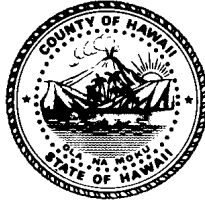


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January 19, 2006

TO: Charlotte Masaki
Civil Service Department

FROM: Michael J. Udovic
Deputy Corporation Counsel

RE: Oath of Loyalty Form
Our File No.: WRK 05-11362

This is in response to your work request regarding the Oath of Loyalty.

The Hawai'i State Constitution as well as the Charter for the County of Hawai'i require that:

All eligible public officers, before entering upon the duties of their respective offices, shall take and subscribe to the following oath or affirmation: "I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States, and the Constitution of the State of Hawai'i, and that I will faithfully discharge my duties as . . . to best of my ability."

The State statutes proscribe that the oath of office be taken by public officers, including State or County employees who possess police powers.

The County Charter provides in Section 13-5:

Oaths of Office. Before entering upon the duties of their office, each officer elected or appointed shall subscribe to the oath or affirmation before some person duly qualified to administer oaths: "I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States of America, and the Constitution of the State of Hawai'i, and that I will faithfully discharge my duties as _____ to the best of my ability."

Additionally, the County Charter defines officers in Section 13-1(d) as follows:

Hawai'i County is an Equal Opportunity Provider and Employer

“Officer” includes the following:

- (1) Mayor and members of the council.
- (2) Any person elected or appointed as administrative head of any agency of the County or appointed as a member or any board or commission provided for in this charter.
- (3) Any person appointed by a board or commission as the administrative head of any agency of the county.
- (4) Deputy, assistant or division chief appointed by the administrative head of any agency of the county.
- (5) Assistant or deputies of the corporation counsel and prosecuting attorney.

Those persons who should execute oaths of office before entering upon the duties of their office shall subscribe to the oath of affirmation before some person duly qualified to administer oaths. This would include those persons described in the State Constitution as well as those persons described in the County Charter.

Since the oath that is found in the County Charter is virtually the same as the oath prescribed in the State Constitution, it would be acceptable to utilize the oath found in the County Charter. The oath should be executed by those persons named as officers in the County Charter as well as those persons exercising police power who are required to execute an oath of office by the State Constitution. I would use one oath which can be modified by the individual department when the respective person executes the oath.

There does not appear to be any requirement that the Department of Civil Service maintain the oaths or copies of the oaths or sign off on the oaths. This should be the responsibility of the department whose employees are required to execute the oath before entering upon their respective assignments. The responsible department should keep a copy of the oath which is sworn to by the employee. It may, however, be wise to keep a file of the oaths that are used by the various departments for their employees. I would recommend that the Police use only one oath.

I checked with my colleagues regarding those employees in their respective departments who exercise “police power.” The listing is the same as that you supplied to me. I updated the research regarding the definition of police power, and it has not changed since the last opinion was rendered. If you have any additional questions please contact me at my office.

MJU:mc

s:\work 2006\january\wrk 05-11362\ltr to civil svc re oath of loyalty