

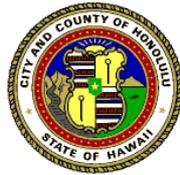
ETHICS COMMISSION

CITY AND COUNTY OF HONOLULU

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**Advisory Opinion No. 2001-1**

**I. INTRODUCTION**

This case involves alleged violations of the city and county's standards of conduct by Councilmember Rene Mansho. Initially, Anne Haunani Acohido submitted a request for advice in which she claimed that Councilmember Mansho used her Council staff and other city resources to aid in the coordination and presentation of celebrations for ship arrivals and departures along with the creation and support of a private non-profit entity organized to support the cruise line industry. While interviewing witnesses regarding Ms. Acohido's request, information was offered that Ms. Mansho also used city staff and other resources during office hours to conduct political activities and support non-profit organizations and charities. The use of city resources for non-city purposes is prohibited by § 11-104, Revised Charter of the City and County of Honolulu ("RCH").

Although staff conducted an extensive investigation, no hearing was held in this case because Councilmember Mansho agrees, with some reservation more specifically stated below, to the findings, conclusions and recommendations stated herein. Councilmember Mansho is permitting the Commission to state her identity in this opinion through the representation of her counsel, James E.T. Koshiba and Charles A. Price. We identify Ms. Acohido because she gave copies of her request for advice to members of the public and the media, thereby waiving her right to confidentiality.

**II. FACTS**

**A. Boat Days and Aloha Boat Days Committee**

The Commission makes the following findings of fact. Ms. Acohido's request for advice was received by the Commission on June 6, 2000. The request focused on Councilmember Mansho's use of city staff and other city resources to aid the development of Aloha Boat Days Committee ("ABDC"), a non-profit organization supporting the cruise line industry on O'ahu, and Aloha Boat Days ("Boat Days"), events providing traditional celebrations for cruise ships arriving in or departing from Honolulu. ABDC and Boat Days were and are intended to benefit the cruise line industry.

Ms. Acohido provided information and documents to the Commission relevant to whether Councilmember Mansho used city resources for private purposes involving ABDC and Boat Days. The documents dated from January, 1999 into 2000 and included letters and emails from the City Hall offices of Ms. Mansho. Specifically, these records reflect that Ms. Mansho used her title as councilmember, city telephones, email, Council letterhead stationery, copying and computer equipment on a regular basis to: (1) coordinate the provision of plants and a fireboat from city agencies; (2) contact interested parties; (3) draft and distribute schedules of ship arrivals and departures; and (4) order flowers and flower leis and receive billings at City Hall. These activities were necessary to create and support Boat Days and ABDC. The activities and coordination were carried out by staff at Ms. Mansho's request. Two staff members were asked to, and did in fact, set up and support some of the Boat Days events at the piers where the cruise ships docked at arrival. Although the Boat Days occurred before the opening of business at the Council (7:45 a.m.), witnesses stated that the set up and support often caused them to arrive late for work. One witness stated that about one-half of her work time was devoted to Boat Days and ABDC matters over a period from the end of January, 1999 to the end of March, 1999.

Once ABDC became more active and obtained private funding in the second quarter of 1999, most of the duties were transferred from Councilmember Mansho's offices to ABDC. Ms. Mansho spearheaded the first meeting of ABDC on January 22, 1999 and has been ABDC's community relations officer since soon after that date. She also acted as the mistress of ceremonies for Boat Days.

The majority of the work done to create and maintain Boat Days and ABDC was done during office hours, especially during the period from the end of January, 1999 through the end of March, 1999. The staff received their city pay throughout the time the office was actively supporting ABDC and Boat Days. Councilmember Mansho did not require her staff to take vacation or other leave while they were doing work for the benefit of ABDC and Boat Days.

On March 3, 1999, the Building and Public Works Committee heard Bill No. 1 (1999). The bill (now Ordinance 99-10) removed the Royal Hawaiian Band's authority to charge cruise ships \$300 for each performance. The bill was sponsored by Councilmember Mansho. According to records provided by the City Clerk's office, during the hearing Councilmember Mansho was asked by another councilmember whether Boat Days was a city function or program. Ms. Mansho responded that it was not, but noted that the program was supportive of the cruise industry as a public/private partnership. She was also asked whether any city employees or city funds were being used to support Boat Days, to which she responded that none were.

