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**From:** Kawauchi, Diane T  
**Sent:** Friday, April 08, 2011 4:44 PM  
**To:** Garcia, Nestor; Harimoto, Breene; Anderson, Ikaika; Cachola, Romy; Chang, Stanley; Gabbard Tamayo, Tulsii; Kobayashi, Ann; Martin, Ernie; Berg, Tom  
**Cc:** Okinaga, Carrie K S  
**Subject:** FW: Transit Authority Powers

CONFIDENTIAL ATTORNEY CLIENT COMMUNICATION  
DO NOT FORWARD

Dear Chair and Councilmembers,  
My response to the email of Mr. Charles Djou is provided to you below. It is inappropriate for me to engage in a substantive discussion on legal issues with a member of the public. These matters were discussed with some of you at the executive session of the Budget Committee meeting on March 17, 2011. For those Councilmembers who were not in attendance at the executive session or for those who wish further discussion on this matter, please do not hesitate to contact me.

Thank you.

Diane Kawauchi  
Deputy Corporation Counsel  
Phone 768-

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**From:** Kawauchi, Diane T  
**Sent:** Friday, April 08, 2011 4:38 PM  
**To:** 'Charles Djou'  
**Cc:** Okinaga, Carrie K S  
**Subject:** RE: Transit Authority Powers

Dear Mr. Djou,  
I hope you have been well and it is pleasant to hear from you, although the subject matter that prompts your communication is not one that I am at liberty to discuss publicly with you. I have not publicly opined on this issue and any discussion that I may have had with my client would be confidential communication, the significance of which you as an attorney can fully appreciate. In addition, since you are strongly encouraging my client to initiate litigation against the City it would be most inappropriate to comment further on the matter.

Thank you and take care.

Diane Kawauchi  
Deputy Corporation Counsel  
Phone 768-

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**From:** Charles Djou [mailto:[charles.djou@hawaii.gov](mailto:charles.djou@hawaii.gov)]  
**Sent:** Thursday, March 31, 2011 7:42 AM  
**To:** Kawauchi, Diane T  
**Cc:** Berg, Tom; Anderson, Ikaika; Kobayashi, Ann; Cachola, Romy; Harimoto, Breene; Martin, Ernie; ttamayo@honolulu.gov; Chang, Steven; sendelacruz@capitol.hawaii.gov  
**Subject:** Transit Authority Powers

Ms. Kawauchi, it has come to my attention that COR may take a position that the Honolulu City Council lacks the power to alter budgets submitted by the Transit Authority under RCH § 17-106. This is incorrect.

As you may know, I introduced Reso. 09-252 that created the Transit Authority and I Chaired the Executive Matters and Legal Affairs Committee that passed this measure out for approval by the voters. Then-Councilmember Donovan Dela Cruz introduced the key CD amendments to the bill. It was both mine and Sen. Dela Cruz's clear intent that the Honolulu City Council would retain the power to approve or amend the

ts by the Transit Authority.

specifically worked to include the language that "[t]he council shall, with or without amendments, approve the authority's appropriation requests." See RCH § 17-106. The plain language of the phrase "shall" was intended to prevent the City Council from playing 'games' and refusing to approve any budget prepared by the Transit Authority.

The plain language of the phrase "with or without amendment," however, is intended to give the City Council the complete discretion to alter all or part of the Transit Authority's spending as it so pleases.

As you may recall, I was (and still am) concerned about the Honolulu Board of Water Supply (BWS). BWS has become a rouge agency that spends public resources without any accountability. I was very concerned that the Transit Authority would become another BWS. Alternatively, the Council recognized that the Transit Authority needed more power than the weak Honolulu Transportation Commission.

Consequently, the EMLA committee approved the Transit Authority bill in its present form, creating an agency with slightly more power than the Transportation Commission, but significantly less power than BWS. The Transit Authority measure passed the City Council **ONLY** because it contained language giving the Honolulu City Council the power to alter part, or all, of the budget as it deemed appropriate. It is important to note that then-Mayor Mufi Hannemann attempted to pass a similar Transit Authority bill in 2008, but failed in part because the City Council was not given the final say on the authority's budget. It is also important to note that I carefully crafted the language for budgeting powers of the Transit Authority differently from BWS. I specifically sought to prevent COR from ever interpreting the Transit Authority as having the same budget powers as BWS. The council wanted to make it clear that the Transit Authority is subject to City Council review and amendment.

It is also important to note that I deliberately crafted what is now RCH § 17-103(2)(g) to grant the Transit Authority the power to only "prepare" a budget. The word "establish" was favored by some, but I intentionally used, and the City Council approved, the word "prepare" to clarify that the Transit Authority's prepares, but the Honolulu City Council retains final approval authority over all Transit Authority budgets. Compare RCH § 17-103(2)(e) (experiencing the 2003 strike by TheBus where the City Council was forced to raise bus fares, it was the consensus that the Transit Authority should be given the power to "establish" such fares, but no such powers to establish a budget were similarly accorded to the Transit Authority.)

The Transit Authority bill would never have passed EMLA in 2009, and I would have done everything I could have to block even a vote as EMLA Chair, if the bill lacked language giving the Honolulu City Council the final say on the Transit Authority's budget. (Similarly, the bill that passed out of my committee specifically contained limiting language on condemnation powers given to the Transit Authority. Unlike BWS, the City Council may reject any condemnation action taken by the Transit Authority.)

My understanding of the Transit Authority's budget power was clearly conveyed and understood by all key DTS personnel - specifically, Mr. Toru Hamayasu and Mr. Wayne Yoshioka.

The Transit Authority bill was only intended to give the agency autonomy from the executive branch of government. Under both the plain language and council intent, the Transit Authority must still subject its budgets to Honolulu City Council for amendment and approval. The Transit Authority lacks the power to spend any resources without specific approval by the City Council.

I respectfully encourage COR to write an opinion that properly reflects the intent of the Honolulu City Council as reflected in this email. In the alternative, I strongly encourage the Honolulu City Council to bring

aratory action against COR to clarify the Transit Authority's powers are subservient to the Honolulu Council and I would be happy to testify in any litigation in conformity with this email. I have not spoken to Sen. Dela Cruz, but I believe his understanding of the Transit Authority's powers is similar to mine and would also so testify.

Mahalo and please do not hesitate to contact me if you have any questions.

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Charles K. Djou  
Member of Congress (2010-11)  
Hawaii, 1st District  
C: (808) .  
Email: