

**ETHICS COMMISSION**  
**CITY AND COUNTY OF HONOLULU**

925 DILLINGHAM BOULEVARD, SUITE 190 • HONOLULU, HAWAII 96817  
PHONE: (808) 768-9242 • FAX: (808) 768-7768 • EMAIL: [ethics@honolulu.gov](mailto:ethics@honolulu.gov) • INTERNET: [www.honolulu.gov/ethics](http://www.honolulu.gov/ethics)

KIRK CALDWELL  
MAYOR



JAN K. YAMANE  
EXECUTIVE DIRECTOR  
AND LEGAL COUNSEL

**ADVISORY OPINION 2019-1**

On or about September 6, 2018, a city official (“Official”) sent a letter to the Neighborhood Commission Office (“NCO”). The Official requested that the NCO forward the request to all 33 Neighborhood Board (“NB”) chairs to place the ballot issue stemming from passage of Senate Bill 2922, Senate Draft 1, House Draft 1 (“SB 2922, SD1, HD1”)<sup>1</sup> on their board’s monthly agenda between September 15 and October 15, 2018, so that a certain political action committee (“PAC”) “and others” could publicly discuss this topic prior to the election on November 6, 2018. On or about September 6, 2018, the NCO forwarded the Official’s letter to all NB chairs.

On or about September 16, 2018, an ethics concern was filed with the Honolulu Ethics Commission alleging that the Official misused the Official’s position to give preferential treatment to a specific PAC that held a certain position on the upcoming ballot issue in violation of Revised Charter of Honolulu (“RCH”) § 11-104.<sup>2</sup> The reporter believed that the specific reference to only one PAC was preferential treatment.

Commission staff investigated the allegations and determined that there were other PACs that held both supporting and opposing views and were not specifically mentioned in the Official’s letter. Commission staff confirmed with the NCO that each Neighborhood Board (“NB”) chair sets their own NB’s agenda. The NCO also confirmed that requests for agenda items are routinely made via the NCO or by directly contacting the NB chair. Thereafter, Commission staff met with the Official.

During the meeting, the Official explained that the Official was unaware of any other ballot issue PACs at the time the letter was drafted. Further, the Official believed the term “and others” sufficiently captured any other unmentioned PACs that may have existed. The Official also stated that the Official checked with personal counsel and determined that the request to the NCO was not a misuse of position for express advocacy. Out of an abundance of caution and due to the proximity of the upcoming election, Commission staff requested the Official to resend the letter removing any specific PAC references.

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<sup>1</sup> SB 2922, SD1, HD1, proposed a State Constitution amendment giving the legislature the authority to institute a tax surcharge on real property for the purpose of funding Hawaii’s educational system.

<sup>2</sup> RCH § 11-104 provides: “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.”

On or about September 19, 2018, the Official sent a revised letter to the NCO without mentioning any specific PAC.

On or about October 17, 2018, the Commission decided not to impose a civil fine based on the following factors.<sup>3</sup>

First, the Official conducted good faith legal research and consulted with personal counsel prior to issuing the letter, although the research was focused on a separate but valid issue (*i.e.*, whether there was misuse of position by expressly advocating for a certain position on the ballot measure). The Official cited relevant ethics laws such Revised Ordinances of Honolulu § 3-8.6 and state case law that demonstrated the good faith effort to research the issue prior to issuing the letter.

Second, the Official cooperated with Commission staff during the investigation and took immediate action.

Third, the duration of the alleged violation was about 14 days, and there was no evidence that there was intention to conceal, deceive, or mislead.

Finally, the change in semantics in the letter had no known financial impact on the city.

Therefore, based on the totality of the circumstances, the Ethics Commission dismissed the complaint and did not impose a civil fine. The Commission applauds the Official's cooperation and swift corrective action.

APPROVED:

/s/Victoria S. Marks  
VICTORIA S. MARKS, CHAIR  
Honolulu Ethics Commission

DATED: April 17, 2019

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<sup>3</sup> Revised Ordinances of Honolulu § 3-8.5(d)(2) provides, in part, "...the ethics commission shall consider the totality of the circumstances, including but not limited to: (A) The nature and seriousness of the violation; (B) The duration of the violation; (C) The effort taken by the officer or exempt employee to correct the violation; (D) The presence or absence of any intention to conceal, deceive or mislead; (E) Whether the violation was negligent or intentional; (F) Whether the officer or exempt employee demonstrated good faith by consulting the ethics commission staff or another government agency or an attorney; (G) Whether the officer or exempt employee had prior notice that his or her conduct was prohibited; (H) The amount, if any, of the financial or other loss to the city as a result of the violation; (I) The value of anything received or sought in the violation; (J) The costs incurred in enforcement, including reasonable investigative costs and attorneys' fees; (K) Whether officer or exempt employee was truthful and cooperative in the investigation; and (L) Any other relevant circumstance.