when deemed necessary.

² Section 11-102. Conflicts of Interest --

No elected or appointed officer or employee shall:

(c) Engage 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.

³ Section 11-103. 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.³⁷ 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 or she 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.

benefit or special treatment for his girlfriend or her employer when he requisitioned materials and supplies, in violation of RCH Section 11-104?⁴

IV. Analysis

a. Financial conflict of interest

According to Employee and his supervisor, Employee was concerned that his need to order supplies through his girlfriend and her employer might create a conflict of interest. He would be conducting business with someone with whom he had a close personal relationship as well as financial interest because they lived together, had a child and shared family expenses. He requested the advice of his supervisor who cautioned him to carefully follow the applicable procurement procedures, which he apparently did. His department found no basis to believe that Employee sought to order more supplies than were needed. There are no facts supporting a conclusion that Employee's independent judgment may have been impaired in requisitioning the supplies.

On the other hand, an apparent conflict of interest may be the basis of a violation of the standards of conduct. The Commission has consistently interpreted RCH Section 11-101⁵ as prohibiting appearances of conflicts of interest. *See*, Advisory Opinion No. 2001-2 (June 22, 2001). "The appearance of a conflict arises when one may reasonably perceive that the officer's public duty may be interfered with or compromised by a personal or financial interest." *Id.* In this case, Employee had an interest in carrying out his duties for the city to order only the necessary reasonable supplies at fair value from a qualified vendor. His public duty appeared to conflict with his personal⁶ and financial relationship with his girlfriend, the salesperson for the supplier.

Employee and his supervisor could have avoided even this appearance of a conflict of interest by removing Employee from all steps in the requisition of supplies through his girlfriend. This is the course of action we would have recommended to them had they contacted the

⁴ Section 11-104. Fair and Equal Treatment --

Elected or appointed officers or employees shall not use their official positions to secure or grant special consideration, treatment, advantage, privilege or exemption to themselves or any person beyond that which is available to every other person.

⁵ Section 11-101. 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.

⁶ The Commission has found that a conflict of interest may arise from a close personal relationship independent of a financial conflict of interest. *See, e.g.*, Advisory Opinion No. 184 (April 8, 1988) (a commission member had a conflict of interest because of her personal friendship with a member of the public who had business before the commission).

Commission. In addition, recusal is discussed in the ethics training classes all supervisors are required to attend.

b. Failure to report conflict of interest

Any time a city officer or employee has a real or apparent conflict of interest, RCH Section 11-103 requires him or her to disclose the conflict in writing to the appointing authority and the Ethics Commission. *See, e.g.*, Advisory Opinion No. 184 (April 8, 1988). The Commission has adopted a form for this purpose, which is available in every department and from the Commission.

Employee failed to follow the written disclosure requirements established in RCH Section 11-103, but did notify his supervisor of the potential conflict of interest. Being in at least partial compliance with the law by orally reporting the conflict of interest to his supervisor reduces the need for discipline in our opinion.

c. Fair and equal treatment policy

Similar to an appearance of conflict of interest, the Commission has concluded that an appearance of favoritism may result in a violation of RCH Section 11-104. *See*, Advisory Opinion No. 2004-1 (March 5, 2004) (a city officer who has authority over a donor's interests should not accept a valuable gift from the donor because it may create an appearance of favoritism toward the donor). Although, Employee did not favor his girlfriend or her employer, it is reasonable to conclude that it looked as if she and her employer may have been afforded special treatment to supply materials to the facility. City officers and employees are held to the highest standards of conduct in order to justify public confidence in the integrity of government. *See*, RCH Section 11-101.

Once again, an employee in such circumstances must avoid even the appearance of impropriety by removing him or herself from the matter that creates the problem.

Some may contend that it is impractical to expect more from an employee than what Employee and his supervisor did. Although they made a good faith attempt to avoid ethics breaches, they did not follow the requirements of the law or seek advice from the Commission. RCH Section 11-101 holds city personnel to the "highest standards of ethical conduct," not just a good try. Avoiding the ethics violations would have only required that Employee not be involved in ordering supplies through his girlfriend.

On balance, the Commission concludes that under the circumstances this opinion should be a sufficient admonishment and will inform other officers or employees of their ethical responsibilities. Therefore, we do not recommend any discipline be taken against Employee.

Dated: December 20, 2005

/S/
ROBIN DAVID LIU, CHAIRPERSON
Ethics Commission