February 21, 2012

The Honorable Ernest Y. Martin, Chairman
and Councilmembers
Honolulu City Council
530 S. King Street, Room 202
Honolulu, Hawaii 96813

Dear Chair Martin and Councilmembers:

Re: Gift of Travel to the City, Resolution Nos. 11-142, FD1 and 11-186

As you may know, the City Ethics Commission on January 25, 2012, issued Advisory Opinion No. 2011-6, in response to my inquiry in May 2011 for guidance on the application of a gift to the City for travel by my wife Judith, to accompany me on the travel. A copy of the Ethics Commission Opinion is attached. The requested Commission response was issued long after the Council acted to accept the gift of travel to Taiwan and Mainland China by adoption of Resolution No. 11-142, FD1, and long after the expenditure of the gift of travel by my wife in June 2011, which prompted my inquiry to the Ethics Commission. Pursuant to that Opinion, I am hereby requesting the Council to make a specific determination, by way of the attached proposed resolution, that my wife’s travel was for a City public purpose. In addition, I am also requesting in the attached proposed resolution that the Council determine that my wife’s travel to Japan in August 2011 was for a City public purpose, pursuant to a gift of travel to the City accepted by the Council by adoption of Resolution No. 11-186 on July 6, 2011.

Resolution No. 11-142, FD1

The Council accepted the gift of travel for five delegates to travel to Taiwan and Mainland China between June 4 to June 20, 2011, by adoption of Resolution No. 11-142, FD1 on May 11, 2011. The offer of travel specifically included an invitation for travel by myself and my wife. The Council was advised that my wife would accompany me on this trip as one of the five delegates, both at the Council meeting on May 11, 2011, and subsequently by memorandum from the Managing Director dated May 23, 2011 and marked as Mayor’s Message 80 (2011).

Resolution No. 11-186

The Council accepted the gift of travel for two delegates to travel to Nagaoka, Japan between August 1 and August 4, 2011 by adoption of Resolution No. 11-186 on July 6, 2011. The offer of travel was for myself and my wife. The Council was advised that my wife would
be traveling on this trip by my memorandum dated June 27, 2011 and marked as Mayor’s Message 102 (2011), which requested acceptance of this gift on behalf of the City.

Attached Proposed Resolution to Amend Resolutions No. 11-142, FD1 and 11-186

It is my belief that in accepting the offer of the gift of travel in both of these instances, the Council knew that the intent of the gift included my wife accompanying me on these trips, and that the Council found this an acceptable application of the gifts to the City. Each offer of the gift to the City specifically included the invitation to me and for my wife to accompany me on the travel. The Ethics Commission Opinion concludes that since the Council did not make a specific determination of the public purpose for the use of the gift to the City by my wife, that the expenditure of the City resources was improper and that I must return to the City the portion of the gift attributable to my wife’s travel, or alternatively, have the Council make the specific determination that my wife’s travel was for a City public purpose.

Accordingly, I respectfully request that the Council consider this matter and determine that my wife’s attendance with me, in accordance with the terms of these two offers of the gift of travel to the City, is travel for a City public purpose. A proposed resolution amending adopted Resolution No. 11-142, FD1 and Resolution No. 11-186, is attached to memorialize the Council determination. In the future, when an offer of a gift of travel to the City includes a spouse of a City officer or employee, it is our intention to include a specific Council finding of public purpose which would allow the expenditure of the gift for the spouse’s travel. In accordance with the Ethics Commission Opinion, I request a specific Council determination of public purpose for the acceptance of these two gifts of travel that were accepted by the Council on behalf of the City prior to the recent issuance of the Ethics Commission Opinion.

While the return to the City of the travel expenditures attributable to my wife’s travel would address the Ethics Commission Opinion, the offer of these two gifts of travel was for my wife to accompany me on the travel, and the gift was accepted by the Council on behalf of the City specifically for such travel.

I thank you in advance for your consideration of this request.

