

HAWAI‘I COUNTY BOARD OF ETHICS

MINUTES – REGULAR SESSION

Wednesday, September 12, 2006 – 10:00 a.m.

County Council Room
25 Aupuni Street, Room 201
Hilo, Hawai‘i 96720

Present: Wayne Joseph, Vice Chair
Kerry Inouye, Member
Ann Lum, Member

Absent: Reeve Williams, Chair
Kendall Sharpless, Member

Also present: Bobby Jean Leithead-Todd, Deputy Corporation Counsel
Karen Delimont, Secretary

~ ~ ~ ~ ~

1. CALL TO ORDER

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

2. STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS

Mr. Norman Olesen identified himself to the Board and made the following statements. He is the Petitioner in regards to this particular claim before the Board of Ethics. He thanked the Board Members for coming to a conclusion after what he felt was an extremely thorough job of Corporation Counsel’s review of the law. He had intended to let the matter drop, but the matter was carried one step further by Mr. Safarik in the press. He did not care for how it was carried by the press. He felt that the statements to the press were slanderous and Mr. Safarik had shown no remorse for what he had done. Mr. Olesen now intends to carry it one step further and submit it to the government facilities that review the campaign spending requirements, which make this a misdemeanor. He had originally felt that it was ridiculous to carry it any further, but he feels that Mr. Safarik did not feel he had done anything wrong, otherwise he would have taken two actions. The first action would have been to thank Constance Kiriu, County Clerk, for stopping the mailings, thereby preventing more expense. The second was that Mr. Safarik owed an apology to the campaign people in his district because he exceeded the law. Instead, Mr. Safarik decided to take an attack posture. Again Mr. Olesen thanks the Board, and then brings to the Board’s attention the fact that the State Ethics

Commission has a completely different set of rules that were passed into law recently. He would recommend that the Ethics Board would entertain the possibility of adopting the same kind of authorization that was passed in June 20, 2006 which establishes administrative fines on top of restitution. Mr. Olesen claims that this has to stop. Being “unfamiliar with the law” is not an excuse and “inadvertent” is not an excuse. An elected official has to be aware of everything that he is doing all the time. Again he thanks the Ethics Commission for doing an excellent and fair job of handling the meeting at the time it was brought up. Subsequent to that, he states, the Board had no control over.

Chair thanks Mr. Olesen and asks if there are any questions from the Board. There are no further questions.

Mr. Olesen asks when it becomes official and is told by the Chair that it will be voted on and signed, and a copy will be forwarded to him.

3. APPROVAL OF MINUTES

July 12, 2006 Regular Session: Ms. Lum moved to accept and file the minutes; Mr. Inouye seconded the motion; all members voted aye, motion carried.

August 9, 2006 Regular Session: Ms. Lum moved to accept and file the minutes; Mr. Inouye seconded the motion; all members voted aye, motion carried.

August 9, 2006 Executive Session: Mr. Inouye moved to accept and file the minutes; Ms. Lum seconded the motion; all members voted aye, motion carried.

August 30, 2006 Special Meeting: Ms. Lum suggested the following corrections be made to the minutes; Page 1, the word “adieu” be changed to “ado”; Page 13 the words “sensually” be changed to “essentially”; Page 14, the words “selling point” be changed to “salient point”; Page 18 the words “sole searched” be changed to “soul searched”; and Page 23 the words “to wick” be changed to “to wit.”

Motion and Vote: Mr. Inouye moved to accept and file the minutes with the corrections; Ms. Lum seconded the motion; all members voted aye, motion carried

4. COMMUNICATIONS

Communication No. 2006-88: Letter dated July 23, 2006 from Peter Hain, Re: Breach of Ethics by Stacy Higa.

Mr. Inouye asked if Mr. Hain had filed a petition in regards to this matter. Ms. Leithead-Todd responded that we have not received a petition from Mr. Hain. The Chair then indicated that they could only vote to accept and file the communication.

Motion and Vote: Mr. Inouye moved to accept and file, Ms. Lum seconded the motion.

Discussion: Ms. Lum indicated that until the Board has received an actual Petition there will be no beginning action.

All members voted aye to accept and file the communication.

Communication No. 2006-87: The High Road No. 2006-2, dated July 2006.

Motion and Vote: Ms. Lum moved to accept and file the communication, Mr. Inouye seconded the motion and all members voted aye.

