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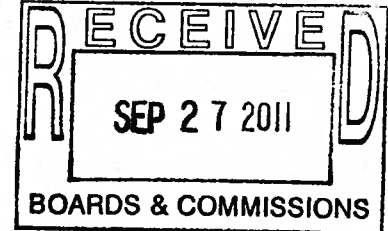


4396 RICE STREET, SUITE 209
LIHU'E, KAUA'I, HAWAII 96766
E-mail: cokcouncil@kauai.gov

September 27, 2011

OFFICE OF THE COUNTY CLERK
Council Services Division
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Telephone: (808) 241-4188
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The Honorable Paul Weil, Chair
& Members of the County of Kaua'i Board of Ethics
c/o Office of Boards & Commissions
4444 Rice Street, Suite 150
Lihu'e, HI 96766

Dear Chair Weil and members of the County of Kaua'i Board of Ethics:

SUBJECT: REQUEST FOR BOARD OF ETHICS ADVISORY OPINION

During the Kauai County Council's ("Council's") deliberations¹ on the County of Kaua'i Salary Commission's ("Salary Commission's") Resolution No. 2011-1, questions have been raised in testimony about whether conflicts of interest exist with the role of the Boards & Commissions Administrator ("Administrator") and the Kaua'i County Charter ("Charter") duties and responsibilities of the Salary Commission.

In the case of Salary Commission Resolution No. 2011-1 ("Resolution No. 2011-1"), the public record of the Salary Commission's consideration and adoption of Resolution No. 2011-1 indicates that the Administrator was asked to submit a proposed draft of Resolution No. 2011-1 at the request of the Salary Commission Chair before the July 26, 2011, Salary Commission meeting. Resolution No. 2011-1 was subsequently adopted at the Salary Commission's August 5, 2011, meeting. It was also noted in testimony that the Salary Commission had not met since November 2010.

At this same July 26, 2011, meeting a request by Mayor Bernard P. Carvalho, Jr., dated July 15, 2011, to defer his salary increase scheduled to have taken effect on July 1, 2011 (as previously authorized by Salary Commission Resolution No. 2010-1) was on the Salary Commission's agenda for discussion. Also on the Salary Commission's July 26, 2011, agenda was Ordinance No. 907 (listed as Bill No. 2395, Draft 1, A Bill for an Ordinance to Amend Chapter 3, of the Kaua'i County Code 1987, as Amended, Relating to the Salaries of County Officers and Employees), which had incorporated the Administrator's position under the Salary Commission's salary-setting authority.

¹ **Kaua'i County Charter; Section 29.03. Resolution.** The commission's salary findings shall be adopted by resolution of the commission and forwarded to the mayor and the council on or before March 15. Subject to Section 29.05, the resolution shall take effect without the mayor's and council's concurrence sixty days after its adoption unless rejected by a vote of not less than five members of the council. The council may reject either the entire resolution or any portion of it. The respective appointing authority may set the salary of an appointee at a figure lower than the figure established by ordinance for the position.

Testimony submitted to the Council during its discussions on Resolution No. 2011-1 raised concerns on whether the actions taken by the Salary Commission might involve various conflicts of interest.

First, rather than independently establishing the basis of its salary-setting decisions in public meetings, the Salary Commission appears to be functioning as an "arm" of the Mayor's Administration. Since the Salary Commission's authority includes elected and appointed officers within the Administration, the question raised is whether having the Administrator submit a draft of Resolution No. 2011-1 to the Salary Commission with information and guidance reflecting the Administration's salary-setting objectives (including the Mayor's July 15, 2011, request to defer his July 1, 2011, salary increase) with no prior guidance from the Salary Commission would involve a conflict of interest.

Second, the appearance of a conflict of interest in the relationship between the Office of Boards & Commissions and the Salary Commission is further exacerbated by the fact that Salary Commission Resolution No. 2011-1 (drafted by the Administrator at the request of the Salary Commission Chair) also incorporated a salary schedule for the Administrator.

Pursuant to Section 20.05 D.(2) of the Kaua'i County Charter², I would request that the County of Kaua'i Board of Ethics render an advisory opinion on whether any of the actions taken by the Salary Commission in adopting Resolution No. 2011-1 contain conflicts of interest between the Administration and Salary Commission.

Please feel free to contact me if you may have any questions, or if you may require further information. Thank you for your timely consideration of this request.

Sincerely,



Mel Rapozo
Councilmember

copy: Councilmembers
Office of Boards & Commissions
Mayor Bernard P. Carvalho, Jr.
Alfred B. Castillo, Jr., County Attorney

² **Kaua'i County Charter; Section 20.05 D.** It shall be the function of the board:

(2) To render advisory opinions or interpretations with respect to application of the code on request. All requests for advisory opinions shall be answered within forty five (45) days of its filing and failure to submit an advisory opinion within said forty five (45) days shall be deemed a finding of no breach of the code. Opinions rendered or deemed rendered shall be binding on the board in any subsequent charges concerning the officer or employee of the county until said opinion is amended or revoked by the board.