

March 4, 1999

OPINION NO. 99-1

Honorable Bobby Jean Leithead-Todd
Hawaii County Council
25 Aupuni Street
Hilo, Hawaii 96720

RE: **RATIFICATION OF A VOIDABLE ORDINANCE**

Dear Ms. Leithead-Todd:

This is in response to your request of February 24, 1999, asking for further explanation of the term “ratification”, as it is applied to the affirmation of an ordinance that was adopted pursuant to a defective procedure.

I. Background

On December 18, 1998, a Circuit Court ruled that Bill 250 of 1995, a substantive revision of the Zoning Code had been adopted in violation of Chapter 92, Hawaii Revised Statutes. Since HRS §92-11 provides that final actions taken in violation of Sections 92-3 and 92-7 shall be “voidable”, the Court directed that Draft 4 of the Bill be referred back to the County Council for “ratification”, in that the violation occurred when that Draft was inadequately agendaized for first reading before the Council.

II Discussion

“Ratification” is defined as the “...confirmation of a previous act done either by the party himself or by another; as, confirmation of a voidable act.” *Black’s Law Dictionary, 5th Edition, 1979, at p. 1135.*

Ratification is a concept taken from the law of agency which allows for the after the fact conferral of authority where the agent had no authority. *Lewis v. Vogelstein* 699 A2d 327 (Del 1997).

An essential requirement of ratification is the need to affirm the prior transaction in its entirety. One may not ratify one part and reject another, accepting the benefits of one part and rejecting the obligations of another. *Restatement of Agency 2d* (1982), §96. *Reuschlein and Gregory; Agency and Partnership, West* (1979); *King v. White*, 962 P 2d 475 (Kan 1998), *Pioneer Concrete Pumping Service, Inc. v. T & B Scottsdale Contractors, Inc.* 462 SE 627 (Ga App. 1995); *Daugherty v. McDonald*, 407 SW 2d. 954 (Tex. Civ. App. 1966).

Thus, when property owners had ordered changes to a plumbing contract, no ratification could occur. *Miles v. Plumbing Services of Houston*, 668 SW 2d. 509 (Tex App. 1984).

Another significant characteristic of ratification, one that distinguishes it from related concepts such as “affirmation” or “adoption”, is retroactivity. When an act is ratified, it operates as if the transaction were complete at the time and place of the first event, and in that way it is unique. *Restatement supra* §82 Comment (c). *Garrison v. Daytonian Hotel* 663 NE 2d. 1316 (Ohio App. 1995); *East Central Oklahoma Electrical Cooperative v. Oklahoma Gas and Electric*, 505 P 2d. 1324 (Okla 1973); *Brewer v. First National Bank of Danville*, 120 SE 2d. 273 (Va 1961).

Although the concept of ratification is most commonly applied in the area of contract, it is also applicable to the actions of legislative bodies. *McQuillin, Municipal Corporations 3rd Ed.*, §16.93, 29.104. Governing bodies are entitled to ratify that which they could have legally authorized, and such ratification after the fact is as valid as any other authority. *Stirman v. City of Tyler*, 443 SW 2d; 354 (Tex. Civ. App. 1969); *Citizen’s National Bank’s Trustees v. Town of Loyall*, 88 SW 2d. 952 (Ky 1935). Thus, in *Valley Realty and Development, Inv. Town of Hartford*, 685 A 2d. 292 (VT 1996), the town board illegally voted to purchase land in a closed session, but because they subsequently voted in public session, the Court held that they had “ratified” their improper action. See also *Bale v. City of Auburn* 941 P2d 671 (Wn 1997) (re-enactment of ordinance later invalidated for improper publication).

When such a defect occurs, the ordinary way to correct the defect is by commencing proceedings at the point where the defect occurred. *McQuillin supra at §16.93, Pohorny v. City of Schuyler, 275 NW 2d 281 (Neb 1979).*

III **Summary**

To summarize, ratification is the affirmance of a prior act, which gives that act the same effect as if originally authorized, *Restatement supra, §82*; it is retroactive to the time of the first action; and it is, in the words of one court, an “all or nothing” proposition. *Friddle v. Epstein, 21 Cal Rptr. 2d. 85 (Cal App. 1993).*

Sincerely,

RICHARD D. WURDEMAN
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RDW:bre3

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Sincerely,

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