Very truly yours,

Peter B. Carlisle
Mayor

Attachments
Advisory Opinion No. 2011-6

I. Summary

Because the City Council did not make a specific determination that the travel for the Mayor’s wife was for a public purpose, the Commission reviews the matter based on the facts available to it. Based on the available facts, the Commission finds that the Mayor's wife is not a city officer or employee and her presence with the Mayor was not necessary to accomplish a city purpose. Therefore, city funds received as gifts to the city should not be used to pay for the travel expenses of the Mayor’s wife if accompanying him on foreign travel in this instance. The Commission leaves as an open question whether city funds or gifts to the city may be used to pay for the expenses of a “protocol invitee” under other circumstances or where the Council has taken legislative action specifically allowing the use of public fund to pay for expenses of a “protocol invitee”.

II. Facts

A. Resolution 11-142 to accept $16,500 as a gift to the city.

On April 29, 2011, the Mayor requested a resolution from the Council asking it to accept $16,500 as a gift to the city from the Taipei Economic and Cultural Office in Honolulu, the Chengdu and Qinhuangdao Municipal People’s Government, and the Shenzhen Delicate Furniture Company (collectively referred to herein as the “Donors”). The money was to be used for the travel expenses of five delegates including airfare, ground transportation, accommodations and meals from June 4, 2011 to June 20, 2011. The purpose of the trip was to strengthen sister city ties, to discuss ways to further cooperate in economic development, to assist companies looking for business opportunities with Honolulu, to expand tourism to Honolulu and to formalize Honolulu’s sister city relationship with Chengdu at a signing ceremony.

On May 9, 2011, OED informed the Commission staff that the five city delegates attending the China trip would be the Mayor, the Mayor's wife, two OED staff members and a councilmember. OED asked whether approximately $3300 of the $16,500 could be used to pay for Ms. Carlisle's travel expenses. Commission staff responded that the
benefit of the travel gifts would personally accrue to the Mayor and be unlawful under Section 3-8.7, Revised Ordinances of Honolulu (ROt I).

On May 11, 2011, the Council heard Resolution 11-142. OED informed the Council that Ms. Carlisle would be traveling with the Mayor and that the gift was intended to pay for her travel as well as the expenses for the other city officers and employees. The Council approved Resolution 11-142, but made no specific findings regarding the need for Ms. Carlisle’s presence on the trips or that expending the funds given to the city to pay for Ms. Carlisle’s Travel would be for a public purpose.

On that same day, the Taipei Economic and Cultural Office sent a letter to Mayor Carlisle stating that Taiwan extends an invitation to the Mayor and First Lady to lead a delegation for a visit to Taiwan. The letter states that “it is well known that the First Lady Judith is involved in many community services and cultural events. Her presence in the meetings will certainly help promote Honolulu and enrich bilateral interactions.”

On May 13, 2011, Commission staff received letters from Mr. Jeffrey Lau, President of the Chinese Chamber of Commerce of Hawaii on behalf of the Chengdu and Qinhuangdao Municipal People’s governments. Mr. Lau stated that the governments invited both the Mayor and his wife to visit their cities. He further stated that in China it is customary to see the spouse of elected officials accompany them on official business as they are seen as an extension of the elected official and their community.

B. The China trip from June 4, 2011 through June 20, 2011

Mayor and Ms. Carlisle and OED staff followed an itinerary prepared by OED staff. Out of the 16-day trip, 5 days were spent in transit, almost 3 days were used to visit rail transit officials and infrastructure, while preparation and execution of the sister city signing event took up 2 days, and the remaining 6 days appear spent in courtesy meetings with local government officials, touring cultural sites and attending hosted lunches and dinners. At some of the functions, Ms. Carlisle made brief thank you remarks and was referred to as the First Lady of Honolulu.

