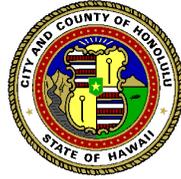


**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**

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KIRK CALDWELL
MAYOR



JAN K. YAMANE
EXECUTIVE DIRECTOR
AND LEGAL COUNSEL

ADVISORY OPINION 2018-1

I. EXECUTIVE SUMMARY

A city employee (“Employee”) misused city resources for the Employee’s own benefit when the Employee failed to take appropriate vacation leave when working at a non-city job. After good faith negotiation, the parties settled this matter without going to contested case hearing. As such, the Commission makes no findings of fact or conclusions of law. However, as part of the Settlement Agreement, Employee admits to all allegations contained in the Notice of Alleged Violation (“Notice”) and has reimbursed the city in the amount of \$1,891.20 (approximately 62 hours of city time) that should have been deducted in vacation time for hours spent at the non-city job. In turn, the Commission dismissed the Notice and has recommended to Employee’s appointing authority that no further action be taken in relation to the 62 hours of vacation time reimbursed to the City.

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

On November 14, 2016, the Commission received anonymous information that Employee was using city time to work at Employee’s non-City job. Staff commenced its preliminary investigation.

Staff determined that Employee worked for the city since the mid-90s. In 2011, Employee became a supervisor. Employee’s normal city work hours are Monday through Friday from 7:00 a.m. – 3:30 p.m.

On or about April 29, 2015, Employee’s Division Chief issued a Memo regarding Standard Operation Procedures (“SOPs”). SOPs require employees to report to the supervisor at the beginning and end of their shift. SOPs are posted on a bulletin board located in Employee’s supervisor’s office. Employee initialed the SOPs, acknowledging that Employee reviewed the SOP memo.

Employee is required to fill out and turn in a Daily Activity Report (“Report”) to the supervisor at the end of Employee’s shift. The Report reflects Employee’s daily activities, assigned crewmembers, and hours worked. Despite the SOPs, the investigation was inconclusive as to whether Employee obtained permission from Employee’s supervisor for certain actions that could have been considered flex time.

On June 1, 2016, the non-City business hired Employee as a part time, on call employee.

In this capacity, Employee could be called into work on an on-call basis to replace part-time absences. On June 12, 2016, the non-City business changed Employee's position to a full-time status employee with a set schedule of 40 hours per week, 8 hours per day. As Employee's seniority increased, Employee had a better chance of obtaining preferred schedules.

Employee is required to clock in and out at the non-City business using a machine that records Employee's ID number and hand print. The non-City business has multiple employee parking lots located within five (5) miles away from Employee's city office.

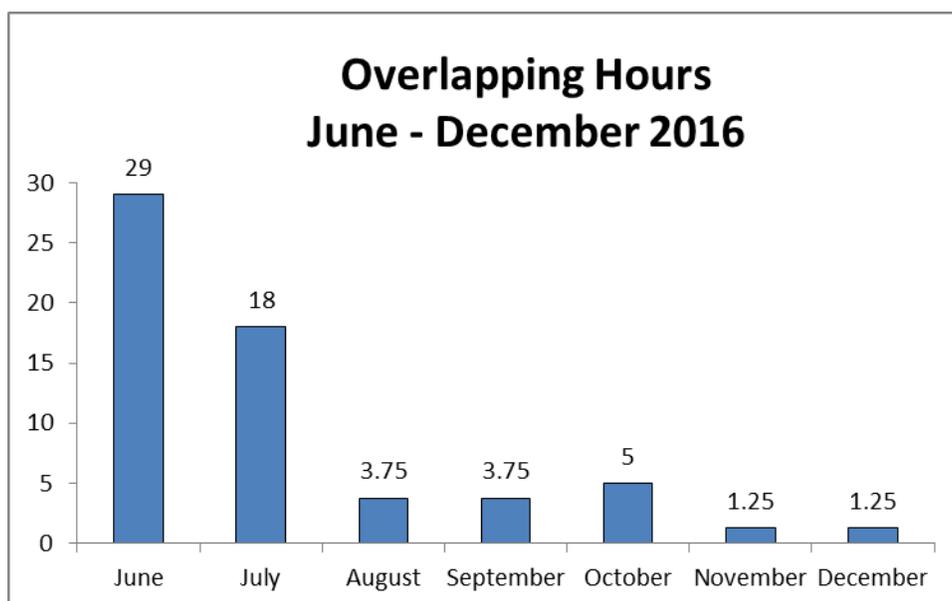
On September 5, 2012, November 21, 2014 and November 3, 2016, Employee completed city ethics training.