5. UNFINISHED BUSINESS

Petition No. 2006-02 and 2006-03: Review of Informal Advisory Opinion re: Gary Safarik, Councilmember for District 5, regarding a violation of Section 2-83(b)(3) of the Hawai'i County Code.

Ms. Leithead-Todd indicated to the Chair that they can decide to accept the opinion as it is, and move to approve it, or if there are specific findings of fact the Board feels is not stated, or if it does not accurately reflect the evidence produced during the hearing, the Board can vote to strike or amend the proposed findings. Because there are only three members of the Board present, it would require a unanimous vote to bring any action. In addition to the Findings, the Board can decide if the Conclusion of Law, as drafted, accurately reflects the motion of the Board.

Something not discussed is what happens once the Informal Advisory Opinion (IAO) is adopted. In the Proposed Findings, Page 9, item numbers 30, 31, and 32 are taken from the Rules of Practice and Procedure of the Board of Ethics. Usually complaints are filed after an elected official has left office and taken employment. The complaints are about whether they have violated the rules on post-employment. Other complaints are generally against employees. Those past IAO's were sent to the appointing authority for follow up. In this case, because it is an elected official, the rules state that the IAO will be forwarded to the Council. The Council reports back if they do anything with it. Normally an IAO states an action such as quitting a job or the issue of an apology letter. It is sent to the appointing authority who reports back by sending a copy of the apology letter. If it was a post-employment issue, they would send verification that employment had been terminated or that the steps required had been taken. In this case, because there had already been restitution paid, it is an unusual situation. The IAO is not requesting any further action and that was the motion of the Board. The rules still require that the IAO be sent to the County Council for their files, for notice, and serves the purpose of notifying other Councils that they may want to look at their own internal rules. In the Findings it is stated that, based on the testimony of Mr. Safarik who referenced the rules regarding the legislative allowance, the State Legislature have limitations on when newsletters can be mailed out. There is no such limitation, so perhaps the Council, upon reviewing this, may want to review their own internal rules and follow up to address those issues. The provision from the State Constitution is included because the creation

of the Board of Ethics is mandated through the State Constitution. Also included are Charter Provisions and the specific duties and functions of the Board of Ethics. This is complaint was unusual and examples of similar complaints did not exist. Ms. Leithead-Todd followed the gist of what had been presented in the State Ethics Commission Informal Advisory Opinion No. 2005-5, a similar situation. It was the Ms. Leithead-Todd's hope that it accurately reflected the Board's position.

Members of the Board reviewed the IAO and requested that the following changes be made; Mr. Olesen's name be corrected from "Oleson" to "Olesen" throughout the document; Page 2, Finding of Fact number 1-- "an the public" be changed to "and the public"; Page 6, Findings of Fact number 19--missing the word "the" in the phrase "members of the public would have been led by the reference..."; Page 6, the spacing on the Findings of Fact, number 20—insert a space between "June" and "2006."

Motion and Vote: Ms. Lum moved to accept the minutes with four typographical changes; Mr. Inouye seconded the motion and all members voted aye.

6. EXECUTIVE SESSION

Motion and Vote: Mr. Inouye made a motion to move into Executive Session, Ms. Lum seconded, all members voted aye.

The Board moved into Executive Session at 10:25 a.m. and re-entered Regular Session at 10:30 a.m., at which time the Chair announced that the Board had reviewed the financial disclosures of Christian Kimo Alameda, Joanne Balberde-Kamalii, Marjorie Ann Erway, Gary K. Fujihara, June R. Rabago, Jon Roy Replogle, and Allen Albert Salavea.

Motion and Vote: Mr. Inouye moved to accept and file the financial disclosures of Christian Kimo Alameda, Joanne Balberde-Kamalii, Marjorie Ann Erway, Gary K. Fujihara, June R. Rabago, Jon Roy Replogle, and Allen Albert Salavea. Ms. Lum seconded the motion, and all members voted aye.

7. ANNOUNCEMENT

Next monthly meeting is scheduled for October 11, 2006 at 10:00 a.m. at the Corporation Counsel Conference Room, Hilo Lagoon Centre, 101 Aupuni Street, Suite 325, Hilo, Hawai'i.

8. ADJOURNMENT

Motion and Vote: Mr. Inouye moved to adjourn, Ms. Lum seconded the motion, and all members voted aye.

The meeting adjourned at 10:35 a.m.

Respectfully submitted:

Karen Delimont, Secretary