## **B. Campaign activities and other non-city business**

Witnesses also explained the regular use by Ms. Mansho of her staff, city facilities and equipment during work hours for political campaign purposes. Beginning in 1989 and for each year through 2000, Councilmember Mansho requested that her staff plan, coordinate and conduct her annual fundraiser. The tasks involved in each fundraiser included, but were not limited to, finding an event location; ordering food; setting up the area with a public address system, tables, chairs; developing a mailing list; asking individuals and businesses for door prizes; ordering and distributing tickets; and drafting, stuffing into envelopes and mailing fundraiser notices to nearly 12,000 potential contributors. Over the years, staff time, copying and computer equipment, email, facsimile machines, and telephones were regularly used for Ms. Mansho's campaign purposes.

Witnesses stated that once, as staff were stuffing envelopes, another city employee walked into the office and saw what was taking place. These witnesses also stated that, when the incident was reported to Ms. Mansho, she suggested that staff lock the door to prevent a recurrence. The practice thereafter was to lock the office door when staff performed campaign activities.

Staff conducted some of the work for the fundraiser the day before and the day of the event. Some of the staff, in some years, signed out on vacation time for these two days devoted to the fundraiser. However, those who did were later given two days of compensatory time to make up for the loss of vacation time.

Councilmember Mansho's staff were heavily relied upon to work for her 1994 and 1998 campaigns to retain her council seat. In addition to the fundraisers, staff were expected to do sign-waiving and other political chores over the months prior to the election. In 1998, Ms. Mansho opened a campaign headquarters in the Mililani Town Center. One of her Council staffers was required to work at the headquarters in the morning hours for several weeks before the election.

A November, 1999 "Staff Assignments" roster stated one set of duties:

Campaign Liaison  
Annual Fundraiser  
Upkeep database  
Campaign Spending Report

These phrases meant that the staff member designated as the "Campaign Liaison" was responsible for coordinating the "Annual Fundraiser," maintaining and updating the database of voters and contributors to Ms. Mansho's campaign fund and producing the reports due the state Campaign Spending Commission.

The councilmember ordered staff, through a January 18, 2000 email, "In light of [name of person] and his staff, or former staff, please revise the "Staff Assignments" sheet and delete any and all campaign activities, and give me the final form." Although the campaign activities were deleted from the roster, they continued to be carried out by staff at Ms. Mansho's direction.

A senior legislative aide and other staff members stated they were required to manage Ms. Mansho's campaign fund over the last 12 years. Tasks included writing checks, balancing the checkbook, inputting data and regularly preparing and filing the reports required by the Hawai'i Campaign Spending Commission. One witness claims that she was demoted and harassed as a result of her refusal to continue with this and other political duties during city time.

Ms. Mansho's staff were also required to assist charities or non-profit projects unrelated to city business, such as the Great Aloha Run, Aloha Scholarship Golf Tournament, the Rene Mansho Charity Fund and the Hawai'i Academy of Performing Arts.

The witnesses interviewed had the understanding that part of his or her job was to do what was requested by the councilmember, including political chores and non-city projects.

### **III. DISCUSSION**

The Fair and Equal Treatment policy is stated in RCH § 11-104:

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 other person beyond that which is available to every other person.

The purpose of this law is to prevent favoritism by government officials. It is the mainstay against the misuse of city position, title, staff, equipment, facilities or other resources for non-city business. The taxpaying public rightfully expects that city funds will be used for legitimate city functions and will not be diverted to bestow unwarranted advantages on politicians, their pet projects and favorite community causes, no matter how praiseworthy.

The issue for the Commission to decide is whether Councilmember Mansho breached the Fair and Equal Treatment policy. Based upon the facts above, we find that she has violated RCH § 11-104 by using city resources for non-city business.

In examining the use of city resources we are mindful that councilmembers necessarily have broad discretion in the use of their staff. This results from the nature of the position. Councilmembers require substantial latitude to respond to inquiries from their constituents and to examine issues that come before them in their official capacities. Our decision should not be read to limit the discretion of councilmembers or other city officers or employees who have broad authority to examine public issues, offer solutions or make decisions. Rather, the Commission's focus is on the use of city resources to aid or benefit projects or entities that are not directly related to the business of the Council.

Turning first to the use of Council staff and other resources for the benefit of Boat Days and ABDC, Councilmember Mansho admitted to other councilmembers that Boat Days was not a city function. Therefore, the use of city staff, her title and position, equipment and other resources provided an unwarranted benefit to the cruise industry, ABDC and the vendors who supplied the Boat Days events. Although supporting the cruise industry may be laudable, Boat Days and ABDC were not projects before or adopted by the Council.

Simply stated, a city officer or employee should use non-city resources for non-city projects. We suggest that when city officers and employees intend to use city resources for what might be considered non-city projects, they should consult with the Commission before doing so to avoid unintentional violations of the standards of conduct.

