

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**



ADVISORY OPINION NO. 108

For the record, this is a follow-up to the Ethics Commission's [Commission's] oral advisory of (date), which was issued because of the imminence of a City board's proposed action on (date), to appoint an executive director.

The question posed in this case was whether there is a conflict or an appearance of a conflict of interest regarding an aide to the Mayor, whose function is to screen and recommend appointees to the Mayor for the various boards and commissions of the City. One of the applicants for executive director was the aide's spouse.

The Commission's answer is yes, there is a conflict.

The Commission understands that the board was established by the City to provide economic opportunities in the private sector. The members of the board consist of representatives of industry, business, organized labor, social service agencies, and educational institutions. Appointments to the board are made by the Mayor, and the aide screens and recommends appointees to various boards and commissions of the City for consideration by the Mayor. The board advertised for an executive director. One of the applicants was the aide's spouse.

The basic issue is whether the aide acquired a business interest when the spouse filed an application for the position as executive director of the board. The Commission is of the opinion that he did.

Revised Ordinances of Honolulu 1978 (hereinafter "ROH") Section 6-1.1(a)(6) defines financial interest as follows:

(6) 'Financial interest' means an interest held by an individual, his spouse, or minor children which is: (A) an ownership interest in a business; (B) a creditor interest in an insolvent business; (C) *an employment, or prospective employment for which negotiations have begun*; or (D) an ownership interest in real or personal property.
[Emphasis added]

An examination of the foregoing definition of "financial interest" includes prospective employment by a spouse of a City employee. Having determined that

the aide has a financial interest, the next consideration is which standards of conduct are applicable under the facts of this case. The Commission finds that RCH Sections 11-102.3 and 11-104, and ROH Section 6-1.2(a)(2) apply in this case.

The foregoing sections read as follows:

Section 11-102. Conflicts of Interest—No elected or appointed officer or employee shall:

....

3. Engage in any business transaction or activity or have a financial interest, direct or indirect, which is incompatible with the proper discharge of his official duties or which may tend to impair his independence of judgment in the performance of his official duties.

....

Section 11-104. Fair and Equal Treatment – No elected or appointed officer or employee shall use his official position to secure or grant special consideration, treatment, advantage, privilege or exemption to himself or any person beyond that which is available to every other person.

Sec. 6-1.2. Additional Standards Of Conduct.

No officer or employee of the City, except as hereinafter provided, shall:

....

(2) Acquire financial interest in business enterprises which he has reason to believe may be directly involved in official action to be taken by him.

With respect to RCH Section 11-102.3, the aide has acquired an interest which may be incompatible with official duties because the aide's spouse was, at the time of this query, one of the applicants for executive director. The aide could screen and recommend to the Mayor appointees to the board who are sympathetic towards the spouse's appointment as executive director. If the aide screened and recommended appointees to the board with the spouse uppermost in mind, allegations could be made that judgment was impaired and the aide was improperly discharging official duties. With respect to RCH Section 11-104, an allegation could be made that the aide failed to consider appointees to the board fairly because of the desire to have the spouse appointed as the executive director. As to ROH Section 6-1.2(a)(2), an allegation could be made that when the spouse applied for the position as executive director, the employee acquired a financial interest in a business enterprise, which would be coming before the employee for

official action – the official action being that the employee would be screening and recommending appointees to the board.

The Commission therefore recommends that the employee refrain from participating in the screening and recommending of appointees to the board. Because the employee is intimately involved with the Mayor in conducting City business, the employee should be extremely careful in the performance of duties so that the public's confidence in the Mayor is not affected.

August 24, 1982

MAZEPPA COSTA
Chairperson