

# HAWAI'I COUNTY BOARD OF ETHICS

## MINUTES – REGULAR SESSION

January 11, 2006 – 10:00 a.m.  
County Council Room  
25 Aupuni Street, Room 201  
Hilo, Hawai'i 96720

**Present:** Reeve Williams, Chair  
Karl Kawahara, Vice Chair  
Kerry Inouye, Member  
Wayne Joseph, Member  
Ann Lum, Member  
Patricia K. O'Toole, Deputy Corporation Counsel  
Mary Crosson, Secretary

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### 1. CALL TO ORDER

The Chair called the meeting to order at 10:00 a.m.

### 2. STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS

There were no members of the public present.

### 3. APPROVAL OF MINUTES.

December 14, 2005, Regular Session: New Board member Ann Lum confirmed that she, too, had been provided with and had read the minutes of December 14, 2005, but didn't know if she should vote because she wasn't present at that meeting. Ms. O'Toole said she has the right to vote, but that since the other four members were present, she didn't need to. Mr. Joseph moved to accept and file the minutes; the motion was seconded by Mr. Inouye; and all members but Ms. Lum, who abstained, voted aye to accept and file the minutes.

December 14, 2005, Executive Session: Mr. Joseph moved to accept and file the minutes; Mr. Inouye seconded the motion; and all members but Ms. Lum, who abstained, voted aye to accept and file the executive session minutes.

*Mr. Kawahara brought up the Police Department's Annual Report for Fiscal Year 2003-2004, which he had borrowed at the prior meeting and was now returning to the secretary. He indicated he felt this report is a waste of money, although he understands it is required by the Charter. He felt it should be incorporated into the annual County report. Mr. Joseph said the issue could be reviewed by the Cost of Government Commission.*

#### 4. NEW BUSINESS

- a. *Review of Disclosure of Financial Interest of Robert Pleau, Assistant Building Inspector.* The Chair noted that the Board had not accepted Mr. Pleau's disclosure at the last meeting because it wanted to know the source of his 2004 income, in case there was a conflict with his current job as an Assistant Building Inspector. The Board's secretary had confirmed with Mr. Pleau that his 2004 income was from his prior job in California. Mr. Joseph moved to accept and file the disclosure; Mr. Inouye seconded the motion; and all members voted aye on accepting and filing the disclosure.
- b. *Review of James Arakaki's Amended Gift Disclosure Statement:* Mr. Joseph wanted to know if the parties whose Legal Defense Fund contributions had been returned had also contributed to Mr. Arakaki's campaign fund. He was concerned that if they contributed the returned funds to the campaign fund, they may have exceeded the amount legal to contribute to the campaign fund.

Ms. O'Toole said that the campaign fund records are open for inspection, but that the amount contributed would be an issue for the Campaign Spending Commission.

The Chair noted that since Mr. Arakaki's legal defense fund issue had already been brought before the Campaign Spending Commission, the issue of what happens to the former legal defense fund monies should have been coordinated with them. He asked if there was a motion to accept and file the gift disclosure. Mr. Joseph so moved; Mr. Inouye seconded the motion; and all members voted aye to accept and file the gift disclosure.

- c. *Discussion on proposed amendment to the County Code regarding financial interest disclosures:* The Chair welcomed Lincoln Ashida, who informed the Board that he was not there to advise them on this issue, but to express his concerns regarding potential board and commission members and their requirement to complete financial disclosures. He said the Office of the Corporation Counsel volunteered to help with recruiting people to serve on boards and commissions, and that the financial disclosure requirement was a sticking point for many applicants, especially for business people needing to disclose their private interests. It is not that they have something to hide, but that it is very easy to inadvertently neglect to disclose something and then later something comes up and they get accused of hiding something, when there was no intention to hide anything. He said there was a time in the past when financial disclosures were not required of board and commission members, but now the Code requires them.

Mr. Ashida said the issue generated by David Frankel really brings up even more information for applicants to disclose and questioned whether we need to go there. As the law is right now, board and commission members do not have to report the financial interests of their spouse and children. The ambiguity lies in Section 2-91.1 of the Code, where the information to be disclosed is limited to the person

disclosing. He noted that the Board had requested that Ms. O'Toole draft an ordinance to amend the financial disclosure form so that it required information on the financial interests of spouse and children. Mr. Ashida said he is okay with elected and appointed officials having to provide the additional information, but he has reservations as to whether volunteer citizens should have to disclose even more information than they already do. He said the form as it is currently already asks an applicant if there is any potential conflict of interest, and he feels that is a sufficient background check.

The Chair questioned whether the Code could be changed so as to particularize the financial interest disclosure for elected officials and appointees.

Mr. Joseph questioned how the State government handles this issue, as he wants the County to be in line with the State.

Ms. O'Toole said she will research how the State handles it.

Mr. Joseph moved to defer this issue for further research by Ms. O'Toole; Mr. Inouye seconded the motion; and all members voted aye on the deferral.

- d. *Discussion on proposed amendment to the Code regarding the registration of lobbyists:* Ms. Lum said she tried to figure out why attorneys are exempted from registering. She wanted to know if there was anything positive in exempting them. Ms. O'Toole said she could only guess at the reason and said the Board might want to get feedback from the bar association on the issue.