C. Cultural expectations that the Mayor’s wife accompany him on the trip.

Ann Chung, the director of OED, stated that in the international protocol for some Asian countries, the mayor’s wife is considered an extension of the mayor. According to Ms. Chung, the mayor’s wife is considered part of the leadership team of the city; and having her attend an economic and cultural exchange such as the creation of a sister city relationship is considered a show of interest and respect to the host government for a continuing relationship between the governments. This is considered important by OED because of the developing economic relations between Hawaii and China. Ms. Carlisle’s attendance was specifically requested by the governments of Taiwan and Mainland China. The invitation for Ms. Carlisle did not originate with the Mayor or his staff, but with the foreign governments.
Ms. Chung also stated that, had Ms. Carlisle not traveled with the Mayor, excuses would have been made by the city administration and the host government personnel would have been disappointed, but there would be no ramifications to the relations between Honolulu and the foreign governments. Honolulu does not reciprocate with gifts of travel to officials of other governments because it is not considered a priority use for the city’s public funds.

The Council has not received similar requests from governments along with travel gifts, although Councilmember Chang was invited to attend the sister city travel to China at the foreign government’s expense as the representative of the Council. He is unmarried and had no one accompany him. The Council did not express an opinion whether Ms. Carlisle’s trips would properly be funded by taxpayer funds and deferred the issue to the Mayor.1

D. The Mayor considers his wife’s travel to China a “public purpose” which could have been paid for with taxpayer dollars from his discretionary fund.

The Mayor has a discretionary account funded with about $25,000 annually. The account may be “expended by the mayor for such public purposes as the mayor may deem proper.” RCH Sec. 5-105. The fund is monitored by the Department of Budget and Fiscal Services, and the fiscal officer in charge noted that, as far as he knows, the fund has never been used for a mayor’s spouse’s travel. OED staff was asked whether the Mayor considered having his wife travel with him in a protocol position to be a public purpose for which the discretionary account could be used. The response: “For the portions of the travel not covered by these gifts, the Mayor has determined for himself that no city funds would be used for his wife. No determination was made whether the expenses of the Mayor’s wife could appropriately be paid from the Mayor’s Contingency Fund in RCH Sec. 5-105.”2

At the Commission’s request, the Mayor submitted an additional explanation:3

As is stated in Ann Chung’s email response of July 26, 2011, no determination was made of the propriety of expenditure from the Mayor’s Contingency Fund for the travel expenses of my wife not covered by the offers of travel and lodging for travel to Nagaoka, Japan and to Taiwan and Mainland China. I had already made the decision that travel expenses not covered by the offers would be paid by me, not by the City.

You have now asked me whether I consider the travel expenses of my wife to Nagaoka, Japan and to Taiwan and Mainland China to be expenses for a public purpose; yes, I do consider the travel and the expenses

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1 Email from Council Chair Ernest Y. Martin to C. Totto dated August 23, 2011.
2 Email from Ann Chung to C. Totto dated July 26, 2011.
3 Email dated August 25, 2011 from Mayor Peter Carlisle to Charles Totto, Executive Director and Legal Counsel, Honolulu Ethics Commission.
incurred to be for a public purpose as described in RCI Sec. 5-105. I understand too that Ms. Chung confirmed with you that for both offers of travel to Japan and to Taiwan and Mainland China, OED confirmed with the donors that the offer was specifically to include the First Lady of the City and we accepted the offer that included my wife as a matter of respect for the foreign donor and as a matter of international diplomacy. As a resident of Hawaii I am sure you are aware that in Japan and China the presence of the wife of a dignitary at an event is a sign of respect and honors the host. At many Chinese and Japanese functions here in Honolulu Judy’s presence is specifically requested.

I reiterate however, irrespective of whether my wife’s travel was for a public purpose and the expenses were for a public purpose, my unilateral decision was that I would pay out-of-pocket for my wife’s travel expenses not covered by the offer for travel and lodging. Some might find it difficult to believe that I would not accept money that could be paid by the City & County of Honolulu. You may not be aware that I have voluntarily taken a 15% salary reduction this year due to budget difficulties of the City caused by the current economic climate. I hope this helps prove there are times when I feel it is appropriate for me to share the City’s and taxpayers’ current financial burden.

Gifts to the city to defray travel expenses for legitimate government activities are relatively common. Only the Council may accept the gifts on behalf of the city, but the gifts may be earmarked for specific purposes. See, RCH Sec. 13-113. The Council Gift Policy is stated in Resolution 05-349, CD1, FD1. The Commission provides ethical guidance on the gifts to the city in its Guidelines on Gifts to City Agencies. Because their travel was for a city government purpose, there are no ethics issues stemming from the acceptance and use of the travel gifts to pay expenses for the Mayor, OED staff or Councilmember Chang.

