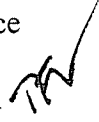


**DEPARTMENT OF THE CORPORATION COUNSEL**  
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TELEPHONE: (808) 270-7740  
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March 18, 2003

MEMO TO: Keith A. Regan, Director  
Department of Finance

FROM: Traci Fujita Villarosa   
Deputy Corporation Counsel

RE: Mileage Policy for Council Members

You have asked this office to advise you on whether a council member may claim mileage reimbursement for mileage that the council member's assistant incurs while driving the council member to and from the County building and the council member's residence.

Initially, this office notes that it has previously advised both Council and Council Services on the issue of the mileage policy for council members. In a response dated February 3, 1993, this office advised Council Chair Goro Hokama that it would be proper to establish a policy in which council members could be reimbursed for mileage for travel to official activities in an amount equal to the lesser of the distance between the council member's home and the activity or the County building and the activity so long as Chapters 2.52 and 2.76, Maui County Code ("MCC"), are satisfied. See Exhibit "1." Chapter 2.52, MCC, pertains to the use of private vehicles for County business and Chapter 2.76, MCC, pertains to the reimbursement of expenses.

As applied to council members, Chapter 2.52, MCC, requires: 1) Prior approval by the Council Chair of any use of private vehicles for county business; 2) Coverage of the vehicle under the County's fleet insurance policy; 3) Submission of monthly claims for mileage reimbursement; and 4) Approval of mileage reimbursement claims by the Council Chair.<sup>1</sup>

Chapter 2.76, MCC, sets forth the provisions to permit payment out of county funds to elected and appointed officers and employees of the County when such individuals incur necessary expenses in the performance of their public duties. For council members, this chapter requires certification by the Council Chair that the expenses were incurred by the claimant: 1) In the performance of the claimant's public duty; 2) Under circumstances where no other provision for

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<sup>1</sup> MCC Sections 2.52.010, 2.52.020, 2.52.030, and 2.52.040.

MEMO TO: Keith A. Regan, Director  
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payment or payment by the County has been made; 3) Primarily for the benefit of the County or one of its agencies; and 4) To allow the claimant to carry out the claimant's public duty or responsibility in an efficient manner.<sup>2</sup> This chapter also allows the Council Chair to disallow a portion of the claim if deemed by the Chair to be excessive.<sup>3</sup> The chapter also requires the claimant to submit proper documentation of the expense to the Council Chair.<sup>4</sup>

The second opinion by this office on the council member mileage policy was drafted in response to a request made by Ken Fukuoka and is dated March 27, 1996. See Exhibit "2." This opinion expanded the mileage policy by permitting council members to claim mileage reimbursement for use of their privately-owned vehicles to drive to and from their homes to the County building. This conclusion was based upon Chapter 2.52, MCC, which permits the Council Chair to approve use of private vehicles in the performance of an officer's duties, § 3-1 of the Maui County Charter ("Charter") which requires council members to reside in specific residency areas, and § 3-5-2 of the Charter which requires council members to meet at least twice in every month.

Returning now to the original question posed, Chapters 2.52 and 2.76, MCC, authorize only persons actually incurring the expense to receive mileage reimbursement from the County. Therefore, based on the set of facts as set forth above, the council member would not be entitled to receive mileage reimbursement because the council member did not incur the expense of commuting to and from the County building.<sup>5</sup> Instead, the council member's assistant used the assistant's own vehicle to drive the council member to and from the County building.

However, the council member's assistant may be able to claim mileage reimbursement since the assistant, and not the council member, incurred the expense of driving the council member to and from the County building. Of course, the council member's assistant must still comply with Chapters 2.52 and 2.76, MCC, in order to receive any mileage reimbursement. This would include obtaining the Council Chair's prior approval of the assistant's use of a private vehicle for authorized County business, the assistant's vehicle being covered under the County's fleet insurance policy, the Council Chair's approval of the assistant's documented monthly claims, and the Council Chair's certification that the mileage costs were incurred in the performance of the assistant's public duty,

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<sup>2</sup> MCC Section 2.76.020.

<sup>3</sup> MCC Section 2.76.040.

<sup>4</sup> MCC Section 2.76.050.

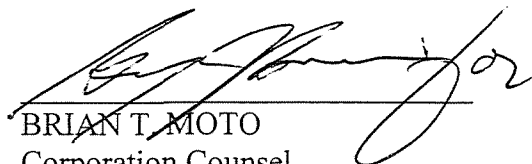
<sup>5</sup> Furthermore, the same analysis applies to Chapter 2.48, MCC. This chapter allows for the reimbursement of ground transportation costs to County officers and employees who travel on official business. However, as previously noted, the Council member did not incur any ground transportation costs and thus cannot claim ground transportation reimbursement pursuant to Chapter 2.48, MCC.