The continuing disregard for the prohibition against campaign activities in this case is troubling because it appears to be blatant and to have thrived for more than a decade. Over the same period, both the Department of Human Resources and the Ethics Commission at least annually notified all city employees and officers that requiring campaign assistance from fellow workers was prohibited by the standards of conduct established in the Charter and the Ordinances. A reasonable person in the

councilmember's position should have known that her and her staff's conduct was in violation of the ethics laws.

From the statements of the witnesses and the review of the documents, we conclude that Ms. Mansho was aware of the impropriety of her in-house campaign activities and tried to avoid their discovery. This is reflected in Ms. Mansho's suggestion to lock the staff offices when stuffing fundraiser envelopes and to remove the campaign tasks from the duty roster while still requiring that campaign jobs, such as fundraiser preparation, be accomplished on city time. The granting of compensatory time to make up for vacation time taken while doing political chores also appears contrived to use city funds to pay Council staff for performing political activities. We have not found similar circumstances in any of the Commission's prior opinions.

While some of the non-city projects she supported may be worthwhile community-oriented programs, they were not city projects and therefore should not have been supported by city funds or other city resources. The political fundraising and other activities appear to be conducted solely to maintain and enhance Ms. Mansho's political career. Such actions do little to enhance public trust and confidence in elected officials. In sharp contrast is the policy underlying the city's ethics laws, as stated in RCH § 11-101:

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. (Emphasis added.)

We understand that Ms. Mansho agrees to the facts, conclusions and recommendations in this opinion, except that she contends as follows: (1) Boat Days are also intended to benefit the city by promoting tourism and economic development; (2) she did not suggest that staff lock the door to hide campaign activities; and (3) she did not demote or harass a staff member as a result of the staff member's alleged refusal to continue campaign or other political duties during city time. Notwithstanding these exceptions, Ms. Mansho does not wish to contest the facts as set forth above and agrees that the facts constitute violations of the ethics laws.

The Commission considers her admission a valuable first step toward establishing compliance with the standards of conduct to which all city officers and employees are held. She also waived her right to keep her identity confidential in this opinion, thereby publicly acknowledging her misconduct. Furthermore, Councilmember Mansho has saved the Commission considerable time and expense by not contesting

the matter. Finally, Councilmember Mansho and the city have reached a settlement in the amount of \$40,000, subject to Council approval, as reimbursement to the city for the misuse of her staff's time. <sup>(1)</sup>

#### **IV. RECOMMENDATIONS**

The Commission is required by § 3-6.5(e), Revised Ordinances of the City and County of Honolulu ("ROH"), to notify the Council of its decision and ". . . shall recommend appropriate disciplinary action against . . ." an officer who is found to have violated the standards of conduct. The Council is mandated to take whatever action is necessary and respond to the recommendations within fifteen days of receipt.

In light of the findings, discussion and conclusions stated above, the Commission recommends the following:

1. Councilmember Mansho and her office staff immediately cease and desist all unethical conduct and practices;
2. The Council discipline Councilmember Mansho by imposing any disciplinary measures it deems appropriate; and
3. The Council require Ms. Mansho and her staff to receive training from the Ethics Commission staff in the application of city's standards of conduct.

In recommendation number 2, above, the Commission proposes that the Council discipline Ms. Mansho, but we leave it to the Council's sound judgment to determine the type of discipline based upon the findings and conclusions stated in this opinion. In this case, the Commission is reluctant to suggest specific disciplinary measures because it might affect the representation of the people in Council District 1 or the operations of the Council. These are issues best determined by the Council. The Commission notes, however, that it does not consider the amount to be paid by Councilmember Mansho in reimbursement for misused staff time to be a disciplinary measure. In determining the appropriate discipline, we recommend the Council explore measures beyond the settled reimbursement alone.

Dated: March 15, 2001

/S/  
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LOLINDA D. RAMOS, Chair  
Ethics Commission

1. The Commission has no authority to recoup the monies paid to Ms. Mansho's staff for doing non-city business. § 3-8.5(c), Revised Ordinances of the City and County of Honolulu, allows the Corporation Counsel to recover ". . . any fee, compensation, gift or profit received by any person as a result of a violation . . ." of the ethics laws. The Commission's staff estimates the use of Council staff time during work hours for non-city business over the twelve-year period to be about \$148,000, or about five to twelve percent of the total annual staff time expended for all work, depending on the year in question. The Commission, however, recognizes that ROH § 3-8.5(c) limits to two years the period for which recovery may be sought. A court could extend this period to a total of six years pursuant to Hawai'i Revised Statutes § 657-20, but only upon a finding that the facts giving rise to the action were fraudulently concealed. Ultimately, the settlement will be presented to the Council for action