III. Question Presented

Do the ethics laws prohibit the use of $3300 to pay for the travel expenses for Ms. Carlisle’s attendance on the trip to Taiwan and Mainland China?

IV. Analysis

At the outset, the Commission notes that the Council did not accept the gift for Ms. Carlisle’s travel with a specific finding that the gift would, once it was accepted as city funds, be expended for a public purpose or that Ms. Carlisle’s travel on this trip was for a public purpose. Therefore, the Commission reviews this matter based on the available facts to determine whether the use of public funds for Ms. Carlisle’s travel was proper. In order to lawfully receive and expend the $3300 for Ms. Carlisle’s travel costs, the travel gifts must be gifts to the city to be expended for a public purpose. The Commission advises that the $3300 for Ms. Carlisle’s travel was not a reasonable and
necessary expense required to support the Mayor in carrying out his official duties and, therefore, was not expended for a public purpose.

Once a gift is accepted by the Council, the gift becomes a public resource and may only be expended for government purposes. The Council’s Gift Policy reads: “Gift means any voluntary contribution of money, securities, other personal property, or of real estate or any interest in real estate to the city for a public purpose, made gratuitously and without consideration, whether earmarked for a specific purpose or not.” (Emphasis added.) In Advisory Opinion No. 2010-2, the Commission began its analysis by observing that any expenditure of public funds must be for a legitimate government purpose, citing Article IV, Section 7, Hawaii Constitution, and RCII Sec. 11-104.5

The Commission’s Guidelines on Gifts to City Agencies6 notes: “The gift [to the city] must only be for reasonable and necessary expenses and not for the sole benefit of the affected officer or employee. The gift may only be for the reasonable and necessary expenses associated with the expressed purpose of the donation. If an officer or employee benefits from a gift to the city that exceeds the reasonable and necessary expenses required to discharge his or her city duties (for example, using first class instead of coach air travel), the gift may violate the gift laws and/or may require reimbursement to the donor for the value of an excessive gift.” (Underlining added.)

Ms. Carlisle’s presence at the Asian functions had merit in it reflected a level of respect to the host governments. But, her attendance was not necessary to achieve a city duty. As she is neither a city officer nor employee she has no duties of her own to fulfill. Even if she had some sort of protocol position as the Mayor’s wife, as noted above, there would have been no consequences to the governmental relations if she had not been in the Mayor’s party. Thus, following the Guidelines on Gifts to City Agencies results in finding that the travel gifts were not expended for a reasonable and necessary city purpose.

Other municipal jurisdictions have found that the presence of a high-ranking official’s spouse as a protocol invitee is not a reasonable and necessary expense sufficient to meet the threshold of a “public purpose.”

The City of New York Conflicts of Interest Board (Board) found that the Brooklyn Borough President (President) could not accept the gift of free travel for his wife from foreign governments because she was not an employee of New York City (NYC). Under NYC law, gifts of travel may be accepted by city officials as long as the

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1 Resolution 05-349, CD1, FD1, Exhibit A, p.1
2 Section 11-104. Fair and Equal Treatment --
3 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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5 Resolution 05-349, CD1, FD1, Exhibit A, p.1
6 Section 11-104, Fair and Equal Treatment --
7 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.
funds are expended for government purposes. (The NYC law has the same result as the Council Gift Policy, whereby gifts to perform city business may be accepted by the Council.) The travel gift for the President was lawful because it was considered part of his job to improve social and economic relations with the governments of Turkey and the Netherlands, the donors. However, as the President’s wife was not a city employee, a travel gift could not be used to pay her way. The Board held that “paying for the company of one’s spouse on a business trip abroad is plainly not an expense that can be paid for with the City funds.” Final Findings of Fact, Conclusions of Law and Order, COIB Case No. 09-0181, July 21, 2011 at 3.

