

ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

715 SOUTH KING STREET, SUITE 211, HONOLULU, HAWAII 96813-3091
Phone: (808) 527-5573 ☎ Fax: (808) 527-6936 ☎ EMAIL: ethics@honolulu.gov ☎ Internet: www.honolulu.gov/ethics

JEREMY HARRIS
MAYOR



CHARLES W. TOTTO
EXECUTIVE DIRECTOR & LEGAL COUNSEL

Advisory Opinion No. 2002-4

I. Summary

The Honolulu Ethics Commission (Commission) does not have jurisdiction over the misconduct of a city officer when the misconduct did not occur in the course of carrying out the officer's city duties or did not involve the use of city resources.

II. Facts

On [date] the Commission received a complaint against a city officer alleging that the official attempted to "cover up" the facts and obstruct justice by lying and providing false information to law enforcement officials conducting a criminal investigation into the actions of the officer. The officer responded to the complaint on [date].

Before the Commission received the complaint, a government board had examined the factual issues raised in the ethics complaint as a result of an investigation into the same set of circumstances. The board adopted certain findings and conclusions on [date]. For purposes of our review of this matter, we rely on relevant portions of those findings and conclusions.

The findings and conclusions, among other things, note that the city officer on several occasions lied to the media and to board's investigative staff about the circumstances which surrounded a vehicular accident on [date]. The findings and conclusions do not indicate that the city official lied to officers of the Honolulu Police Department (HPD) during the course of their investigation. Based on the findings and conclusions, the city officer was disciplined. The officer also entered a guilty plea for violation of [law] and was fined.

The events surrounding the accident, as well as the ensuing investigations by HPD and the board's staff and media interviews regarding the accident, were unrelated to the official duties of the city officer. However, the Commission staff interviewed personnel from HPD and other agencies to determine if the official attempted to use his or her city position to obtain special treatment from any member of those agencies. No evidence was found of an attempt by

the city officer to use the city position or city resources to influence the course or result of the investigations or the prosecution.

III. Issue

The threshold question is whether the Commission has jurisdiction over the misconduct of a city officer that is unrelated to the officer's official duties or use of city resources.

IV. Analysis

We read the plain language of the ethics laws to determine the extent of our jurisdiction. The Commission's jurisdiction is generally stated in § 11-107, Revised Charter of Honolulu (RCH), and § 3-6.3, Revised Ordinances of Honolulu (ROH). The Commission has the power and duty to investigate conduct that may violate the city ethics laws and make recommendations for discipline. Each ethics law in Article XI of the Charter and Chapter 3, Article 8 of the revised ordinances focuses on the conduct of city officers and employees in carrying out their respective city duties or in using city resources. None of these laws is intended to or does in fact guide city personnel in their conduct in matters unrelated to work.¹

Unlike the standards of conduct for judges and attorneys, for example, which specify that members of those professions must refrain from dishonest conduct in all activities, whether or not related to work,² the city ethics laws are limited to conduct related to work or involving the use of city resources.

¹ RCH § 11-101 declares the policy of the ethics laws:

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 consideration.

RCH § 11-101 mandates the highest standards of ethical conduct by city officials. However, this admonition is stated in the context of public servants discharging the duties of their offices and, therefore, leads us to conclude that the city ethics laws are limited to conduct involving city work or city resources.

² For attorneys, see, e.g., Hawaii Rules of Professional Conduct, Rule 8.4(c) (professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation); for judges, see, e.g., Hawaii Code of Judicial Conduct, Canon 2 (a judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities).

We have found no credible evidence that the city officer's dishonesty was in any way related to carrying out the duties of his office or the use of city resources. Therefore, the officer's lies as related to the events surrounding the accident are not within the jurisdiction of the Commission.

The Commission does have jurisdiction should a city official use his or her position or other city resources to obtain special treatment for anyone. RCH § 11-104 states:

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.

Therefore, the Commission staff examined whether the city officer attempted to use his or her city position or any city resources to obtain favorable treatment from any governmental agency. Our staff interviewed the personnel at those agencies who conducted their respective investigations and prosecution and no one stated that the city officer had directly or indirectly used his or her city position or city resources to affect the process or outcome of their respective agencies' actions.

Based on the foregoing, the Commission finds that it has no jurisdiction over the misconduct of the city officer because the misconduct was unrelated to the discharge of his official duties and that there are no facts upon which to base a claim of violation of RCH § 11-104.

ROH § 3-6.5(d), requires that the Commission render an opinion to the parties and publish a redacted version for the public.

Dated: November 8, 2002

/S/
ROBIN DAVID LIU, Chairperson
ETHICS COMMISSION