

ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

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CONFIDENTIAL

Advisory Opinion No. 2008-5

I. Summary

It is a violation of Section 11-104, Revised Charter of Honolulu, for a city officer to include political campaign materials or information on a city web site.

II. Facts

This matter arises from a review of the web sites of incumbent candidates for elected office. As of July 14, 2008, an internet user who wanted to access the Honolulu government web site for Elected Officer would do so by going to, [www.honolulu.gov/\[\]](http://www.honolulu.gov/), and clicking on the link "[name of Elected Officer]." This action would then take the user to [Elected Officer's website].

By letter dated July 14, 2008, Honolulu Ethics Commission (Commission) staff informed Elected Officer that certain information contained on [Elected Officer's website] appeared to be in violation of Section 11-104, Revised Charter of Honolulu (RCH),¹ and the Commission's *Revised Guidelines on Campaign Activities (Guidelines)* as described below:

- a. In the document entitled "[title of document]," you stated in part:

As you already know, I am running for re-election for [name of elective office]. I humbly ask that you allow me to continue to represent you and your family **by voting for me in a winner-take-all Primary Election this [date]**. (Emphasis in original.)

¹ **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.

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I am already walking in your neighborhoods to become acquainted – and reacquainted – with you and learn about your concerns. If I miss you during my walks, please feel free to contact me at any time at my Campaign Headquarters:

[Address]

- b. In the “[title of document]” written by [name], in the last sentence of the last paragraph, it stated:

“I can honestly say that the best man for the job in [elective office district] is already on the job.” (Emphasis in original.)

This language was also repeated in your web site link entitled: “. . . the best man for the job is already on the job” on the home page.

Upon notification of the concerns, the foregoing information was removed from [Elected Officer’s website], except for the link that stated “. . . the best man for the job is already on the job,” although the [name] letter was no longer available through the link.

By email dated August 21, 2008, Commission staff reminded Elected Officer that the “best man” phrase should be removed from the web site because it reflects why he should be reelected. The “best man” phrase was then removed the web site.

In the same August 21, 2008 email, Elected Officer was informed that the web site contained additional information not earlier reviewed by Commission staff that may be considered political campaign materials – in particular, his responses to the [date] Candidate Questionnaires from [names of organizations]. The responses appeared targeted to voters. For example, some of the questions focused on why Elected Officer is running for office and what he would try to accomplish as [an elected office holder]. Overall, the responses described a broad range of issues relevant to a voter’s choice in an election. His responses to the [date] Candidate Questionnaires were then promptly removed from [Elected Officer’s website].

On September 11, 2008, the Commission transmitted a Notice of Possible Violation of the Standards Conduct to which Elected Officer responded on October 15, 2008. Elected Officer pointed out that [Elected Officer’s website] had been used as his campaign web site for the [date and name of elective office] election and contained the questionable materials. After his [date] reelection, Elected Officer and his staff used the help of personnel from the Department of Information Technology (DIT) to convert the campaign web site to a city government web site. However, in the transition, the problematic statements and documents were unintentionally transferred to the city web site.

III. Question presented

The issue here is whether Elected Officer used his city web site to obtain special treatment for himself in violation of RCH Section 11-104.

IV. Analysis

The *Guidelines* note that the use of city resources for campaign activities or purposes is prohibited under RCH Sec. 11-104. [Elected Officer's website] is accessed through a government web site. As described above the web site contained requests for members of the public to vote for Elected Officer. Therefore, through the government web site Elected Officer obtained special treatment or advantage in his [date] campaign for [name of elective office], in violation of RCH Sec. 11-104. The *Guidelines* describe prohibited "campaign activities and purposes" to include "distributing campaign literature or materials." His having the responses to the Candidate Questionnaire on the web site amounts to distributing campaign literature or materials. Therefore, the government web site was used to obtain special treatment for Elected Officer's political campaign.

The public harm in using government resources for the benefit of a political campaign is that it diverts tax funds generated to run the government for the benefit of the public to the benefit of a political candidate. The government web site [www.honolulu.gov/\[\]](http://www.honolulu.gov/) is the property of the city and is maintained for the purpose of communicating government information between and among the public and government officials. City officers and employees should guard against the misuse of public resources for any non-public purpose such as political activity. In this case, Elected Officer and his staff should have taken appropriate action to remove the election statements and materials before they were added to the contents of the city web site.

V. Conclusion and recommendation

It is evident from our investigation that the inclusion of election materials and statements on the web site was unintentional. In addition, Elected Officer and his staff promptly removed from the web site any questionable information when it was brought to their attention. Consequently, the Commission does not believe that any recommendation for disciplinary action is warranted.

DATED: November 14, 2008

BY: /S/
Lex R. Smith, Chair
Honolulu Ethics Commission