The President offered several theories to justify that his wife’s travel supported his government business abroad. He noted that: he and his wife were guests of foreign mayors and other officials for several meals; the President’s wife was requested to be part of the delegation by the foreign governments; the travel was for the purpose of developing a sister city relationship and to strengthen socio-economic ties; they listened to speeches, received proclamations, visited hospitals, urban renewal zones and religious and cultural centers; the President was not a good traveler and never went anywhere without his wife and, so, needed her on the trips to enable him to perform his official duties; and his wife was known as the “First Lady of Brooklyn.” The Board rejected these arguments, found that the wife’s attendance was not required to conduct NYC business and that the travel gift personally benefited the President. Id. at 3.

Similarly, a Texas Attorney General Opinion (Letter Opinion No. IO-90-31) concluded that the government could not pay for the expenses of spouses of city councilmembers and other city employees to attend government related conventions. The attorney general noted that the spouses were not government employees and had no official responsibilities or duties to perform. Therefore, using government funds for the spouses’ expenses would be unlawful.

The Commission recognizes that protocol invitees are permitted under federal law as an exception to the federal standards of conduct found in Title 5 of the Code of Federal Regulations Part 2635. Congress provides a legislative exception under 31 U.S.C. Sec. 1353(b) for acceptance of gifts from foreign governments. Title 5 of the United States Code section 7342(c)(1)(B)(ii) permits an employee and an employee’s spouse to “accept gifts of travel or expenses for travel taking place entirely outside the United States (such as transportation, food and lodging) of more than minimal value if such acceptance is appropriate, consistent with the interests of the United States ...” Unlike the federal law, there is no city law that would provide a similar exception to the city’s ethics laws for a city official’s spouse to accept a gift for travel from a foreign government.

V. Conclusions and recommendations

We acknowledge that the Council Gift Policy has not previously been interpreted in circumstances similar to those presented here. Furthermore, it is reasonable for a city official to think that the Council Gift Policy might permit gifts to the city for the use by the mayor’s spouse if that use is related to some city event. OED asked for an opinion
from the Commission staff before expending the money and staff advised that the travel
gifts would be considered unlawful gifts to the Mayor.

In our opinion, if the Mayor retains the $3,300 travel benefit, it would result in an
unlawful use of city funds under RCII Sec. 11-04. We recommend that the Mayor
reimburse the city for the actual expense of his wife’s travel or alternatively have the
City Council make a specific determination that all or a portion of the funds for Ms.
Carlisle travel was for a public purpose.

The Commission makes its determination based on the facts presented in this case
and upon interpretation of the current law. Under other circumstances, there may be a
reason to depart from our opinion today or to create an exception to the gift law for
“protocol invitees.” Also, the Council may take legislative action in this area by passing
an ordinance permitting such a use of city funds or by specifically identifying and
justifying the use of city funds in a gift resolution.

Finally, we commend the Mayor for bringing the issue to our attention, as prior
administrations had not consulted the Commission on this issue. Asking for advice, as
the Mayor did, before taking action allows all issues to be fairly reviewed and responded
to, while supporting the efficient administration of government and avoiding the loss of
public trust resulting from ethical misconduct.

APPROVED AS TO FORM
AND LEGALITY:

CHARLES W. TOTTO
Executive Director and Legal Counsel

CHARLES W. GALL, ESQ., Chair
Honolulu Ethics Commission

Dated: 4/17/17
RESOLUTION

TO AMEND RESOLUTION NO. 11-142 FD1, RELATING TO THE ACCEPTANCE OF A GIFT TO THE CITY FROM THE TAIPEI ECONOMIC AND CULTURAL OFFICE IN HONOLULU, CHINA PEOPLE’S MUNICIPAL GOVERNMENTS AND SHENZHEN DELICATE FURNITURE CO., LTD. OF TRAVEL TO TAIWAN AND MAINLAND CHINA, AND TO AMEND RESOLUTION NO. 11-186, RELATING TO THE ACCEPTANCE OF A GIFT TO THE CITY FROM NAGAOKA CITY OF TRAVEL TO NAGAOKA, JAPAN