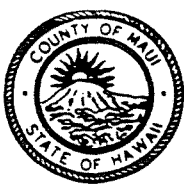
MEMO TO: Keith A. Regan, Director  
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under circumstances where no other provision for payment or payment by the County has been made, primarily for the benefit of the County or one of its agencies, and to allow the assistant to carry out the assistant's public duty or responsibility in an efficient manner.

If you should have any further questions, please do not hesitate to contact me.

Approved for Transmittal:

  
BRIAN T. MOTO  
Corporation Counsel



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February 3, 1993

MEMO TO: Honorable Goro Hokama, Council Chair

F R O M: Guy A. Haywood, Corporation Counsel

SUBJECT: MILEAGE POLICY FOR COUNCIL MEMBERS

This memorandum is in response to your January 26, 1993 request on the above-mentioned subject.

You asked about the legality of your setting a policy for the Council that allows mileage reimbursement for travel to official activities in an amount equal to the lesser of the distance between the councilmember's home and the activity or the County building and the activity. We believe setting such a policy is proper so long as the provisions of Maui County Code, Chapters 2.76 and 2.52 are otherwise satisfied.

The Maui County Code allows reimbursement of expenses upon certification by the Chairman that the expenses were incurred in the performance of public duty, when no other provision for payment was made, when the act was primarily for the benefit of the County or its agencies and when the expenses were incurred to allow the claimant to carry public duties or responsibilities in an efficient manner. (See generally MCC 2.76.020.)

If a claim for reimbursement involves the use of a privately owned vehicle prior approval by Council Chair is required. These claims must be itemized and submitted monthly. (See MCC, Chapter 2.52.)

These two provisions of the Code clearly allow the chairperson the power to review and approve these expenses. The proposed policy appears to be reasonable in that it accommodates a situation where the councilmember lives close to the activity.

It is difficult to address every instance where reimbursable mileage or other expenses may be incurred. Our office recommends that the above policy be considered a guideline. Should there be additional questions on expenses by members, they could raise those questions individually. Although trips originating from the County

EXHIBIT " 1 "



Honorable Goro Hokama, Council Chair  
February 3, 1993  
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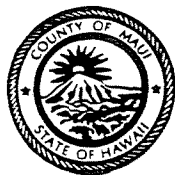
building more likely to be reimbursable than trips originating from other areas, just because a trip originated elsewhere does not mean it is nonreimbursable.

You also commented about reimbursement for use of private vehicles on Molokai and Lanai. Councilmembers on Molokai and Lanai might be able to receive mileage reimbursement for use of their own vehicles on their respective islands under certain circumstances. First, they must have received permission to use their private vehicles. Second, the expenses must otherwise qualify.

If you have any additional questions or comments, please contact me.

GAH:lc  
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LINDA CROCKETT LINGLE  
MAYOR



J. P. SCHMIDT  
CORPORATION COUNSEL

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March 27, 1996

MEMO TO: Ken Fukuoka, Director of Council Services

F R O M: J. P. Schmidt, Corporation Counsel *JPS*

SUBJECT: MILEAGE REIMBURSEMENT FOR COUNCIL MEMBERS

This is in response to a request for advice on the legal ramifications of granting prior approval to Council members for use of their privately owned vehicles for legislative purposes, including driving from their homes to the County Building. I do not intend to give any advice on tax consequences of such actions. This memo simply addresses considerations under the Maui County Code and Maui County Charter.

The Maui County Code in Chapter 2.52 provides the council chair may approve use of private vehicles in performance of an official's duties. (MCC § 2.52.010). Council members are required to reside in specific residency areas. (Charter of County of Maui § 3-1). Council members are also required to meet at least twice in every month. (Charter of County of Maui § 3-5-2). Council members also are required to go on site visits and meet in various places throughout the County. Traveling from the required site of residence to the County Building and travel to site visits or official meetings in other parts of the County is clearly a part of the performance of council members duties.

When individual members travel to a meeting of citizens or to do his or her own investigation. This may also be considered traveling in performance of ones duties. However, when a council member travels on their own, the Chair may want more specific justification before approving reimbursement.

The County is currently self-insured. To comply with MCC §2.52.020, each council member should provide a copy of their valid driver's license and current auto insurance coverage card to the Department of Finance. Every six months the insurance renewal should be updated. If there is in fact an accident while on official business, the County will cover the council member under almost all circumstances.

EXHIBIT " 2 "

Ken Fukuoka  
March 27, 1996  
Page 2

Itemized claims for reimbursement should be submitted monthly. The County will pay based on a rate equal to the average mileage rate granted under collective bargaining agreements.

If you have any further questions, please do not hesitate to contact me.

JPS:ko  
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