

ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

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**COUNCILMEMBER AGREES TO \$6500 FINE FOR FAILING
TO DISCLOSE CONFLICTS OF INTEREST ABOUT RAIL
TRANSIT AND DEVELOPMENT BILLS**

In response to a Honolulu Ethics Commission investigation, Councilmember Nestor Garcia has paid a \$6,500 fine to the City for failing to disclose conflicts of interest arising from his employment and Board membership with the Kapolei Chamber of Commerce (Chamber). Councilmember Garcia was a member of the Chamber's Board in 2008, became its executive director in 2009, and continues in that job.

While he was involved with the Chamber, the Chamber's Board members testified in support of rail transit, Kapolei rezoning and other measures before the Council and Councilmember Garcia. He failed to file conflict of interest disclosures for 38 rail transit bills and resolutions and for 14 other matters such as rezoning from agriculture to commercial and residential uses around Kapolei.

Councilmember Garcia was legally required to file conflict of interest disclosures for all 52 bills and resolutions. Although he had filed his annual financial disclosures showing his Chamber employment, he needed to fully disclose his conflict of interest for each piece of legislation because the Chamber had testified in support of rail transit, rezoning in the Kapolei area and other significant public issues.

"Councilmember Garcia's duty to the public here is clear-cut," said Chuck Totto, the Commission's Executive Director and Legal Counsel. "The test for a conflict of interest is simple – Would a reasonable person question the councilmember's impartiality in voting if his employer took a position on the bill? It's hard to imagine a more obvious and basic financial conflict than your employer testifying on a bill that you'll vote on."

The Commission noted that Councilmember Garcia's excuses for not filing the disclosures were implausible. He mistakenly believed that the Chamber and its members would not be benefited by the bills for rail transit and rezoning. He also contended that,

because he and the Chamber are both proponents of rail transit, he could not have a conflict of interest. But, a conflict between the public interest and personal employment does not disappear because Councilmember Garcia and the Chamber's positions are aligned on public issues. The disclosure law is essential to making the democratic process transparent, here requiring the Councilmember to reveal that his employer has taken a position on a bill. Without disclosure, the public would be unaware of his private interests that would cause a reasonable person to question whether his votes on the public issue were impartial.

Hawaii law nullifies a councilmember's vote where he or she has not disclosed a conflict of interest. If there are still enough votes to support the Council decision, the action stands. After investigating, the Commission found that none of the outcomes on the 52 measures would have changed after Councilmember Garcia's vote was subtracted from the total.

The \$6,500 fine is the largest fine imposed on a city official to date. The Commission admonished in its Advisory Opinion 2012-4: "Failure to file conflict disclosures for 52 bills and resolutions over a 3-year period is egregious. . . . The legislation included essential steps to planning and developing the largest capital improvement project in Hawaii's history. Rail transit has been and continues to be one of the most controversial public issues in several decades. By not revealing his Board membership or employment with the Chamber for each rail measure, Councilmember Garcia expanded the public debate over whether the rail transit measures were decided objectively, independently and fairly by the Council."

The Commission examined several other factors in deciding that the settled amount of fine was appropriate. These included that Councilmember Garcia had at least disclosed his work for the Chamber on his annual financial disclosures, admitted his misconduct and was fully cooperative in the investigation.

"A broader issue is at the heart of this case," added Tutto. Under current law, a councilmember with a conflict of interest may still vote on the bill. The only obligation is to disclose the conflict. "Only councilmembers have this privilege. All other City officials and employees, including the Mayor and the Prosecuting Attorney, are disqualified from participating in matters where they have a conflict of interest. The Ethics Commission has tried unsuccessfully to convince the councilmembers to change the law so they will be held to the same standard as all other City officials."

A copy of Advisory Opinion No. 2012-4 is available at: http://www1.honolulu.gov/ethics/0ebf70f2-b9cc-4227-8d45-4b40cc0f1d8f.htm#_ftn3. The Commission speaks through its advisory opinions and staff members are not allowed to discuss the Commission's deliberations. Questions about the Commission and its process may be directed to Chuck Tutto at ctotto@honolulu.gov or (808) 768-7786.