

GUIDELINES ON THE USE OF CITY RESOURCES

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I. Introduction

All city officers and employees are reminded that, with a few narrow exceptions, city resources must only be used for city projects and purposes. These guidelines are intended to help city personnel understand the restrictions on the use of city resources in common situations. The discussion below is general in nature and city personnel should request advice from the Commission in specific cases.

II. The Ethics Law Prohibits The Use Of City Resources For Non-City Projects Or Purposes.

Revised Charter of Honolulu (RCH) Section 11-104 provides:

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.

The core purpose of RCH § 11-104, commonly referred to as the city's fair and equal treatment policy, is to prevent favoritism by city officers and employees. As discussed below, the policy covers a wide range of activities and conduct. In each example that follows, the city officer or employee has used his/her city position to give unwarranted special treatment to him/herself or someone else.

III. Common Types Of Misuse Of City Resources

A. City officers and employees may not use city resources for non-city purposes.

City officers and employees have access to city resources that members of the general public do not. For example, city personnel may be provided with city-owned cars, computers or other equipment to help them perform their official duties. The public has the right to expect that these resources – which they fund – are used only for legitimate city purposes. City employees and officers, therefore, are prohibited from using city resources for non-city purposes.

Example #1: Your wife has started a small business. You offer to help her out by designing and maintaining a website for her. During your lunch hour, you stay in your office and use your city computer to work on the website. Have you violated the RCH § 11-104?

Answer: Yes. Even though you have limited your work to your lunch hour, you are still using city resources – your city-owned computer and office -- for a non-city purpose.

Example #2: You are a city employee who sells personal healthcare products on the side. A number of your customers are city employees. Customers regularly call you at work or send an email to your city email address to place their orders. During normal work hours, you demonstrate and deliver your products to your city employee customers at their offices/workstations, which are generally not accessible to the public. Have you misused city resources?

Answer: Yes. You are using city resources (your city phone, email, and time) to conduct your private, non-city business. In addition, you are using your city position to give yourself an advantage – access to your city employee customers – that is not available to sellers of competing products.

Example #3: You are an inspector for a city agency. Your friend, who is in the midst of a divorce, asks you to do an inspection of his wife’s business. You agree, even though her business would ordinarily be scheduled for an inspection for next year. Have you misused city resources?

Answer: Yes. You have used your official position to single out your friend’s wife for special treatment – in this case, unfavorable special treatment.

Helpful Hint: What is a city resource?

Virtually every type of city property and information is considered a city resource. For example, time that you are “on the clock” (actual time during which you are supposed to be performing city duties) and your official title are city resources. All city equipment, such as copiers, facsimile machines, telephones (including cell phones), typewriters, computers, and motor vehicles are city resources. City premises, including city offices, conference rooms, and working areas are city resources. So are less tangible things such as computer software,

information about employees and your “honolulu.gov” email address.

One way of determining whether something is a city resource is to ask yourself: Who owns it or who paid for it? If your answer is the city, it is a city resource.

Exceptions to the general rule against using city resources for non-city purposes.

The Ethics Commission has recognized two exceptions to the general rule that city resources cannot be used for non-city purposes: (1) the “reasonable personal use” exception and (2) the “project with a community-wide benefit” exception.

The *“reasonable personal use”* exception allows personnel to use a city resource for personal convenience that is (1) for a brief time, (2) does not interfere with the productivity of the employee, (3) does not create an additional cost to the city, and (4) is not for business, financial or commercial purposes. For example, an employee may use her city telephone to call her husband to discuss who will pick up the children from school. Strictly speaking, this is use of a city resource for a non-city purpose. However, the use is permitted as a convenience to personnel because it is for a short call, not for the purpose of buying or selling anything and use of the phone does not require the city to expend additional funds.

The *“project with a community-wide benefit”* exception recognizes that there are non-profit and charitable organizations that sometimes rely on government support. When the Mayor or Council Chair (or the department head in the case of the Police Department, Department of the Prosecuting Attorney or Fire Department) officially designates a particular non-profit or charity event or project as having a community-wide benefit, city resources may be used, with appropriate approval, to support these groups. The Food Bank, Aloha United Way and March of Dimes are a few of the charities that have been designated as offering projects with a community-wide benefit in the past.

B. City personnel may not exceed their authority in using city resources.

In general, the authority and duties associated with your position determine whether you are using city resources for a city or a non-city purpose. If you use city resources to do something that is within the scope of your job authority and duties, it is likely that you are using those resources for a city purpose. If, however, you use city resources for something that is not associated with your job duties or is beyond the scope of your authority, you are likely using those resources for a non-city purpose.

Example #4: You are a city officer. Your friend has been nominated to serve on a state board. As a favor, you write a letter to a state senator supporting his nomination. Your letter is written on your department's official stationery, which bears the seal of the City and County of Honolulu. The letter identifies your official city position. Have you used city resources for a non-city purpose?

Answer: Yes. You have used city resources – city stationery, as well as the prestige of your official position and the seal of the city -- to give what appears to be an official endorsement to the nominee. Such endorsements are not available to all nominees. In addition, it is not within the scope of your official authority or duties to give endorsements to nominees to state boards

Example #5: You are a facilities manager for the city. In an effort to increase employee morale and improve efficiency, you implement an overtime incentive plan for certain employees, which changes the basic pay structure at the facility. You know, or should know, that such a change requires the approval of your supervisors. You implement the plan without getting the approval of, or even consulting with, your supervisors. Have you violated the city's fair and equal treatment policy by using city resources for a non-city purpose?

