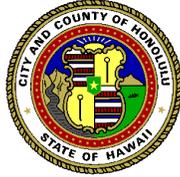


**ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU**

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**ADVISORY OPINION 2019-2**

**I. SUMMARY**

An ethics concern alleged that a non-elected city official (“Official”) misused Official’s position and a city agency’s Instagram account to post and “like” a City Council candidate’s Instagram<sup>1</sup> account in violation of the City’s Standards of Conduct, Article XI, Revised Charter of Honolulu (“RCH”).

Official admitted that Official’s actions were in error, unintentional, and immediately corrected by deleting the comment and “like.” Additionally, other city officials took corrective action by acknowledging the mistake and re-educating city employees to prevent future mistakes.

Considering the one-time conduct and mitigating factors, the Honolulu Ethics Commission (“Commission”) dismissed the ethics concerns as *de minimis*, issued a warning letter, and counseled Official. The Commission applauds the administration’s cooperation and swift corrective actions. This is the Commission’s first case regarding use of a city social media account.

**II. FACTUAL BACKGROUND**

On May 21, 2018, the Commission received a concern that Official commented favorably and “liked” Candidate’s campaign Instagram account using an official city agency’s Instagram account.

When asked about the postings, Official stated that Official mistakenly used an official city agency’s Instagram account instead of Official’s personal Instagram account. Official acknowledged the mistake and knew it was wrong.

After Official realized the mistake, Official immediately removed the posting and “like.” Several days later the mayor cautioned his cabinet members to be “extra careful” with any statements that may seem to support a candidate.

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<sup>1</sup> Instagram is a social networking application made for sharing photos and videos from a smartphone. Each Instagram account has a profile and news feed. Photos or videos posted on Instagram will be displayed on the user’s profile. Users can interact with other users on Instagram by following them, being followed by them, commenting, liking, tagging, and private messaging. See, e.g., <https://www.lifewire.com/what-is-instagram-3486316>.

The following day, the City administration issued a memorandum on “Campaign Activities” to all city employees. The memo reminded all employees of their duties and responsibilities regarding participating in political campaigns and referenced the Commission’s guidance on campaign activities.

Shortly thereafter, the administration advanced a new social media policy. As of the date of this Advisory Opinion, a draft social media policy was pending review by relevant public worker unions.

### **III. DISCUSSION**

The policy behind the City’s Standards of Conduct requires city officers and employees demonstrate by their example the highest standards of ethical conduct, so that the public may justifiably have trust and confidence in the integrity of government. RCH § 11-101.

Further, the City’s *Fair and Equal Treatment Law* 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.

RCH § 11-104.

The Commission determined that there was likely probable cause of an ethics violation because Official knew that the conduct violated the law. But, as explained below, the Commission reviewed the totality of the circumstances and also confirmed the conduct as *de minimis*, dismissed the complaint, and did not impose a civil fine on Official.

First, Official’s favorable comments on Candidate’s Instagram account using a city agency’s Instagram account makes it appear as if the City endorses Candidate. Official did not post favorable comments or “like” the campaign Instagram accounts of other City Council candidates. Thus, Official used Official’s position to give preferential treatment to Candidate.

Second, Official used Official’s city computer equipment to post comments and “like” Candidate’s campaign Instagram account. The Ethics Commission’s *Revised Guidelines on Campaign Activities* provides that City personnel are prohibited from using City paid time, equipment, facilities, and other resources for political campaign activities or purposes. *Revised Guidelines on Campaign Activities*, September 12, 2012; see also *Administrative Directives Manual Subject No. 160, “Use of City Resources” (eff. 1.29.2008)*.

When asked about the postings, Official explained that Official has difficulty toggling between Official's personal and city Instagram accounts. Official did not intend to post comments from the City account because Official knew that it was an improper use of City resources. Based on Official's explanation, this appears to have been a one-time, unintentional incident, and unlikely to occur again. Official also affirmed in an interview that Official will "never do this again."

Ethics Commission Rules of Procedure ("ECRP") Section 5.8, entitled *Probable Cause Determinations*, provides at subsection (c):

If the legal counsel determines that there is probable cause to believe that there has been a violation of the standards of conduct, but that the violation was *de minimis*, he or she may dismiss the complaint and notify the complainant in writing of the determination ....

ECRP Section 5.8(c).

Under the present circumstances and as provided by rule, the Commission dismissed the complaint as *de minimis*. Ibid.

In addition, mitigating factors make Official's actions easier to understand and excuse. Both Official and other City officials took immediate corrective action soon after they became aware of the improper Instagram posting, as shown by these after-the-fact events:

- Official admitted that the posting was in error and tried to apologize;
- City administration instructed Official to immediately remove the favorable comments and "like," which Official did;
- The mayor addressed his cabinet shortly thereafter, reminding cabinet members of prohibited campaign activities;
- The day after the mayor addressed his cabinet, City administration issued a memo reminding all city employees of prohibited campaign activities;
- City administration drafted and advanced a city social media policy; and
- City administration requested relevant public worker unions to review the social media policy.

These corrective actions both acknowledge that Official made a mistake and preempt such behavior prospectively. As provided by law, the Commission reviewed the totality of the circumstances in support of dismissing the complaint as *de minimis* and not imposing a civil fine.<sup>2</sup>

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<sup>2</sup> Revised Ordinances of Honolulu Section 3-8.5, *Violation Penalty*, paragraph (d)(2), provides a list of factors to consider in determining whether to impose a civil fine and the amount of the civil fine. Such factors include the violation's nature and seriousness; duration; effort taken by officials to correct the violation; absence of intention to conceal or mislead; whether the violation was negligent; the amount, if any, of financial loss to the city; the truthfulness and cooperation of the official during investigation; among other relevant circumstances.

**IV. CONCLUSION**

The Commission dismissed the ethics concern and did not impose a civil fine on Official. Even though Official likely gave preferential treatment to Candidate and misused city resources by commenting favorably and “liking” Candidate’s campaign Instagram account from a city agency account, the conduct was a one-time, unintended mistake and immediately corrected.

APPROVED:

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

DATED: April 17, 2019