

ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

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ADVISORY OPINION NO. 2014-03

I. SUMMARY

A city employee admitted to making an appearance before a city agency when he/she had been told repeatedly by Ethics Commission staff not to do so. The Commission recommends that the appointing authority suspend the employee between 1-3 days in light of his/her disregard of legal advice from Commission staff and the city's ethics laws. The city employee did not request a hearing for this matter, therefore, the Commission renders its opinion on the basis of the information available to it. Revised Ordinances of Honolulu ("ROH") Sec. 3-6.7(c).

II. FACTUAL BACKGROUND

Employee is an [position] in the [] Division, Department[], City and County of Honolulu. He/She has worked for Department in this position since 2007. Employee's office is in the Fasi Municipal Building ("FMB"). Employee is also the principal and responsible managing employee of [Business], his/her general contracting company which was incorporated in [date].

A. Complaint 1 Received on [Date], 2012

On or about [Date], 2012, Commission staff received a complaint that Employee was using city work time to stand in line to process residential building permit applications. Thereafter, Commission staff questioned Employee regarding the allegations. He/she responded that he/she only processed building permits at the One Stop Permit Center ("Center"), Department of Planning and Permitting ("DPP"), during lunch or break time, and that sometimes he/she takes vacation time to process the permits. The Center is located on the first floor of the FMB. Commission staff thanked him/her for his/her clarification and stated that no further action was needed as it was staff's understanding that he/she was processing personal applications for his/her residence. On or about [date], Employee attended Ethics Training.

B. Complaint 2 Received on [Date], 2013

A little over a year later, on or about [Date], 2013, Commission staff received another complaint that Employee was using city work time to process building permit applications for his/her clients from Business. Employee was acting as a permit expeditor who applied for building permits on behalf of clients and acted as a liaison and coordinator between the home owner client and DPP plan review.

On or about December 2, 2013, Commission staff interviewed Employee regarding the November 26, 2013 complaint. During that interview he/she stated that he/she did not understand that he/she was violating any laws because he/she only processed building permit applications on his/her own time, not on city work time.

During that interview, Commission staff explained to him/her that RCH Sec. 11-102.1(e) and ROH Sec. 3-8.2(c)¹ prohibit city officers and employees from appearing on behalf of private interests before any city agency. It was further explained that “appear” before any city agency includes acting as an agent or otherwise representing any other person or business in any formal or informal appearance through any oral or written communications, including letters or telephone calls, to any city agency or personnel with the intent to influence on behalf of any other person or business.

During that interview Employee communicated that he/she understood that he/she could not make any physical appearances at city agencies, in particular the Center, DPP. He/She stated that he/she only had a few remaining active applications that were being processed.

After the interview, Commission staff continued to provide Employee with further clarifications and advice in order to cease further violations of ROH Sec. 3-8.2(c). On December 3, 2013, Commission staff specifically informed Employee that “there is an absolute prohibition against appearing on behalf of private interests before city agencies” and “all arrangements for the building permit application process must be made through the established channels by ordinary persons – not through you.”

In order to stop any further appearances at the Center he/she was advised to replace his/her name and/or his/her business’ name with the home owner’s name on approximately 30 active/open building permit applications. Commission staff received confirmation that this was done.

Staff advised Employee that although he/she was restricted from making an appearance for his/her clients and other private interests, he/she may provide them with information about who to contact in the City, what information is needed for a permit, and where the particular

¹ RCH Sec. 11-102.1(e) provides in pertinent part: No elected or appointed officer or employee shall represent private interests in any action or proceeding against the interests of the city or appear in behalf of private interests before any agency, except as otherwise provided by law.

ROH Sec. 3-8.2(c) provides in pertinent part: No officer or employee of the city shall appear in behalf of private interests before any agency other than a court of law... This prohibition shall not apply to any architect, landscape architect, surveyor or engineer registered as such under the provisions of HRS Chapter 464, who is a city employee or officer, with respect to the affixing by such registered professional of such person’s registered stamp to any plans, specifications, drawings, etc., to be submitted to the city for permits for such person’s principal residence or that of members of such person’s immediate family; provided that the stamp is accompanied by a signed statement that the work was prepared by the person stamping the document or under such person’s supervision; and provided further that the registered professional may not, in the capacity of a city employee or officer, review, approve, or otherwise act upon the plans, specifications, drawings, etc., such person has stamped. For the purposes of this section, “immediate family” means the employee’s or officer’s spouse, siblings, children or parents; spouse’s children or parents; or children’s spouses.

office is located. But, all arrangements for the building permit application process must be made through the established channels used by ordinary persons – not through him/her.

