

ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

715 SOUTH KING STREET, SUITE 211, HONOLULU, HAWAII 96813-3091
Phone: (808) 768-7786 · Fax: (808) 768-7768 · EMAIL: ethics@honolulu.gov
Internet: www.honolulu.gov/ethics

MUFI HANNEMANN
MAYOR



CHARLES W. TOTTO
EXECUTIVE DIRECTOR & LEGAL COUNSEL

Advisory Opinion No. 2007-2

Summary

A city supervisor, whose subordinate “moonlighted” for the supervisor’s family business, violated Revised Charter of Honolulu § 11-102(c), because the subordinate’s outside work may have tended to impair the exercise of independent judgment in the performance of supervisor’s official duties.

Background

In January 2003, the Honolulu Ethics Commission (“the Commission”) received a third party request for an advisory opinion (*i.e.*, a complaint) alleging that [name and city position] “Supervisor” had violated the ethics laws. The gravamen of the complaint was that Supervisor had a conflict of interest because one of his subordinates (“Employee”) did private work for Supervisor’s family’s business (“Family Business”), which operated on a neighbor island. The complaint also alleged that Supervisor misused city resources by: (1) discussing Employee’s outside work during normal city work hours and in city offices and (2) by taking personal tax exemptions on real estate that he knew or should have known he was not entitled to claim.

After an investigation, the Commission issued a Notice of Potential Violation of the Standards of Conduct to Supervisor. Supervisor and the Commission subsequently entered into a Stipulation Regarding Violation of the Standards of Conduct, which fully resolved this matter as follows.

Facts

Supervisor was hired by the city as a [position] in 1987. He was promoted to [position] in 1993. In this capacity, he evaluated and supervised the work of several subordinates. In 1998, Supervisor became a division head.

“Employee” was employed by the city in the division as a [position] from 1988 to 1989, and then again from May 13, 1996 to sometime in 2004. From May 13, 1996 to 1998, Supervisor was Employee’s direct supervisor. As his direct supervisor, Supervisor had

responsibility for evaluating Employee's work performance. On March 17, 1997 Supervisor conducted one annual performance evaluation of Employee.

From 1998 to 2004, while Supervisor was the division chief, he reviewed the reports of annual job performance evaluations of Employee, which were prepared by Employee's immediate supervisor. At no time did Supervisor change these performance evaluations.

Family Business owns and operates a neighbor island business, [description of Family Business's work]. Supervisor owns a 31% interest in Family Business and serves as vice president and [position].

During the period from May 13, 1996 to September 16, 1998, Employee worked as an independent contractor for Family Business, [type of work performed]. From 1999 to about 2002 or 2003, Employee worked as an independent contractor for [name] "Second Company". During this latter period, Second Company performed private work as a subcontractor for Family Business.

Employee's direct and indirect work for Family Business consisted of a number of projects. From 1995 to 1998, Family Business made eight separate payments totaling \$7,670 to Employee for work he did directly for the Family Business. From 1999 to about 2002 or 2003, Employee worked on approximately ten projects that Second Company was subcontracted to perform for Family Business.

Supervisor knew that Employee was working directly for Family Business during the period in which Employee was Supervisor's subordinate in the division. On occasion, he talked to Employee about Employee's work for Family Business. At times, he would ask Employee about the status of his assignment. These conversations would take place away from the division workplace and did not occur during city time. In his capacity as an officer for Family Business, Supervisor reviewed and signed off on the tasks that Employee worked on.

Supervisor was informed by Employee and Second Company that Employee was working indirectly for Family Business through his work for Second Company. Supervisor signed off on the work that Second Company had been contracted to perform. In doing so, he reviewed Employee's work product, although he did not necessarily know it was Employee's work he was reviewing, because the work was submitted to Family Business by Second Company.

[Name] Employee 2, who worked with Employee, discussed the issue of Employee's outside work with Supervisor on two occasions. The first time, Employee 2 informed Supervisor that Employee was complaining about not getting paid for his work for Family Business. Employee 2 asked Supervisor if Employee was working for Family Business. Supervisor told him that Employee did not work directly for Family Business but did work through Second Company and that any problems Employee had with his pay were between Second Company and Employee.

The second time, Employee 2 told Supervisor that Employee appeared to be doing his private work for Second Company on city time. Employee 2 asked Supervisor to address the issue. Supervisor does not specifically recall having either of these discussions with Employee 2. He did, however, remind Employee on several occasions that it was against city policy for an employee to do non-city work on city time.

Complainant, another employee in the division, also complained about Employee's work for Family Business. He had repeated discussions with Employee about what he considered to be the impropriety of the relationship. In February 2002, Complainant sent an email to [name] Supervisor 2, complaining that Employee was doing outside work for Family Business on city time. In response to Complainant, Supervisor 2 talked to Employee, who denied that he was doing any private work on city time or at the division office. Supervisor 2 also inspected Employee's computer (which had data related to private work), and he warned Employee that if he were doing any private work on city time, he would be disciplined.

Supervisor also talked to Employee after the email complaint was submitted to Supervisor 2. Employee denied that he was doing private work on city time. Supervisor warned Employee that if he were doing his outside job on city time, he was to stop, and that if he were caught doing so he would be disciplined.

Conclusions Regarding Alleged Ethics Violations

Revised Charter of Honolulu (RCH) § 11-102 sets forth the conflicts of interest that city officers and employees must avoid. In particular, RCH § 11-102 (c) provides:

No elected or appointed officer or employee shall:

...

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.

The retention of Employee directly by Family Business from May 13, 1996 to 1998 constituted a conflict of interest under RCH § 11-102(c), because it may have tended to impair the exercise of independent judgment in the performance of Supervisor's official duties.

With respect to the allegations in the complaint that Supervisor misused city resources by discussing Employee's work for Family Business during normal city work hours and in city offices and by taking unwarranted tax exemptions on personal real estate,¹ the Commission finds that there is insufficient evidence to support these allegations.

Recommendation

When the Commission finds that there has been a violation of the ethics laws, it is

required to submit a recommendation for discipline to the violator's appointing authority. RCH §11-106. Based on the foregoing, and giving due consideration and weight to all of the relevant circumstances, the Commission recommends to Supervisor's appointing authority that he receive a written reprimand for his violation of RCH § 11-102(c) and that he attend mandatory ethics training.

DATED: September 25, 2007

/S/

LEX R. SMITH
CHAIR
HONOLULU ETHICS COMMISSION

¹ The misuse of city resources is prohibited by RCH § 11-104, which 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."