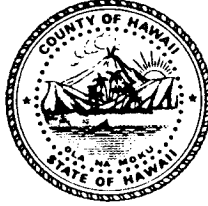


Harry Kim
Mayor



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Lincoln S.T. Ashida
Corporation Counsel

Gerald Takase
Assistant Corporation Counsel

County of Hawaii

OFFICE OF THE CORPORATION COUNSEL

101 Aupuni Street, Suite 325 • Hilo, Hawaii 96720-4262 • (808) 961-8251 • FAX (808) 961-8622

MEMORANDUM

TO: Mayor Harry Kim

FROM: Gerald Takase, Assistant Corporation Counsel *g*

DATE: April 5, 2001

SUBJECT: Delegation of Authority

You have asked whether the Mayor can delegate his authority to sign documents on behalf of the County of Hawai'i to the Managing Director. Our short answer is that the Mayor does have the power to delegate that authority.

We look to the Charter to provide the relevant guiding authority. Section 5-1.3, Hawai'i County Charter, Powers, Duties and Functions (of the Mayor), states (in part):

"The mayor shall have the power to:

- (g) Sign instruments requiring execution by the county, except as otherwise provided by this charter or by ordinance."

Therefore, the primary responsibility for the execution of County instruments rests with the Mayor.

Section 5-1.5, Hawai'i County Charter, Temporary Absence or Disability (of the Mayor), states (in part):

"During the temporary absence or disability of the mayor, the managing director shall act as mayor."

Thus, if the Mayor is disabled, the Managing Director shall act as Mayor.

Memo to Mayor Harry Kim
Page -2-
April 5, 2001

With respect to the instant case, it is our understanding that if the Mayor is not disabled, but would like to be relieved of some of the routine signing responsibilities and transfer those duties to the Managing Director, this duty can be delegated pursuant to Section 6-1.3, Hawai'i County Charter, Powers, Duties and Functions (of the Managing Director), which states (in part):

“The managing director shall:

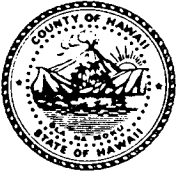
(h) Perform all other duties as required by this charter or assigned by the mayor.”
(Emphasis added.)

It is our opinion that the Mayor can assign his duty to sign instruments requiring execution by the County, by the exception as otherwise provided by the Charter contained in Section 5-1.3(g).

In terms of style, we would recommend that the Managing Director sign her name “for” the Mayor, to denote that she was assigned to execute these documents, rather than as “Acting Mayor,” which would seem to denote periods when the Mayor was not present due to absence or disability.

Thus, a letter assigning the Managing Director with the authority to execute instruments on behalf of the County of Hawai'i, even when the Mayor is not absent or disabled, should satisfy the Charter provisions with regard to signing County instruments.

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Office of the Corporation Counsel

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Larry S. Tanimoto
Mayor

Richard I. Miyamoto
Corporation Counsel

Steven Christensen
Assistant Corporation Counsel

July 17, 1990

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MEMO TO: Managing Director

FROM : Frederick Giannini, Deputy Corporation Counsel

SUBJECT: "Acting Mayor" Terminology

This is in response to your memorandum of June 25, 1990, in which you asked about the use of the term "Acting Mayor." You have stated that the Mayor's Office of the County of Hawaii has used this title for the Managing Director serving as Mayor during the Mayor's temporary absence or disability, pursuant to §5-1.6 of the county charter.

The Hawaii County Charter does not use the term "Acting Mayor." Section 5-1.6 states, however:

During the temporary absence or disability of the mayor, the managing director shall act as mayor.
[Emphasis supplied.]

"Acting Mayor" connotes someone doing the duty of another position while that position is vacant. Capibianco v. Civil Service Commission, 60 N.J. Super. 307, 158 A.2d 834 (1960); Pellechia v. Mattia, 121 N.J.L. 21, 1 A.2d 28 (1938). The term "Acting Mayor" is often used to denote one who fills the position which is vacant due to death or resignation, pending the election or selection of a successor. Mayer v. D'Ortona, 408 Pa. 518, 184 A.2d 582 (1962); Culbertsen v. Moore, 196 S.W.2d 308, 302 Ky. 768 (1946).

Because the term "Acting Mayor" is used for situations when the office is vacant, and not to situations where the Mayor is temporarily absent or disabled, to avoid confusion, this office recommends that regardless of where the Mayor is during his temporary absence or disability, (1) the Managing Director should sign her name "for" the Mayor on documents that requires

Memo to Managing Director
Page 2
July 17, 1990

execution or approval by the Mayor; and (2) for such documents that are initiated by the Managing Director in her temporary role as the Mayor, the Managing Director should sign her name over the words "Acting as Mayor."

Please contact this office if there are any questions.

FG:jk/de

APPROVED:

RICHARD I. MIYAMOTO
Corporation Counsel