C. Complaint 3 Received [Date], 2014

About four months later, on or about [Date], 2014, Commission staff received a third complaint alleging that Employee made an appearance at the Center to process another building permit application. Commission staff investigated the allegations.

Employee confirmed that on or about [Date], 2014 he/she dropped off his/her [Family Member's] friend's building permit application [No.] to the [] Branch, DPP, for a property located at [address] with a note to call Friend for pick up. According to Employee, his/her Family Member asked him/her to help Friend because Friend had previously spent seven hours processing a permit earlier in the month because he/she stood in the wrong line. Further, Friend had problems communicating as English was his/her second language and he/she needed to respond to comments on his/her building permit application.

Commission staff confirmed that on or about [Date], 2014 Employee returned to the [] Branch to pick up the application and/or plans. At that time, the plans examiner was too busy and asked that he/she wait for the response. After approximately ten minutes, the examiner assisted Employee with making the required changes to the plans and reviewing the notes in the application. Thereafter, the examiner processed the permit. Staff was unable to determine whether Employee was on city work time while at DPP.

III. PROCEDURAL BACKGROUND

On April 25, 2014, the Commission found probable cause that Employee violated RCH Sec. 11-102.1(e) and ROH Sec. 3-8.2(c) because he/she appeared on behalf of a private interest before a city agency. The Complainant issued a Notice of Alleged Violation (“Notice”) to Employee that same day.

On May 5, 2014, Employee responded to the Notice. Employee stated that he/she did not “anticipate representing any person’s interest for applying for the building permit at all.” Employee further stated “I agreed that I might handle [Friend’s] case inappropriately. However, I never used my ‘influence’ and never received any special treatment from DPP neither.” Although Employee was notified in writing of his/her right to ask for a hearing and present evidence in this matter, he/she did not make such a request. When the subject of the investigation declines to request a hearing, the Commission may decide the matter on the information available to it. ROH Sec. 3-6.7(c).

IV. DISCUSSION AND ANALYSIS

No elected or appointed officer or employee of the city shall appear in behalf of private interests before any agency. Revised Charter of Honolulu (“RCH”) Sec. 11-102.1(c); ROH Sec. 3-8.2(c). To “appear” includes: acting as an agent for or otherwise representing any other person or business in any formal or informal proceeding; making any oral or written communications,

including letters or telephone calls, to any City agency or personnel with the intent to influence on behalf of any other person or business. See ROH Sec. 3-8.3(d).

The purpose behind this law is to deter the potential special treatment sought by or afforded to someone who works within the government. In this case Employee was prohibited from meeting with and otherwise making an “appearance” at the Center on behalf of Friend.

The Commission reviewed and decided a similar case addressed in Advisory Opinion No. 2004-3. In that case, the Commission found that former Councilmember Rod Tam violated RCH Sec. 11-102.1(e) and ROH Sec. 3-8.2(c) by acting as a permit expediter to process building permit applications before the DPP. See also, Advisory Opinion No. 152 (Landscape architect for the city was prohibited from appearing before city agencies to apply for permits for his private clients.)

V. CONCLUSION AND RECOMMENDATIONS

There is no dispute that Employee appeared on behalf of the contractor and homeowner for the review of the building permit application. As a result, Employee violated RCH Sec. 11-102.1(e) and ROH Sec. 3-8.2(c).

Under RCH Sec. 11-106 and ROH Sec. 3-6.3(d) the Commission is required to recommend disciplinary action to the appointing authority of a city employee who was found to have violated the ethics laws. In this case, the Commission recommends that the Department Director suspend Employee 1-3 days in light of his/her disregard for staff’s legal advice and the city’s ethics laws. The identity of Employee and his/her Department will remain confidential pursuant to Office of Information Practices Opinion Letter No. 10-3.

The appointing authority has 15 days to report the action taken and the reasons for the action to the Commission pursuant to ROH Sec. 3-6.5(e).

APPROVED AS TO FORM
AND LEGALITY:

/s/ Charles W. Tutto
CHARLES W. TOTTO
Executive Director and Legal Counsel

/s/ Charles W. Gall
CHARLES W. GALL, Chair
Honolulu Ethics Commission

Dated: Honolulu, Hawaii, May 30, 2014