WHEREAS, Section 13-113 of the Revised Charter of the City and County of Honolulu provides for the acceptance of gifts to the City by the Council of the City and County of Honolulu; and

WHEREAS, Resolution 05-349, CD1, FD1, establishes a policy of the Council for the solicitation and acceptance of gifts donated to city executive agencies, and

WHEREAS, through a letter dated April 29, 2011, marked as Mayor’s Message 65 (2011), the Mayor submitted a request to the Council for acceptance of a gift from the Taipei Economic and Cultural Office in Honolulu, China People’s Municipal Governments, and Shenzhen Delicate Furniture Co., Ltd. of travel to Taiwan and Mainland China, with airfare, ground transportation, accommodations, and meals, from June 4, 2011 to June 20, 2011; and

WHEREAS, at the Council meeting on May 11, 2011, the Council was informed of the five individuals identified as the five delegates who would be utilizing the gift of travel to Taiwan and Mainland China and which five delegates included the Mayor and Mayor’s wife, Judith Carlisle; and

WHEREAS, the Council on behalf of the City accepted the gift of travel to Taiwan and Mainland China by adoption of Resolution No. 11-142, FD1, on May 11, 2011; and

WHEREAS, in response to the request by the Council to the Administration submitted at the Council meeting on May 11, 2011, that in the future the Council be apprised of the individuals who have been identified to travel on offers of gift of travel to the City, the Managing Director issued a letter dated May 23, 2011, marked as Mayor’s Message 80 (2011), identifying among other individuals and other gifts of travel, that the Mayor and the Mayor’s wife Judith Carlisle had been identified as two of the five individuals to travel on behalf of the City under Resolution No. 11-142, FD1; and

WHEREAS, through letter dated June 27, 2011 and marked as Mayor’s Message 102 (2011), the Mayor submitted a request to Council for acceptance of a gift from Nagaoka City, Japan of travel for the Mayor and his wife to Nagaoka, Japan, with
RESOLUTION

airfare, ground transportation, accommodations, and meals, from August 1, 2011 to August 4, 2011; and

WHEREAS, the Council on behalf of the City accepted the gift of travel to Nagaoka, Japan by adoption of Resolution No. 11-186, on July 6, 2011; and

WHEREAS, in response to the May 2011 inquiry by the Mayor to the City Ethics Commission relating to the offer of a proposed gift of travel to Taiwan and the Mainland China, the Ethics Commission issued Advisory Opinion No. 2011-6 on January 25, 2012, concluding that it was improper for the Mayor's wife who is not a City officer or employee, to expend City funds received as a gift to the City in the absence of a specific determination by the Council that the travel of the Mayor's wife was for a public purpose; now therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu that Resolution No. 11-142, FD1 that accepted the gift of travel estimated at $16,500.00 from the Taipei Economic and Cultural Office in Honolulu and China Municipal Governments, be amended to specifically include the Council's determination of a City public purpose for the application of the gift of travel by the Mayor's wife, Judith Carlisle, to accompany the Mayor as one of the five delegates to travel to Taiwan and Mainland China between June 4, 2011 and June 20, 2011, and that Resolution No. 11-186 that accepted the gift of travel estimated at $4,622.40 from Nagaoka City, Japan, be similarly amended to specifically include the Council's determination of a City public purpose for the application of the gift of travel by the Mayor's wife, Judith Carlisle to accompany the Mayor as one of the two delegates to travel to Nagaoka, Japan between August 1, 2011 and August 4, 2011, and that both determinations are based upon the following additional considerations:

(1) The offers of the gift of travel specifically identified travel by the Mayor and the Mayor's wife;

(2) Among the purpose of the travel was for the City to strengthen sister-city relationships, for cooperative economic development, and to assist with identifying economic opportunities in the City; and

(3) Recognized international protocol for some Asian countries is for the wife of the head of the government to accompany the head of the government in travel for economic and cultural exchange; and
RESOLUTION

BE IT FINALLY RESOLVED that the Clerk is directed to transmit a certified copy of this Resolution to the Mayor.

INTRODUCED BY:

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Councilmembers

DATE OF INTRODUCTION:

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Honolulu, Hawaii