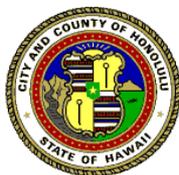


ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

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Advisory Opinion No. 2005-4

Summary

Members of the city administration did not violate the ethics laws when they published a book that described the administration's projects and accomplishments and was intended for use by government agencies and the public to promote Honolulu. The mayor possessed the legal authority to use the book as a means to inform the public of the city's policies, programs and operations. There is no evidence that any one received special treatment or an unwarranted advantage as a result of the publication of the book in violation of § 11-104, Revised Charter of Honolulu (RCH).

Facts

On several occasions the administration of former Mayor Jeremy Harris published an annual executive summary of accomplishments made in the preceding year. These summaries were distributed at the Mayor's State of the City address.^[1] The reports were usually about 25 pages long and were funded by monies budgeted to the administration. While preparing a similar 48-page report for release at the end of 2004 (for which about \$38,000 had been earmarked), the administration decided to expand the publication and focus on the transition of Honolulu to a "sustainable" city.

The product is a 220-page, soft-cover book including many photographs that "tell[s] of Honolulu's rise as a sustainable city, and the development of an enlightened, forward-looking philosophy of urban planning and management." *The Renaissance of Honolulu*, Preface by Benjamin B. Lee, FAIA, former Managing Director. The book focuses on the period 1994 through 2004 during which "our city made tremendous progress as a place of incomparable beauty that protects the environment, celebrates its diverse

heritage and supports economic growth." *Id.* This decade also covered former Mayor Harris' term of office.

The book cost the city about \$108,000 to publish and 5,000 copies were printed. The book is under the copyright of former Mayor Harris and the city. It sold well initially when released in December 2004, but thereafter sales slumped. The book's retail price is \$19.95, of which \$12.95 is paid to the distributor. Under the consignment contract, all net proceeds from sales are to be paid to the city; none will be paid to former Mayor Harris. As of the end of May 2005, the distributor states that approximately 1,072 copies had been sold, resulting in about \$8,407 in revenues to city.

To explain the purpose of publishing the book, Ben Lee transmitted to the Ethics Commission (Commission) a copy of his December 29, 2004 letter to Councilmember Charles Djou. The letter states that the book was "to be an integral part of the upcoming celebration of the 100th Anniversary of Honolulu." Also, Mr. Lee equates the book with past years' executive summaries. He continues:

It is our intent that this report, *The Renaissance of Honolulu*, would also be used by the Mayor and the City Council, State DBEDT, HTA, OVB, WIA, HHA^[2] and others in the sports and travel industry (*sic*) to showcase and market Honolulu as a great place to visit, live, work, recreate, raise families as well as be a vehicle to attract local and foreign investment to our City. We also see an excellent opportunity to use *The Renaissance of Honolulu* to showcase our wonderful city to all the mayors, city managers and government officials that (*sic*) will attend the 2005 NACO Conference hosted by our City in July. (Footnote added.)

The Council and some members of the public have questioned whether it is appropriate to spend taxpayer funds to produce a coffee table book that aggrandizes former Mayor Harris' vision of and projects for Honolulu. As characterized by Councilmember Djou: "I believe former Mayor Harris' decision to use taxpayer money to produce this book is a poor fiscal decision and a waste of money. I also believe that this book may be an illegal misappropriation of taxpayer funds." The essential question raised by the book's critics is whether the city should have paid for its publication.

The Council asked Corporation Counsel (COR) to examine whether the publication of the book resulted in a misuse of public funds.^[3] In a written opinion dated April 1, 2005, COR concluded that no procurement laws were

violated in the production of the book. Below, the Commission considers whether there is a violation of the standards of ethical conduct.

Issue

The question presented is whether using city funds to produce *The Renaissance of Honolulu* resulted in an unwarranted advantage or special treatment for some person in violation of RCH § 11-104.^[4]

Analysis

In order to analyze whether an unwarranted benefit was obtained under RCH § 11-104, the Commission must determine if there is someone who received such special treatment. Some of the requests for advice questioned whether former Mayor Harris received an unwarranted benefit by having the city pay for publication of the book.

