

ETHICS COMMISSION

CITY AND COUNTY OF HONOLULU



**Advisory Opinion No. 307**

On May 16, 2000 a department director (Director) sought the opinion of the Ethics Commission (Commission) regarding the use of city resources by a department employee (Employee) in support of his position in several grievances involving his department and the Department of Human Resources (DHR).

The Director also transmitted a copy of a memorandum from DHR, dated May 24, 2000, stating the applicable city policy on the use of city resources in preparing for grievance procedures. The Employee responded to the request letter and the DHR memorandum on July 12, 2000. He also submitted other documents describing the history of the grievances on July 18, 2000. The Commission examined and deliberated the matter at its August 29, 2000 meeting. Because neither the Director nor the Employee requested a hearing, the Commission determined the case based upon the information available to it. See, Sec. 3-6.7(a), Revised Ordinances of the City and County of Honolulu.

**I. Facts**

The Employee is an excluded manager and division head within the department. The Director states that the Employee is using city time (his own and that of division staff for typing, copying and research) and equipment to prepare for steps in his grievance process. At the time of the request, there were sixteen grievances involved that have been or will be heard by the Civil Service Commission. Generally, six of the grievances are based upon the Employee's concern that he is unable to properly discharge his duties because of threats of harm made against him by an individual in his division. Eight other grievances relate to alleged procedural failures by his department or DHR arising from the grievance process. Two others relate to a reprimand, again flowing from the perceived harm arising from the alleged workplace threat.

In his July 12, 2000 response, the Employee does not deny his use of city time and resources for the purpose of the grievance process. He contends, however, that the

grievances will not result in a personal benefit to him, but are for the purpose of developing and maintaining a safe work environment. He believes that this is one of his duties as a division head and cites city administration memoranda (attached to his response) declaring a zero tolerance policy for workplace violence. He also presents a statement by the assistant division chief that the Director authorized the Employee's use of city resources for the grievance process.

In its May 24, 2000 memorandum, DHR informed the Director that there is no provision allowing an excluded manager (such as the Employee) the right to use any city resources to prepare for steps in the grievance process.

## **II. Ethics Issue**

The question presented is whether the use of city resources by an excluded managerial employee pursuing a grievance through appropriate channels violates the standards of conduct.

## **III. Analysis**

Section 11-104, Revised Charter of the City and County of Honolulu (RCH), states the fair and equal treatment policy. It reads: 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.

It is undisputed that the Employee used city resources in the course of preparing his grievances. Thus, the underlying issue is whether an employee pursuing the grievance process is securing "special treatment" for himself when he uses city time and resources to prepare his case.

The Employee contends that his grievances arise from the city policy against workplace harassment and violence. His conclusion is that his use of the resources does not amount to "special treatment" because he is using the city resources in support of the city's policy against workplace harassment and violence. To put it another way, because it is within his authority to promote a violence-free work place and because he is doing so through the grievance process, the use of city resources is justified.

Interpreting the applicable personnel laws and policies is beyond the scope of the Commission's authority, but rests with DHR. It is within the authority of DHR to conclude on these issues on behalf of the city. See, Secs. 6-1105(5) and 6-1111(2),

RCH. DHR states that an excluded managerial employee has no right to use city time or resources to prepare for the steps in the grievance process.

Applying the opinion of DHR to the fair and equal treatment policy, the Commission finds that the Employee is securing special treatment for himself because he is not entitled to use city resources in the employment grievance process. In this case, the employee has no more right than "every other person" to use city resources. Because the average person may not use the city resources in question, the Employee may not do so. Therefore, the Employee's use of these resources violates RCH Sec. 11-104 as an unwarranted or special treatment and should cease immediately. Should DHR, the Civil Service Commission or other appropriate authority modify DHR's conclusion on this issue, the parties would be free to ask the Commission to revisit its opinion.

#### **IV. Recommendation**

The Commission recommends that the Director require the Employee and other affected employees to cease using city resources for purposes related to the grievance process. Although we find a violation of the ethics code, we do not believe discipline is required because, based upon the information before us, it appears the Employee believed he had been authorized by the Director, at least to some extent, to use city resources for preparation of the grievances.

Pursuant to Sec. 3-6.5(e), Revised Ordinances of the City and County of Honolulu, within fifteen days of receipt of this opinion the Director is required to report to the Commission the corrective action taken in response to the Commission's recommendation.

Dated: September 14, 2000

LINDA A. REVILLA, Chair  
Ethics Commission