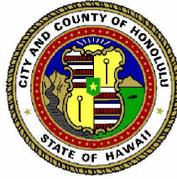


ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR



CHARLES W. TOTTO
EXECUTIVE DIRECTOR &
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Advisory Opinion No. 2014-7

I. SUMMARY

The Honolulu Ethics Commission (“Commission” or “EC”) found that a city officer who is under investigation by a subordinate has a personal conflict of interest such that the officer should not participate in the annual evaluation of the subordinate.

II. ANALYSIS

Generally, the ethics laws prohibit a city official from participating in any official matter in which a reasonable person may question his/her impartiality due to personal and/or financial interests. (RCH Sec. 11-101¹; RCH Sec. 11-102.1(c)²)

A reasonable person may question the officer’s impartiality in evaluating the subordinate as the city officer is currently the subject of an investigation being conducted by the subordinate. This statement is not to be construed as implying that the officer’s judgment would in fact be affected, only what a reasonable person could think. For example, if the subordinate received a negative evaluation, a reasonable person could believe that the officer is misusing his/her position to give the subordinate negative treatment in retaliation for the investigation. But, even if the subordinate received a good evaluation, a reasonable person could believe that the officer is trying to curry favor with the subordinate in an attempt to influence the investigation. This is a situation in which the officer cannot give a credible evaluation. The evaluation of the subordinate should be delegated to another officer.

¹ 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 considerations.

² 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.

Advisory Opinion Nos. 184, 2006-3, 2008-1, and 2012-2 construe the ethics conflict of interest laws expansively to prohibit financial as well as personal conflicts, and actual as well as perceived conflicts. Advisory Opinion No. 2008-1 provides:

In addition to the conflicts of interest specifically identified in RCH § 11-102, the city's revised charter recognizes that conflicts that arise from other relationships or interests that do not fall directly within the specific ambit of RCH § 11-102 can also undermine the public's confidence in the integrity of its government and should therefore be prohibited.

In addition, RCH § 11-103, which contains the basic requirement that conflicts of interest be fully disclosed, does not delimit the type of conflicts that require disclosure. It simply provides that:

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.

Id. (Emphasis added.) In reliance on these mandates, the Ethics Commission has opined that conflicts that arise from personal relationships that “might reasonably tend to create a conflict with the public interest” are prohibited.

III. CONCLUSION AND RECOMMENDATION

The Commission finds that the city officer should not participate in the subordinate's evaluation because he/she has a conflict of interest between his/her official city duties (evaluating the subordinate) and his/her personal interests (being the subject of an ethics investigation by the subordinate). A reasonable person could believe that his/her impartiality may be affected because he/she is under investigation by the subordinate.

The Commission also approves release of a redacted general published Advisory Opinion in order to provide guidance to the public on this issue. All identifying information shall be redacted in accordance with Hawaii Revised Statutes Sec. 92F-13 and 14.

[Signature page follows:]

APPROVED:

/s/ Katy Y. Chen
KATY Y. CHEN, Vice-Chair

Dated: November 21, 2014

APPROVED AS TO FORM:

/s/ Laurie A. Wong
LAURIE A. WONG
Associate Legal Counsel for
CHARLES W. TOTTO
Executive Director and Legal Counsel

Dated: November 21, 2014