

STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION
235 SOUTH BERETANIA STREET, ROOM 300
HONOLULU, HAWAII 96813

February 6, 2008

TO: The Honorable Brian Taniguchi
The Honorable Clayton Hee
Members of the Senate Committee on Judiciary and Labor

FROM: Barbara U. Wong, Executive Director
Campaign Spending Commission

SUBJECT: Testimony on S.B. No. 2777, Relating to Campaign Spending

Wednesday, February 6, 2008
9:00 a.m. in Conference Room 016

Chair Taniguchi, Vice-Chair Hee, and Members of the Senate Committee on Judiciary and Labor, thank you for the opportunity to testify on this bill.

The Campaign Spending Commission is not opposed, but recommends changes.

Campaign funds may be used for purposes specified in the law. Hawaii Revised Statutes §§11-200(b)(3)¹ and 11-206(c)(3)² provide that funds may be used for “ordinary and necessary expenses.”

The Commission’s rules, which were last amended in 2002, provides as follows:

“Ordinary and necessary expenses incurred in connection with the candidate’s duties as a holder of an elected state or county office shall include usual and reasonable expenses, and bear a direct relation to the office; and such expenses shall be absolutely necessary for carrying out the duties of the office. Such expenses may include office equipment or supplies, but not travel or related expenses, food or other professional or personal services.” Hawaii Administrative Rules section 2-14.1-16 (f).

This bill proposes to amend the law to allow funds to be used for “ordinary and customary expenses.” This change would take effect upon approval.

While we are not opposed to clarifying the law, we are opposed to the use of the term “ordinary and customary expenses,” because it appears, on the surface, to be much

¹ Provides guidelines for the use of funds before an election.

² Provides guidelines for the use of “surplus funds” after an election.

broader than the current standard (“ordinary and necessary expenses”) and difficult to enforce. We also note that the term “ordinary and necessary” is used in the Federal campaign law and tax law and guidance may be gleaned from those laws.

We recommend that the Committee consider amending sections 2 and 3 of the bill by adding language from the Commission’s rules relating to expenses “that are usual, bear a direct relation to the office and are reasonable” and repealing “the term “ordinary and necessary.”

SECTION 2. Section 11-200, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Any provision of law to the contrary notwithstanding, a candidate, campaign treasurer, or candidate's committee, as a contribution:

(1) May purchase from its campaign fund not more than two tickets for each event held by another candidate, committee, or party whether or not the event constitutes a fundraiser as defined in section 11-203;

(2) May use campaign funds for any [~~ordinary and necessary~~] expenses that are usual, bear a direct relation to the office, and are reasonable that are incurred in connection with the candidate's duties as a holder of an elected state or county office, as the term is used in section 11-206(c); and

(3) May make contributions from its campaign fund to any community service, educational, youth, recreational, charitable, scientific, or literary organization; provided that in any election cycle, the total amount of all contributions from campaign funds and surplus funds shall be no more than the maximum amount that one person or other entity may contribute to that candidate pursuant to section 11-204(a); provided further that no contributions from campaign funds shall be made from the date the candidate files nomination papers to the date of the general election."

Current language in S.B. 2777:

SECTION 2. Section 11-200, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Any provision of law to the contrary notwithstanding, a candidate, campaign treasurer, or candidate's committee, as a contribution:

(1) May purchase from its campaign fund not more than two tickets for each event held by another candidate, committee, or party whether or not the event constitutes a fundraiser as defined in section 11-203;

(2) May use campaign funds for any ordinary and [~~necessary~~] customary expenses incurred in connection with the candidate's duties as a holder of an elected state or county office, as the term is used in section 11-206(c); and

(3) May make contributions from its campaign fund to any community service, educational, youth, recreational, charitable, scientific, or literary organization; provided that in any election cycle, the total amount of all contributions from campaign funds and surplus funds shall be no more than the maximum amount that one person or other entity

may contribute to that candidate pursuant to section 11-204(a); provided further that no contributions from campaign funds shall be made from the date the candidate files nomination papers to the date of the general election."

SECTION 3. Section 11-206, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Surplus funds may be used after a general or special election for:

- (1) Any fundraising activity;
- (2) Any other politically related activity sponsored by the candidate;
- (3) Any [~~ordinary and necessary~~] expenses that are usual, bear a direct relation to the office, and are reasonable that are incurred in connection with the candidate's duties as a holder of an elected state or county office; or
- (4) Any contribution to any community service, educational, youth, recreational, charitable, scientific, or literary organization; provided that in any election cycle, the total amount of all contributions from campaign funds and surplus funds shall be no more than the maximum amount that one person or other entity may contribute to that candidate pursuant to section 11-204(a); provided further that no contributions from campaign funds shall be made from the date the candidate files nomination papers to the date of the general election."

