

LAW OFFICES OF RICHARD E. WILSON, LLC

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850 Richards St., Ste. 600  
Honolulu, Hawaii 96813  
Telephone: (808) 545-1311  
Facsimile: (808) 545-1388  
Email: rewilson\_law@yahoo.com

February 1, 2014

Former<sup>1</sup> Mayor Bernard Carvalho  
County of Kauai  
4444 Rice Street, Ste. 235  
Lihue, Hawaii 96766

Re: *Haw.Rev.Stat. §78-9*

Dear Former Mayor Carvalho:

I correspond on behalf of my client, Michael G. Sheehan, a landowner and resident of Kauai. Mr. Sheehan is very concerned about your actions and asked me to pen this letter.

It is Mr. Sheehan's understanding that in your capacity as Mayor of Kauai, you refused, following lawful notice, to answer questions asked of you regarding the "property and/or affairs" of the County of Kauai on the ground that your answer would tend to incriminate you.<sup>2</sup> More specifically, you refused on the advice of counsel<sup>3</sup> to answer questions in connection with an investigation undertaken by the County Auditor regarding the Fuel Audit ("gas card scandal"). Pursuant to Haw.Rev.Stat. §78-9, you are no longer the Mayor of Kauai.

Haw.Rev.Stat. §78-9 states as follows:

**If any person subject to sections 78-8 to 78-11, after lawful notice or process, wilfully refuses or fails to appear before any court or judge, any legislative committee, or any officer, board, or commission, or having appeared refuses to testify or to answer any question regarding (1) the government, property or affairs of the State or of any political subdivision thereof, or (2) the person's qualifications for public office or employment, or (3) the qualifications of any officer or employee of the State or any political subdivision thereof, on the ground that the person's answer would tend to incriminate the person, or refuses to testify or to answer any such question without right, the person's term or tenure of office or employment shall terminate and the office or**

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<sup>1</sup> While you have yet to formally resign, by operation of law **you are no longer the Mayor of Kauai**.

<sup>2</sup> See, Taylor and Mickens January 13, 2014 letter submitted as testimony for the executive session regarding the Ernie Pasion matter.

<sup>3</sup> At the time you were being represented by County Attorney Al Castillo.

**employment shall be vacant**, and the person shall not be eligible to election or appointment to any office or employment under the State or any political subdivision thereof. To the extent that the State is without authority to require, under the constitution or laws of the United States, compliance by any public officer or public employee herewith, sections 78-8 to 78-11 shall not apply to the officer or employee, but the sections shall apply to the extent that they or any part thereof can lawfully be made applicable.

As Mayor at the time, you were a person subject to sections 78-8 to 78-11. *See*, §78-8(**The persons subject to sections 78-8 to 78-11 are those elected to** or appointed or employed in **the government of** the State or **any county**, or in any political subdivision thereof, or appointed to or employed in any office or employment any part of the compensation of which is paid out of public funds.)(emphasis added).

The procedure for your removal is as follows:

If any person subject to sections 78-8 to 78-11 refuses to appear or refuses to testify under any of the circumstances contemplated in section 78-9, **the presiding judge or officer of the court or body before which the default or refusal occurs shall certify the fact thereof to the appointing or employing authority having cognizance of the person as a public officer or public employee and to the comptroller or other disbursing officer who issues warrants or checks to pay the person for the person's services as a public officer or public employee. If the default or refusal occurs before any court or body whose presiding judge or officer may not be required by the legislature to make and file such a certificate,**<sup>4</sup> then (1) the presiding judge or officer may make and file the certificate,<sup>4</sup> and (2) **the attorney general of the State, upon learning of the default or refusal, shall make and file the certificate if the presiding judge or officer of the court or body has not filed the same.** Upon receiving a certificate, (A) the appointing or employing authority shall remove or discharge the person from office or employment, and (B) the comptroller or other disbursing officer shall make no further payments of public funds to the person, except to pay the person the salary, wages, bonus, or other compensation to which the person otherwise would

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<sup>4</sup> Assuming that the officer is unable or unwilling to make and file a certificate, we will obtain a transcript of the proceeding and forward it to the Attorney General for disposition.

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be entitled if the person were voluntarily terminating the person's office or employment on the day the order is served on the comptroller or other disbursing officer.<sup>5</sup>

Section 78-10.

Your tenure as Mayor has ended.

Mr. Sheehan's sole question is how do you intend to proceed? You can acknowledge that you are no longer the Mayor of Kauai pursuant to §78-9, and so advise the Council. That would be Mr. Sheehan's preferred avenue. At least you would be able to control the news release and leave 4444 Rice Street on your own terms. The alternative is for Mr. Sheehan to obtain the relevant transcript, provide it to the Attorney General and then demand your removal in compliance with §78-10. If you choose the latter, you will have no control over the situation and it will be a media circus. Mr. Sheehan would, of course, advise the media that you refused to voluntarily leave which required him to seek your removal. The choice is yours.

If we do not hear from you by the close of business, February 5, 2014, we will proceed accordingly, and without further notice to you.

Very truly yours,

Richard E. Wilson  
REW/asa  
cc: Michael G. Sheehan

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<sup>5</sup> You will then be entitled to your final paycheck.