

ETHICS COMMISSION  
**CITY AND COUNTY OF HONOLULU**

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**Advisory Opinion No. 2005-1**

**I. Summary**

Under the Honolulu Ethics Commission's precedent, city employees and officers who have the authority to take official action to enforce the laws, including Honolulu Liquor Commission investigators and Honolulu Police Department officers, are prohibited from holding active real estate licenses. That precedent is overruled. Instead, city personnel with the authority to take official action to enforce the laws will be permitted to hold active real estate licenses, as long as they submit to their appointing authorities a signed statement attesting that they have read, understood and will abide by the mandates of the Revised Charter of Honolulu Sections 11-102, 11-103, and 11-104.

**II. Background**

[Employee's name] ("Employee") is an investigator for the Honolulu Liquor Commission. He also holds an active real estate license and works as a realtor with [company name].

The Ethics Commission has issued a number of advisory opinions over the years maintaining that Honolulu Liquor Commission investigators and Honolulu Police Department (HPD) officers should not hold active real estate sales or broker licenses under any circumstances. In addition, in 1995, the Commission issued Guidelines On Real Estate Licenses. The guidelines, like the advisory opinions, take the position that HPD officers and Liquor Commission investigators (and other city employees/officers with the authority to enforce the law) are not permitted to hold active real estate licenses.

Under the Ethics Commission's precedent, therefore, Employee would be prohibited from maintaining his active real estate license. Employee says that he was never informed about the prohibition when he was hired as an investigator and that requiring him to de-activate his license and give up his supplemental income as a realtor would impose a great financial hardship on him. He therefore has requested that the Ethics Commission reconsider its blanket rule that

Liquor Commission investigators (and other city employees/officers with authority to enforce the laws) are prohibited from holding active real estate licenses.

### **III. Question Presented**

Under the city's ethics laws, may city employees/officers who have the authority to take official action to enforce the law hold active real estate licenses?

### **IV. Analysis**

#### **A. Ethics Commission Precedent**

##### **1. Advisory Opinions**

Over the years, the Ethics Commission has consistently taken the position in our advisory opinions that HPD officers and Liquor Commission investigators should not be permitted to hold active real estate licenses. Our previous advisory opinions set forth several reasons for this position.

The primary rationale for the prohibition has been concern over the potential for conflicts of interest. *See, e.g.*, Advisory Opinions Nos. 83, 116 and 119. Our opinions noted that selling real estate creates potential conflicts of interest that pit an officer's/investigator's duty to enforce the laws fairly and without favoritism against his/her own financial interests. These potential conflicts are inconsistent with RCH § 11-102(c)<sup>1</sup>. While recognizing that the likelihood of actual conflicts of interest occurring might be small, our previous opinions concluded that the public's perception was that actual conflicts occur frequently. *See* Advisory Opinion No. 118 at p. 5. To eliminate this perception, which we believed undermined the public's trust and confidence in the integrity of law enforcement personnel, we adopted the blanket rule that Liquor Commission investigators and HPD officers were prohibited from holding active real estate licenses.

Our opinions also reflected concerns that: (1) police officers and liquor control investigators, who typically have access to confidential information regarding on-going investigations, *etc.*, might divulge this confidential information to ingratiate themselves to their real estate clients (or prospective clients)<sup>2</sup>; and (2) real estate clients, or prospective clients,

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<sup>1</sup> RCH § 11-102(c) provides, in pertinent part:

No elected or appointed officer or employee shall:

...

(c) Engage in any business transaction or activity or have a financial interest, direct or indirect, which is incompatible with the proper discharge of such person's official duties or which may tend to impair the independence of judgment in the performance of such person's official duties.

<sup>2</sup> This potential misuse of confidential information would violate RCH § 11-102(b), which provides, in pertinent part:

No elected or appointed officer or employee shall:

might do business with an officer/investigator in expectation of favorable treatment on official business or out of fear of retribution if they don't do business with the officer/investigator.<sup>3</sup>

## 2. The 1995 Guidelines on Real Estate Licenses

On October 23, 1995, we issued Guidelines on Real Estate Licenses. The Guidelines, citing RCH § 11-102(c), essentially adopted the general rule set out in our earlier advisory opinions, but provided for some limited exceptions:

The general rule in regard to the holding of active real estate sales or broker licenses has two parts.

### 1. Active Real Estate Licenses:

City personnel who a) have authority to take **official action** to enforce the laws **or** b) have access in the course of City employment to confidential information regarding real estate on Oahu should not have active sales or broker licenses and therefore must inactivate such licenses.

### 2. Ownership of a Real Estate Business:

City personnel who a) 1) have such enforcement authority **or** 2) have access to confidential information relating to real property **and** b) own all or part of real estate firms should not manage the operations of such business interests.

Such personnel should file with the Commission an affidavit in which they promise to abide by this restriction.

Guidelines at pp. 1-2. The Guidelines specifically identify police officers and Liquor Commission investigators as employees with "enforcement authority."<sup>4</sup>

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...  
(b) Disclose confidential information gained by reason of such person's office or position or use such information for the personal gain or benefit of anyone.

<sup>3</sup> The city's fair and equal treatment policy, embodied in RCH § 11-104, provides:

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.