Answer: Yes. You should have known that it is not within your authority to unilaterally implement the overtime incentive plan without the approval of your supervisors. By using your position to grant an unauthorized financial benefit to certain employees, you have used city resources for a non-city purpose.

C. City officers and employees may not use city resources for political activities or campaign assistance.

The fair and equal treatment policy prohibits city officers and employees from using city resources for political activities, such as campaign fundraising, endorsing political candidates, or soliciting votes.

Example #6: You receive a message on your city email from a national political party soliciting support for its slate of candidates. The party asks you to forward the email to your friends and colleagues. Can you forward the email?

Answer: No. The email contains a political message. Your city email is a city resource. Therefore, if you forward the email you will be violating the fair and equal treatment policy by using a city resource for a political activity.

Helpful Hint:

The Ethics Commission has issued *Guidelines on Campaign Activities* (Revised April 20, 2004), which explain the restrictions on political activities in more detail. Also, your department may have its own standards of conduct relating to restrictions on campaign activities. You should review your department's standards, which may be more restrictive than the ethics laws.

D. Supervisors may not engage in a substantial financial transaction or business relationship with a subordinate.

When a supervisor engages in a substantial financial transaction or business relationship with a subordinate, a number of problems may result. For instance, the two may discuss their outside interests on city time or use other city resources to accomplish their outside work. If the relationship or transaction does not work out, there may be hard feelings, making it difficult for the supervisor to treat the employee fairly. Even if the supervisor and subordinate are able to keep their outside relationships separate from their official duties, others, including their fellow city employees, might have a different perception. They might, for instance, think that the employee is getting treated favorably because of his/her outside relationship.

In order to avoid these problems, city supervisors are prohibited from engaging in substantial financial transactions or business relationships with subordinates.

Example #7: You are a supervisor in a city department. Your family has a private real estate appraisal business, which you own with your two brothers. With your knowledge and approval, one of the employees you supervise in your department works for your family business on his days off. Is this an ethics violation?

Answer: Yes. Your subordinate's work for your family business makes you his employer and therefore constitutes a substantial business relationship. Even if you do your best to make sure that your outside relationship does not interfere with your official duties as his supervisor, there is a risk that others may believe that you cannot keep the two separate.

Note: Even if you do not actually give your subordinate favorable (or unfavorable) treatment at work, the possibility that you might is enough to result in a fair and equal treatment violation.

E. Nepotism is prohibited

The ethics laws prohibit city officers and employees from giving unwarranted favorable treatment to their relatives – a practice commonly referred to as nepotism. Like other forms of unwarranted favorable treatment, nepotism erodes the public's trust in government by creating the perception that decisions are based on "who you know" rather than merit.

Example #8: You are a division head. Your sister applies for an exempt position in your department and you recommend that she be hired, even though some other applicants might be more qualified. Based in part on your recommendation, your sister is hired. Have you violated the fair and equal treatment policy?

Answer: Yes. By recommending your sister for the position, you have used your city position to give her an advantage over other applicants. You have therefore engaged in nepotism and you have violated the fair and equal treatment policy. In order to avoid even the appearance of favoritism, you should not have

given her a recommendation and you should have played no role in the hiring process.

F. City officers and employees may not use their city positions or other city resources to endorse, promote or advertise any non-city product, service or business

On occasion, city officers and employees may be asked to give a testimonial for a commercial product or service. Typically, the testimonial will identify you as a city officer or employee. Generally, you should decline the request, because giving a testimonial that identifies your official city position creates the impression that you are giving an official city endorsement to the product or service. This will constitute a violation of the fair and equal treatment policy, because you are allowing city resources, which includes your official city title, to give a special advantage to a non-city business.

Example #9: Your division recently purchased and installed a mechanical device that lets your staff complete work 20% faster than before. The vendor would like you to give a testimonial about how well the product works. The vendor tells you that your testimonial will be posted on its website and your city position will be identified. As the Division Chief, would you be violating the fair and equal treatment policy by giving the vendor permission to use your testimonial?

Answer: Yes. Your testimonial will appear to be an official city endorsement of the product – which gives the vendor an advantage not available to its competitors. Therefore, if you allow the vendor to promote its product by using your “official-sounding” testimonial, you will have allowed your city position to be used to give a special advantage to the vendor.

Note: It would not be a violation of fair and equal treatment for the vendor to simply identify the city as a user of its product. The violation occurs when city resources – for instance, your city title – are used to implicitly or explicitly endorse or promote a non-city product or service.

IV. Penalties

Violation of the fair and equal treatment policy may subject the officer or employee to discipline, including termination of employment, or impeachment or the imposition of a civil fine in the case of elected officials. City officers and employees may also be responsible for the value of any benefit received by anyone as a result of the violation. The city may void any contract that results from actions that are a violation of the ethics laws.

V. Contact Information

Anyone who has questions about the fair and equal treatment policy or any other ethics issue may contact the Commission by calling us at 768-7786; writing to or visiting us at 715 S. King Street, Suite 211, Honolulu 96813-3091; or by sending us an e-mail at ethics@honolulu.gov.

DATED: October 9, 2007

LEX SMITH
Ethics Commission Chair

APPROVED FOR DISTRIBUTION:

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