

**ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU**



**Advisory Opinion No. 71**

This is in reference to Employee X whose duties and responsibilities have been shifted from a position designated as investigator dealing with liquor license applications to that of supervising liquor inspector engaged in field work.

We are of the opinion that there is no actual conflict of interest due to remoteness, but there is an appearance of conflict of interest which this Commission believes no action should be recommended to remove such appearance because of the equities involved in this case.

We understand that the salient facts are as follows:

1. In August, 1973 Employee X was assigned to office duty which involved reviewing and processing all liquor license applications after five years of duties in the field in the enforcement section.
2. This Commission issued an advisory opinion stating that, so long as Employee X is confined to reviewing and submitting recommendations on liquor license applications, there is no conflict of interest or the appearance of a conflict of interest in contravention of any of the standards of conduct contained in the Revised Charter of 1973 or RO 1969, as amended, even though his wife is an employee of Y Hotel.
3. Your concern now is, as a member of the enforcement section which is required to enforce all liquor laws against any licensed premises including Y Hotel whether his new assignment results in violation of any of the standards of conduct contained in the RCH or RO 1969, as amended.
4. Specifically, as a member of the enforcement section, he supervises two to three liquor inspectors who cover certain assigned precincts within the City and County of Honolulu; and depending upon the rotation, he and his subordinates would have to inspect the Y Hotel to check whether it is conforming to all of the liquor laws and rules and regulations in the dispensing of liquor.
5. Employee X's wife works for the catering department of the hotel and she merely sets up the food, beverage and seating requirements for any person desiring to use the appropriate facilities at the hotel.
6. Employee X's wife works in an area where no liquor is dispensed or permitted as it is the business office of the hotel, although under the broad license premises granted to the hotel the office from which she works out of is a liquor license premise.
7. Employee X's wife does not manage, control, supervise or participate in the dispensing of liquor to the patrons or guests of the hotel.
8. Employee X has a definite pecuniary private financial interest in this case because his wife is employed by the hotel.

The primary issue under the foregoing facts is whether or not Employee X is in a situation where his wife's employment with the hotel, which has a liquor license issued by the Liquor Commission of the City, is incompatible with the proper discharge of his official duties as a supervising field liquor inspector or whether the situation would impair his independence of judgment in the performance of his official duties. See RCH Section 10-102.3. We think not.

To support the foregoing statement, the Commission considered Employee X's role as a supervising liquor inspector and Employee X's wife's employment at the hotel in the catering department from the standpoint of remoteness. This consideration is based on the following facts:

1. Employee X is a supervising liquor inspector and would not make direct inspection of Y Hotel as in the case of his subordinates. His primary function is to ensure that his subordinates do inspect Y Hotel as scheduled. Thus, the actual enforcement of the liquor laws and rules and regulations against the hotel is done by his subordinates.
2. Employee X's wife works in the business office of the hotel and she does not manage, supervise, control or participate in the dispensing of liquor. Thus, neither Employee X nor his subordinates would come in contact with Employee X's wife in the course of carrying out their duties and responsibilities.
3. A review of the Liquor Commission records reveals that y Hotel has been issued only two citations since its construction in 1971 as a result of any violation of liquor laws or rules and regulations. This indicates that the hotel's policy is to dispense liquor as prescribed under the liquor laws or rules and regulations and the possibility of any infraction of such laws or rules and regulations is remote, thereby minimizing the necessity of constant inspection by the Liquor Commission through its field inspectors.

Based on the foregoing, we conclude that the probability of a conflict of interest in this case is remote.

On the other hand, there is an appearance of a conflict of interest because the general public may view this situation from the standpoint that Employee X may cause to overlook or direct his subordinates to overlook any infractions by Y Hotel because his wife is employed there. However, the Commission believes that no recommendation should be made to the appointing authority of Employee X, as we have done in other cases, because there is a necessity for balancing the equities in the instant case. For example, we have recommended to the employee who has had a real estate salesman's license to inactivate his salesman's license because of an appearance of conflict of interest. In such case the Commission had no qualms in making such recommendation because there was no threat to the livelihood of a family. In this case the Commission believes that the continued employment of Employee X's wife at the hotel is a necessity to supplement the income of Employee X to meet the economic obligations of Employee X. Therefore, the Commission will make no recommendation that Employee X be assigned to other functions within the Liquor Commission or that his wife leave the employ of the hotel.

By way of a caveat, we recommend that the performance of Employee X be reviewed from time to time to determine whether or not Employee X's independence of judgment has been impaired in the performance of his official duties as against Y Hotel.

Dated: Honolulu, Hawaii, April 12, 1977.

ETHICS COMMISSION  
Nathaniel Felzer, Chairman