The Chair asked if the Board wanted to pursue this. Mr. Inouye said the Board should move forward as is, and Mr. Joseph agreed. Mr. Inouye moved to accept the proposed ordinance and to move forward in changing the lobbying section of the Code. Ms. Lum seconded the motion, and all members voted aye. Ms. O'Toole was requested to follow up on having the proposed ordinance presented.

## 5. UNFINISHED BUSINESS

- a. Petition No. 2005-05: *Review draft of Informal Advisory Opinion on Mr. Frankel's petition regarding Mr. Arakaki's receipt of gifts to his legal defense fund:* Chair Williams recused himself, and Vice Chair Kawahara assumed the role of Chair. He asked if the Board had any comments on the proposed draft.

Mr. Joseph questioned the conclusion section, concerned that if the monies have been turned into political campaign contributions, there may now be a violation of the legal amount to contribute.

The members discussed changing the wording of the conclusion and decided to cross out the words "complying with" and replacing them with "as defined under." Ms. Lum moved to so amend the conclusion, Mr. Inouye seconded the motion, and all members voted aye on the amendment, with recused Chair Williams abstaining.

Therefore, that sentence in the conclusion paragraph was amended to read: “The funds received by the Respondent are political campaign contributions as defined under State law and therefore are not considered as gifts which are to be reported to the Board of Ethics in a gift disclosure form.” Chair Kawahara initialed the change and signed the opinion. He asked if there was a motion to adopt the amended Informal Advisory Opinion. Mr. Joseph so moved; Mr. Inouye seconded the motion; and all members voted aye on adopting the opinion, with recused Chair Williams abstaining.

- b. Petition No. 2005-06: Review of Declaratory Ruling Regarding Information Required in Financial Disclosure Forms: Mr. Williams resumed as Chair. Ms. O’Toole informed the Board that she did not think it appropriate, and would prefer to delete, on page 2, the paragraph beginning, “The Board discussed.” She does not feel the Board should put its “intent” concerning possible future action in its opinions and rulings.

Mr. Joseph questioned whether this issue should be deferred, since Ms. O’Toole was to research the State’s procedure on financial disclosures for its board and commission members. Ms. O’Toole said the Board’s opinion needs to reflect what the actual law was at the time the petition was made. As the law existed at that time, people were complying.

The Chair said he had requested the additional wording on the Board’s intent because he wanted Mr. Frankel to know the Board would be pursuing the issue. He said he would be willing to write a personal letter to Mr. Frankel, informing him that the County is in compliance but that the Board would pursue the issue. He stated that the Board should follow its counsel’s advice.

Ms. Lum moved to adopt the Ruling with the following changes: deleting the paragraph beginning “The Board discussed,” since it was about intent, and adding the word “currently” to the last sentence of the Ruling, so that it reads: “The Board concludes that in the absence of specific language in the Hawai’i County Code requiring disclosure of the financial interests of a spouse, it is not currently required.” Mr. Inouye seconded the motion, and all members voted aye on adopting the Ruling with the above changes.

- c. Petition No. 2005-07: Review of Informal Advisory Opinion re lobbyists: Ms. O’Toole pointed out the same issue that was discussed on the 2005-06 ruling—that the Board’s intent had been added to the opinion, which she felt was inappropriate. The Chair and Ms. Lum stated they agreed with her. Mr. Joseph disagreed and expressed that as a community member and a lay person, he prefers to have the Board’s intent stated, as that lets the petitioner and others know how the Board feels on an issue. He stated he preferred to keep the intent wording in the opinion. Ms. O’Toole said she didn’t want to add in the Board’s opinion actions taken subsequent to closing the hearing, such as recommending a code amendment which would delete the exemption for attorneys registering as lobbyists.

The Chair stated the Board should follow the advice of counsel and said he would send a second letter to Mr. Frankel, as well as to Sidney Fuke, regarding the Board's intent to pursue the issue of not exempting attorneys from registering as lobbyists.

Mr. Kawahara moved to adopt the opinion upon deletion of the "intent" language. Ms. Lum seconded the motion, and the Chair, Mr. Inouye, Mr. Kawahara, and Ms. Lum voted aye. Mr. Joseph opposed the motion.

## **6. EXECUTIVE SESSION**

- a. *Review of Disclosure of Financial Interest filed pursuant to §2-91.1(d), Hawai'i County Code, wherein personal matters will be reviewed, and who requested review in executive session, of Kenneth Kaneshiro, a member of the Public Access, Open Space, and Natural Resources Preservation Commission.*

Mr. Inouye moved to enter Executive Session; Mr. Joseph seconded the motion; and all members voted aye to enter Executive Session.

*Moved into Executive Session at 11:15 a.m.*

*Resumed to Regular Session at 11:17 a.m.*

Mr. Kawahara moved to accept and file the Disclosure of Financial Interest of Kenneth Kaneshiro. Mr. Inouye seconded the motion, and all members voted aye.

## **7. ANNOUNCEMENT**

The Chair announced that the next regular monthly meeting of the Board is scheduled for February 8, 2006, at 10:00 a.m., at the County Council Room.

## **8. ADJOURNMENT**

Mr. Joseph moved to adjourn the meeting, Mr. Inouye seconded the motion, and all members voted aye on adjournment. The meeting adjourned at 11:18 a.m.

Respectfully submitted:

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Mary E. Crosson, Secretary