<sup>4</sup> The Guidelines provide two limited exceptions to the general rule:

(1) City and County personnel are allowed to activate real estate licenses "for the purpose of buying or selling their own primary or secondary residences but not rental property or property owned by relatives" and

(2) Members of boards or commissions who do not receive more than a stipend in compensation and whose duties relate to real estate may choose to retain active real estate licenses, provided: a) they sign affidavits in which they agree to limit their real estate activities to real property that will not be affected by pending, required, or anticipated official action by the City and b) they abstain from official action that affects real property in which they have an interest.

### C. Departure From Our Precedent

Our past advisory opinions and the guidelines apply essentially a bright-line rule: Any city personnel who have law enforcement authority should not be permitted to hold active real estate licenses. While bright-line rules have the virtues of simplicity and clarity, they are often over-inclusive. In reconsidering our precedent, we conclude that the blanket rule prohibiting city law enforcement personnel from holding active real estate licenses is too broad.

We do not depart from our precedent lightly. However, it is our belief that our previous advisory opinions overemphasized the risk of conflicts of interest developing, as well as the public's perception that they occur with frequency. We believe that it is likely that most city law enforcement personnel who hold (or would hold) active real estate licenses will not encounter actual or potential conflicts of interest. The complete ban against all city law enforcement personnel holding active real estate licenses therefore is unfair and deprives these city employees from legitimately supplementing their city incomes.

We therefore will no longer apply a blanket rule prohibiting all city personnel with the authority to take official action to enforce the laws from holding active real estate licenses. Instead, we will follow a case-by-case approach as follows: City personnel with the authority to take official action to enforce the laws will be permitted to hold active real estate licenses, *as long as they submit to their appointing authorities a signed statement attesting that they have read, understood and will abide by the mandates of RCH §§ 11-102, 11-103, and 11-104*. A sample of an acceptable statement is appended hereto. If city law enforcement personnel do not submit such a signed statement to their appointing authorities, they will not be permitted to hold active real estate licenses.

Our case-by-case approach does not, of course, exempt city law enforcement personnel from compliance with the city's ethics laws. It only lifts the automatic ban against their holding active real estate licenses. Further, our decision addresses only the question whether the city's ethics laws, including the standards of conduct embodied in Article XI of the RCH, prohibit city law enforcement personnel from holding active real estate licenses. We do not render an opinion as to whether the standards of conduct adopted by specific city departments/agencies (*e.g.*, HPD) prohibit their personnel from holding active real estate licenses. We recognize that city departments may establish higher, or more restrictive, standards of conduct than the minimum standards imposed under the Charter and ordinances. *See* Advisory Opinion No. 187.

### V. Conclusion

Our previous advisory opinions applying a blanket rule prohibiting city personnel with the authority to take official action to enforce the laws from holding active real estate licenses are overruled. In addition, to extent the Guidelines on Real Estate Licenses apply such a blanket rule, they are superseded.

The case-by-case approach we adopt is fair to city law enforcement personnel in that it allows them to legitimately supplement their incomes, while at the same time, it requires them to affirmatively acknowledge and abide by the standards of conduct. Although the more conservative approach we have followed in the past has its benefits, it is based on assumptions that are not completely realistic and it is over-inclusive.

Employee therefore is permitted to maintain his active real estate license on the condition that he submits to the Honolulu Liquor Commission a signed statement attesting that he has read, understood and will abide by the mandates of RCH §§ 11-102, 11-103, and 11-104.

Dated: January 31, 2005

/S/  
ROBIN DAVID LIU, CHAIRPERSON  
Ethics Commission

**APPENDIX**

**1. Name**

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**2. City Department/Agency:**

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**3. City Position:**

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**4. Real Estate License:**

**a. Type of license:**

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**b. License No.:**

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**5. Non-City Employment (if any):**

**Name of Employer:**

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**Nature of Duties:**

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**6. Statement of Compliance with Standards of Conduct:**

I understand that under the Standards of Conduct embodied in Article XI of the Revised Charter of the City and County of Honolulu:

**A. No elected or appointed officer or employee shall:**

(a) Solicit or accept any gift, directly or indirectly, whether in the form of money, loan, gratuity, favor, service, thing or promise, or in any other form, under circumstances in which it can reasonably be inferred that the gift is intended to influence the officer or employee in the performance of such person's official duties. Nothing herein shall preclude the solicitation or acceptance of lawful contributions for election campaigns.

(b) Disclose confidential information gained by reason of such person's office or position or use such information for the personal gain or benefit of anyone.

(c) Engage in any business transaction or activity or have a financial interest, direct or indirect, which is incompatible with the proper discharge of such person's official duties

or which may tend to impair the independence of judgment in the performance of such person's official duties.

(d) Receive any compensation for such person's services as an officer or employee of the city from any source other than the city, except as otherwise provided by this charter or by ordinance.

(e) 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.

**B.** Any elected or appointed officer or employee who possesses or who acquires such interests as might reasonably tend to create a conflict with the public interest shall make full disclosure in writing to such person's appointing authority or to the council, in the case of a member of the council, and to the ethics commission, at any time such conflict becomes apparent. Such disclosure statements shall be made a matter of public record and be filed with the city clerk. Any member of the council who knows he or she has a personal or private interest, direct or indirect, in any proposal before the council, shall disclose such interest in writing to the council. Such disclosure shall be made a matter of public record prior to the taking of any vote on such proposal.

**C.** 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.

I attest that I have read and understood and that I am in compliance with the foregoing standards of conduct. I further attest that I will continue to abide by these standards and that my compliance with these standards is a condition to my being permitted to hold an active real estate license during my employment/appointment as a city officer or employee.

Date: \_\_\_\_\_

\_\_\_\_\_

Signature