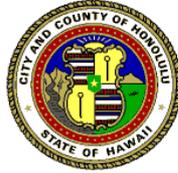


ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

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Advisory Opinion No. 2004-5

I. Summary

Prior to voting on a city budget, a councilmember must fully disclose in writing all interests she has in private organizations receiving funds under the budget.

II. Facts

In 2003, Councilmember Ann Kobayashi voted on the city's fiscal year 2004 budget, which appropriated funds to three non-profit organizations of which she was an unpaid board member.¹ The funds were made available to the city as United States Department of Housing and Urban Development (HUD) Community Block Grants (CDBG). The budget was passed in June 2003.

On December 10, 2003, the Honolulu Ethics Commission (the Commission) received a written request asking whether Councilmember Kobayashi's vote on the city's budget violated the city's standards of ethical conduct. Councilmember Kobayashi was subsequently given a copy of the request in compliance with Revised Ordinances of Honolulu (ROH) § 3-6.7(b). Ms. Kobayashi responded in writing to the request, but did not seek a hearing before the Commission. Pursuant to ROH § 3-6.7(c), the Commission renders this opinion based on the information available to it.

III. Issue

The issue presented is whether Councilmember Kobayashi violated the city's disclosure of interests requirements when she voted on the city's fiscal year 2004 budget, which earmarked funds for non-profit organizations with which she was affiliated.

¹ The specific budget items included \$47,800.00 for the Windward Spouse Abuse Shelter; \$42,000.00 for Moiliili Community Center; and \$280,000.00 for Seagull Schools. The funding the Windward Spouse Abuse Center and Moiliili Community Center were apparently placed into the budget by the Budget Committee, of which Councilmember Kobayashi was the Chair; the funding for Seagull Schools was proposed by the City Administration.

IV. Analysis

Section 11-103 of the Revised Charter of Honolulu (RCH) requires a councilmember to fully disclose in writing all interests he or she may have in proposals before the council prior to voting on the proposal. Specifically, RCH § 11-103 provides:

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. Such disclosure statements shall be made a matter of public record and be filed with the city clerk. Any member of the council who knows he or she has a personal or private interest, direct or indirect, in any proposal before the council, shall disclose such interest in writing to the council. Such disclosure shall be made a matter of public record prior to the taking of any vote on such proposal.

Councilmember Kobayashi's affiliation with the three organizations proposed as recipients of block grant funds under the city's fiscal year 2004 budget created an apparent conflict of interest. Pursuant to RCH § 11-103, Councilmember Kobayashi therefore had an obligation to disclose her interests in writing prior to voting on the budget. In her response to the Commission's notice of a possible violation, Councilmember Kobayashi did not dispute that she failed to make the required written disclosure.

Under the circumstances presented, Councilmember Kobayashi did not comply with the disclosure requirements of RCH § 11-103.²

IV. Recommendation

Although Councilmember Kobayashi's failure to file the required written disclosure constitutes a violation of RCH § 11-103, the Commission does not recommend any disciplinary action be taken in this matter. We have no evidence that the non-disclosure was anything more than a mere oversight. Councilmember Kobayashi had listed her board positions in her financial disclosure statement for 2002. She was therefore clearly not trying to conceal her affiliations. Moreover, Councilmember Kobayashi immediately removed herself from the boards of the non-profit organizations once the non-disclosure issue was raised last year. The Commission believes that it is sufficient that Councilmember Kobayashi be reminded of the conflicts of interest disclosure requirements, which are clearly set forth in the Commission's *Guidelines on Abstention from Voting* (July 13, 1995).

² We understand that vote on the city's fiscal year 2004 budget was unanimous. Thus, Councilmember Kobayashi's participation did not invalidate the Council's actions. *Hui Malama Aina O Ko'olau v. Pacarro*, 4 Haw. App. 304, 666 P.2d 177 (1983) (a failure to disclose conflict does not invalidate council action when sufficient votes existed excluding the councilmember's vote.)

Dated: 6/22/04

/S/

ROBIN DAVID LIU, Chairperson
Ethics Commission

* Editor's note: Because the issues and facts described herein were discussed in various media reports, this opinion is not being maintained as confidential.