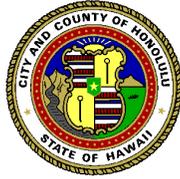


ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

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ADVISORY OPINION 2018-2

I. SUMMARY

A concern alleged that a City department head, who is a non-elected official (“Department Head”), misused the Department Head’s position and the Department’s intranet (accessible only to Department employees) to request support for a Department-related, city administration-drafted proposed charter amendment on the November 2016 election ballot. The Honolulu Ethics Commission (“Commission”) dismissed the concern because the allegations did not constitute a violation of the City’s Standards of Conduct, Article XI, Revised Charter of Honolulu (“RCH”).

City resources may be used for legitimate government purposes within the scope of duties associated with the employee’s position that may be relevant to a ballot measure. [Commission’s *Guidelines on Campaign Activities* (Sept. 12, 2012) (“2012 Guidelines”); RCH § 11-104.] The Department Head’s scope of duties is sufficiently broad to imply that it includes educating and informing Department employees of the administration’s official position on the charter amendment affecting the Department.

This is the first time the Commission has reviewed this issue. Its conclusions are applicable to this situation only.

II. FACTUAL BACKGROUND

Every ten years, the Mayor and the City Council appoint a charter commission to review city government operations and propose amendments to the existing charter. RCH § 15-105.¹ In January 2015, charter commission (“Charter Commission”) members were appointed. The Charter Commission held hearings for proposed charter amendment submissions. City agencies briefed the Charter Commission on at least 14 separate occasions during this time.

¹ RCH § 15-105.1 provides in pertinent part: “After November 1 of every year ending in “4,” but before the immediate following February 1, the mayor and the presiding officer of the council shall appoint a charter commission consisting of thirteen members to study and review the operation of the government under this charter. The mayor shall appoint six members; the presiding officer of the council, with the approval of the council, shall appoint six members; and the thirteenth member shall be appointed by the mayor and confirmed by the council.”

City administration introduced to the Charter Commission a proposal (“Proposal”) related to the jurisdiction of a Department. RCH § 6-102.² The Department also briefed the Charter Commission on the Proposal. Department personnel testified in support of the Proposal before the Charter Commission for three consecutive months in 2016. Numerous other city agencies also testified before the Charter Commission in support of their respective proposals. The Charter Commission approved about 20 proposed charter amendments to be placed on the ballot.

Thereafter, the City administration requested that department heads provide information, in the form of an op-ed or otherwise, to muster support for ballot measures directly impacting their respective departments.

On or about October 27, 2016, the Department Head uploaded a video message (“Video Message”) that Department employees could access via a link on the Department’s intranet. The Department Head regularly uploaded video messages on the Department’s intranet on a monthly basis. The Video Message was about nine minutes long. The Department Head discussed several topics including: hiring status, claims filings, new Department unit opening; and accolades to Department personnel. The Department Head spent approximately one minute discussing the November election and the Proposal.³

The election was held on November 8, 2016. The Proposal was approved by the voters. Thereafter, a concern was filed with the Ethics Commission alleging that the Department Head’s intranet video message was a misuse of city resources for political purposes (“Concern”).

III. DISCUSSION

City employees may not use city resources for non-city purposes, including political and campaign activities. RCH § 11-104; Administrative Directive No. 160 (January 29, 2008). However, the Commission allows the use of city resources to support ballot measures under certain circumstances:

City resources may be used in support of a legitimate government purpose that is within the scope of duties expressly or implicitly associated with the position of the city officer or employee whose conduct is in question. *At times, an issue of legitimate government concern also is or may be relevant to an election or ballot measure.* Absent a showing that city resources were used primarily for political campaign activities or purposes as defined above, the government purpose was

² RCH § 6-102 provides in pertinent part: “The managing director shall:...(b) Evaluate the management and performance of each executive agency, including the extent to which and the efficiency with which its operating and capital program and budget have been implemented, appoint the necessary staff to assist in such evaluation and analyses and to assist the executive agencies in improving their performance and make reports to the mayor on the findings and recommendations of such evaluation and analyses. A report also shall be made to the police commission when an evaluation and analysis is performed on the police department. A report also shall be made to the fire commission when an evaluation and analysis is performed on the fire department.”

³ Specifically, the Department Head stated “Again, Charter Amendment Number [] is something that the Department worked on so if you can vote “yes” for that, that would bring our language up to speed to the current practices that we do now and again not adding any new services.”

misrepresented or similar questions, *the fact that there is both a governance and a political aspect to an issue does not alone create a violation of RCH Sec. 11-104.*

2012 Guidelines at 5 (emphasis added).

The Commission believes that this language supports the Department Head's actions. The Department Head's scope of duties is sufficiently broad to imply that it includes educating and informing Department employees of the administration's official position on the charter amendment affecting the Department. Further, the Department Head's actions were in accordance with City administration's request to muster support for proposed charter amendments.

IV. CONCLUSION

The Commission dismissed the Concern because the allegations would not constitute a violation of the Standards of Conduct. The Department Head was acting within the scope of the Department Head's city duties by urging Department employees via the Department's intranet to support the administration's proposed charter amendment.

APPROVED:

/s/Michael A. Lilly
MICHAEL A. LILLY, VICE CHAIR
Honolulu Ethics Commission

DATED: October 17, 2018