Although COR found that no procurement laws were violated in the production of the book, a procurement violation is not the only means by which city funds may be misused. For example, in Advisory Opinion No. 2001-1 (March 15, 2001), the Commission found that former Councilmember Rene Mansho violated RCH § 11-104 when she used her Council staff members, while they were being paid to perform city services, for her political campaigns and for other personal projects not reasonably related to her position as a councilmember.

In other cases regarding questions of whether a city officer has misused city resources for his or her personal benefit, this Commission has examined whether the officer had express or implied authority to take the action. In Advisory Opinion No. 2002-2 (September 6, 2002), the Commission determined that no violation of RCH § 11-104 occurred when the administration used city resources to draft and send letters to community groups and other interested parties about possible cuts by the Council to the mayor's proposed capital improvement budget. The Commission noted that:

A key element to the existence of a violation of RCH § 11-104 is that the city resource must be misappropriated for a non-city use, that is, a use not within the scope or duties expressly or implicitly associated with the position of the city officer or employee whose conduct is in question. Generally, the use of

resources for a project not within the officer's or employee's duties would be in violation of RCH § 11-104.

The converse of this statement is equally true: use of resources for a project that is performed within the officer or employee's scope of duties generally is not a violation of RCH § 11-104.

The limited question before the Commission, therefore, is whether expending the funds for the book was a use "within the scope or duties expressly or implicitly associated with the position of" former Mayor Harris. In Advisory Opinion No. 2002-2, the Commission reviewed the various Charter sections that described the role and duties of the mayor. We observed that the mayor had a duty to submit and advocate for the administration's budget proposal and also has the power to make periodic reports to the public about the budget. Germane to the present case, the mayor has the "power to . . . make periodic reports informing the public as to city policies, programs and operations." RCH § 5-103(j). The Charter does not condition this broad power.

The Renaissance of Honolulu highlights the transitions that occurred regarding mass transit (*e.g.*, the bus system), pollution abatement (*e.g.*, wastewater treatment), land use (*e.g.*, urban renewal), energy efficiency (*e.g.*, the HPOWER plant), revitalization of Waikiki, eco-tourism, the park system, and other topics of public interest. Although grander in scale, it is a similar publication to the conventional executive summaries. We conclude, therefore, that the book falls within the mayor's "power to . . . make periodic reports informing the public as to city policies, programs and operations" under RCH § 5-103(j).

As stated above, it essential that someone receive an unwarranted benefit from publication of the book in order to find a violation of RCH § 11-104. There is no evidence that any business involved in the publication or distribution requested or was given special treatment. One could argue that former Mayor Harris might benefit from being the author of the book, but all proceeds will be paid to the city. In addition, because the mayor is an elective office, those who occupy the position will always obtain good will or incur disfavor from the public depending on the administration's successes and failures. The fact that the public may perceive former Mayor Harris more or less favorably as a result of the accomplishments stated in the book, in and of itself, does not constitute a violation of RCH § 11-104.

The publication of the book was within the authority of former Mayor Harris. There is no evidence that he or anyone else received special treatment as a result of publishing *The Renaissance of Honolulu*. Accordingly, we find no violation of RCH § 11-104.

The Commission's opinion should not be read as an endorsement of *The Renaissance of Honolulu*. It is not for the Commission to decide whether publishing the book was a wise or imprudent use of public funds. Instead, the Commission may only determine if there was a misuse of public funds under the ethics laws. Regardless of whether or not one believes the money was well spent, it was within the authority of the administration to expend the funds because publishing the book may reasonably be viewed as an attempt to inform the public about the city's policies, programs and operations.

Dated: July 18, 2005

/S/

ROBIN DAVID LIU, CHAIRPERSON

Ethics Commission

^[1] The administrations of Mayors Eileen Anderson and Frank Fasi used public funds to publish annual multi-page newspaper inserts to inform the public of their respective accomplishments.

^[2] The acronyms stand for the state Department of Business, Economic Development and Tourism; Hawaii Tourism Authority; Oahu Visitors Bureau; Waikiki Improvement Association; and Hawaii Hotel Association, respectively.

^[3] On March 2, 2005, the Council's Budget Committee deferred action on Resolution No. 05-010, which permits the Budget Committee "to conduct an inquiry of the expenditure of city funds related to the publication of the book . . ." until COR and the Ethics Commission rendered their opinions.

^[4] Section 11-104. Fair and Equal Treatment --

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.