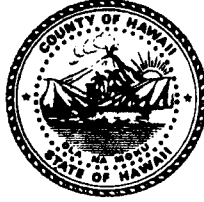


Harry Kim
Mayor



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PRIVILEGED AND CONFIDENTIAL COMMUNICATION
ATTORNEY-CLIENT COMMUNICATION
NOT A PUBLIC RECORD

March 3, 2006

TO: Michael R. Ben
Deputy Director of Personnel

FROM: Michael J. Udovic 
Deputy Corporation Counsel

RE: Opinion Re: Oath of Office
Our File: WRK 06-11716

I reviewed the legislative history of the amendment to Article XVI, Section 4, of the Hawai'i State Constitution, as well as the relevant code sections, and conducted research into the question posed by your inquiry.

Our office is of the opinion that the 1992 amendment to the Constitution of the State of Hawai'i does not preclude the County of Hawai'i from requiring loyalty oaths from officers, either elected or appointed, prior to entering upon the duties of their position with the County of Hawai'i.

The legislative history of this amendment shows that testimony in support of the amendment was motivated by a professor who was recruited for a position with the University of Hawai'i who declined the appointment because of the requirement that he sign the loyalty oath. He was quoted at the time as saying that, "loyalty is like love: It can be given but it cannot be demanded . . . loyalty oaths are meaningless because disloyal people will sign them anyway." The Committee report goes on to reason that the wholesale application of the requirement as one more piece of paper to be signed, as part of the pre-employment paperwork, is neither necessary nor desirable. The presumption of loyalty is enough. Therefore, the Constitution was changed to require loyalty oaths from a minimum number of people.

Even though this language may be persuasive as it relates to the fundamental philosophy of a loyalty oath, the amendment to the Constitution does not prohibit a County from requiring a loyalty oath from its officers as it deems appropriate. This Constitutional amendment sets the minimum standard under which there can be no dispute. Those persons named in Article XVI,

Mr. Michael R. Ben
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Section 4, are those persons who are required to take an oath. This section does not dictate that they are the only persons who, under the provisions of County legislation, may be required to take the oath.

If you have any questions regarding this opinion, please contact me.

MJU:mc

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