On or about March 30, 2017, our office issued a subpoena duces tecum ("Subpoena") to the non-City business for documents related to Employee's employment with the non-City business.

On or about April 12, 2017, the non-City business responded to the Subpoena and produced the requested documents.

Staff conducted a review of Employee's city Payroll Time and Attendance records and compared them with the time and attendance records received from the non-City business. Staff also conducted interviews for additional information.

A review of the documents resulted in a finding of approximately 62 hours of overlapping time from the City job and the non-City job between June 2016 to December 2016. The overlap occurred when Employee was working at the non-City job at the same time Employee was allegedly working for the City; or when Employee was on sick leave from the City job but simultaneously working at the non-City job. In either case, Employee should have taken vacation leave in order to work for the non-City job.



On or about December 20, 2017, staff brought the matter before the Ethics Commission. The Commission found probable cause that Employee violated Revised Charter of Honolulu (“RCH”) Sec. 11-104 and directed legal counsel to issue a Notice of Alleged Violation.

The Notice was served thereafter. The parties discussed and approved settlement. On or about February 21, 2018, the Commission approved and adopted the parties’ settlement agreement.

III. ANALYSIS

Revised Charter of Honolulu (“RCH”) Sec. 11-104, *Fair and Equal Treatment*, 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.

The Commission has consistently found that RCH Sec. 11-104 prohibits the use of City resources for an employee’s private business. *See*, Advisory Opinion No. 2006-1 (use of city buildings and city time for outside business a violation). *See also*, Advisory Opinion Nos. 273, 305, 2001-1. RCH Sec. 11-104 exists to prevent City employees from using tax-payer funded resources for personal benefit. The Employee should have used personal time in order to work at the non-City job.

IV. CONCLUSION

Based on the totality of the circumstances and a review of the mitigating and aggravating factors, the Commission believes that this settlement is in the best interest of the public.

Employee has worked for the City for 25 years with no prior disciplinary issues. Recent life situations required Employee to support Employee’s family with a second job.

Records reviewed indicate that Employee tried to do the right thing in most circumstances by requesting leave when he did work at the non-City job or taking leave without pay when Employee ran out of vacation.

Further investigation indicates that after Employee was able to establish a better schedule at the non-City job with increasing seniority, Employee no longer had overlapping hours in 2017 between the city job and the non-City job. Employee stated that it was not Employee’s intention to “do wrong” to the city as Employee had worked so hard and for so long to get where Employee currently is with the City. Employee would like to continue employment with the city. Finally, Employee appeared to be truthful, cooperative, and sincere with the investigation and resolution of this matter.

For all these reasons, the Commission accepted this settlement. The Commission advises all employees to speak with your supervisor to obtain a clear understanding of flex work hours

and to also take the appropriate leave as necessary if working at a non-city job.

/s/Victoria S. Marks
VICTORIA S. MARKS, Chair
Honolulu Ethics Commission

DATED: March 21, 2018

APPROVED AS TO FORM AND LEGALITY:

/s/Jan K. Yamane
JAN K. YAMANE
Executive Director and Legal Counsel
Honolulu Ethics Commission

DATED: March 21, 2018