Current language in S.B. 2777

SECTION 3. Section 11-206, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Surplus funds may be used after a general or special election for:

- (1) Any fundraising activity;
- (2) Any other politically related activity sponsored by the candidate;
- (3) Any ordinary and [~~necessary~~] customary expenses incurred in connection with the candidate's duties as a holder of an elected state or county office; or
- (4) Any contribution to any community service, educational, youth, recreational, charitable, scientific, or literary organization; provided that in any election cycle, the total amount of all contributions from campaign funds and surplus funds shall be no more than the maximum amount that one person or other entity may contribute to that candidate pursuant to section 11-204(a); provided further that no contributions from campaign funds shall be made from the date the candidate files nomination papers to the date of the general election."

The Twenty-Fourth Legislature
Regular Session of 2008

LATE

THE SENATE

Committee on Judiciary and Labor
Senator Brian T. Taniguchi, Chair
Senator Clayton Hee, Vice Chair

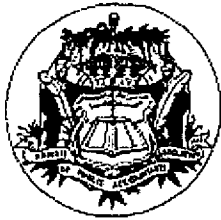
State Capitol, Conference Room 016
Wednesday, February 6, 2008; 9:00 a.m.

**STATEMENT OF THE ILWU LOCAL 142 ON S.B. 2777
RELATING TO CAMPAIGN SPENDING**

The ILWU Local 142 supports S.B. 2777, which clarifies that "ordinary and customary" expenditures are allowable under campaign spending law.

As stated in the current law, use of campaign contributions may only be used for "ordinary and necessary" expenses. The definition of "necessary" can be subject to interpretation and may be needlessly restrictive. The term "customary" can be validated by the practices of current and past candidates. We believe S.B. 2777 offers a more common-sense approach to campaign spending, while upholding the ethical standards that the public expects in regard to campaign contributions.

The ILWU urges passage of S.B. 2777. Thank you for the opportunity to share our comments on this measure.



HAWAII ASSOCIATION OF PUBLIC ACCOUNTANTS

Organized August 7, 1943
P.O. BOX 61043
HONOLULU, HAWAII 96839



LATE

Before the Committee on Judiciary and Labor

Wednesday, February 6, 2008 at 9:00 a.m.
Conference Room 016

Re: **Support of SB2777, with amendment** Relating to Campaign Spending

Testimony of Marilyn M. Niwao, J.D., CPA

Chair Taniguchi, Vice-chair Hee, and committee members:

I am a CPA and attorney in the State of Hawaii, and I am a state director and legislative co-chairperson for the Hawaii Association of Public Accountants. HAPA is the only statewide accounting organization representing local public accounting practitioners (i.e., primarily CPAs and PAs who practice public accounting), with neighbor island chapters in addition to its Oahu Chapter.

SB2777 amends HRS §11-200 (b) and HRS §11-206 (c) by eliminating the "ordinary and necessary" language that may be used to determine the type of expenses that may be made by a candidate, campaign treasurer, or candidate's committee for expenses incurred in connection with the candidate's duties as a holder of an elected state or county office.

The term "ordinary and necessary" is a term that is used in Internal Revenue Code section 162 to define allowable trade or business expenses, and the terminology is used, for example, to identify expenditures which would fall within the "exempt function" of a political organization.

Amounts expended by a political organization for an exempt function aren't income to the individual on whose behalf the expenditure is made. However, if a political organization expends any other amount for the personal use of an individual, that amount is treated as income to the individual. See Internal Revenue Code Reg § 1.527-5(a)(1).

Therefore, this committee may want to retain the "ordinary and necessary" language in order to be consistent with Internal Revenue Code definitions, but an amendment should be made to clarify what "ordinary and necessary" expenses means.

Testimony of Marilyn M. Niwao, J.D., CPA
for the Hawaii Association of Public Accountants
In support of SB2777, with amendment
Page 2

With case law guidance on the definition of "ordinary and necessary", (see, for example, Welch, Thomas v. Helvering, (1933, S Ct) 12 AFTR 1456 , 290 US 111 , 78 L Ed 212 , 3 USTC ¶1164 and Blackmer, Sidney v. Com., (1934, CA2) 13 AFTR 957 , 70 F2d 255 , 4 USTC ¶1264 ; Warwick, Pierre v. U.S., (1964, DC VA) 14 AFTR 2d 5817 , 236 F Supp 761 , 64-2 USTC ¶9864),

we suggest that the "ordinary and necessary" definition be retained, with the following clarification:

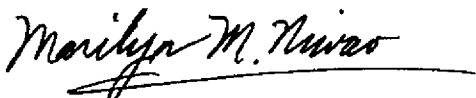
Amendment to be incorporated, as appropriate:

"For the purposes of HRS §11-200 (b), the definition of "ordinary" shall be "customary or usual", and the definition of "necessary" shall be "appropriate and helpful, as determined by the candidate or candidate committee."

"For the purposes of HRS §11-206 (c), the definition of "ordinary" shall be "customary or usual", and the definition of "necessary" shall be "appropriate and helpful, as determined by the candidate or candidate committee."

Thank you for this opportunity to testify. If you have any questions, please do not hesitate to contact me at (808) 242-4600, ext. 224.

Respectfully submitted,



Marilyn M. Niwao, J.D., CPA (a.k.a. Marilyn Niwao Roberts)
HAPA State Director and Legislative Committee Co-chairperson