



BOARD OF ETHICS

101 Aupuni Street, Suite 325, Hilo, Hawai'i 96720

MINUTES OF SPECIAL MEETING

Wednesday, August 30, 2006 – 10:00 a.m.

County Council Conference Room

25 Aupuni St., Room 201

Hilo, Hawai'i 96720

Present: Reeve Williams, Chair (RW)
Wayne Joseph, Vice Chair (WJ)
Kerry Inouye, Member (KI)
Ann Lum, Member (AL)
Kendall Sharpless, Member (KS)
Bobby Jean Leithead-Todd, Deputy Corporation Counsel (BLT)
Karen Delimont, Secretary (KD)

RW: Okay it is 10:00. The Board of Ethics Meeting will come to order and if it suits the Board and the members of the public I would like to allow both Ms. Stocksdale and Mr. Olesen and Mr. Safarik, if you needed some more time to read, Mr. Safarik I see you nodding your head there, more time to read and digest the late handouts that they received so everybody just sit tight for a few moments. And feel free to talk among yourselves, members of the audience. Any objections, you guys?

RW: Here she comes....

(Kendall Sharpless enters the room.)

KD: I thought you were going to be on vacation.

BLT: September.

(Break while members read the handout materials from BLT)

RW: Mr. Olesen, Ms. Stocksdale have you guys had a chance to review that stuff, are you ready to roll?

KSS: Ready to rock 'n roll.

RW: Okay, so Board of Ethics will come to order and we are conducting a special meeting this day for the specific purpose of addressing two petitions filed by Ms. Stocksdale and Mr. Olesen. And so, without any further ado, we would like to call for any statements from the public on the agenda items. I think that Ms. Hirayama (KS) has a statement to make. Ms. Hirayama, would

you like to stand and deliver? Kathy? Either at the mike or--I think Karen needs to hear this so if you can sit there it is fine, or at the podium.

KH: I have no written statement, but I will give...

RW: Please identify yourself.

KH: Yes, My name is Kathy Hirayama, and I am the owner of Hirayama Brother's Electric, and I will start with (cough). Excuse me I am having a problem with my asthma this morning (clearing of her throat). I will start with, excuse me (cough).

RW: Take your time.

KH: I apologize.

RW: No problem. While she is getting her wind, are there any other members of the public, by the way, who would like to speak at this time? Your okay?

KH: I am a personal friend of Gary and Debbie Safarik. I've known them for many years. I have also worked with Gary when he was the Council Chair. I was his special assistant. And I can tell you, honestly, those who know me, know that we operate our business in a honest manner, and we have live in this community for, I cannot say, 50 years and operated a business for 40 plus years. And I know, I worked closely with Gary, he was always an honest broker. If he wasn't I wouldn't work with him. And while I worked with him closely as the President of KIAA, he was my Vice President and I know that when he worked with me everything was done in an honest manner. This is an honest man and I think if a mistake was made it was an honest mistake. He would not deliberately do anything illegal, immoral, or against society's rules and regulations. I don't believe that. So I'm just saying that his wife and him they are good people. They believe in their community. He's a man who loves his family, he loves his friends, and he really loves his Puna community. I know that 'cause I saw it first hand. And so, I know that he would never take money from anybody, especially the people of the Island of Hawai'i. No way. So, I'm just saying please take a real good look at it and I know that you all think that I am his friend, so I'm going to back him up. No, I'm backing him up because it is the truth and I thank you for your time.

RW: Thank you. Any questions from the Board? Ah, do we have another witness, or another statement from the public. Please step forward and identify yourself.

ND: My name is Norman Dionne (ND). I'm a resident of Puna and live on Aweoweo Street, and I also work at the Hilo University of Hawaii in Hilo. And what came to light when I heard this about this issue. About communications basically. The residents of Puna and I saw this handout come in the mail and I am not particularly a friend of Gary Safarik or his wife I only know them through political service, that kind of thing. And I am here to tell you that I appreciate these things. I didn't know what was going on till I got a handout--the mail out.

RW: Which one? What is the date of that one? The cover letter. What is the date on that one?

ND: That is a good question. June 6. This is the June 6th one. So I find these things important.

I work at UH Hilo and I am in charge of a mailing list called the "Ohana" mailing list of about 500 people. And invariably during political actions there is always someone who complains about the content of something being mailed out through the mailing list as being improper or in violation of some kind of laws. So when I dealt with the State Ethics Commission on this question they said they take each issue individually and that the political speech, I should say the political speech, is still allowed. We could not restrict that on the mailing list--so what we did basically, is we made each person individually responsible. But the point being is that communication has to occur and there is not enough of it. And I would hope this commission would keep that in mind. That we need to hear more from our elected officials. We don't hear enough from them. I did make the complaint to Stacy Higa. That we don't have enough of this from all the council people and maybe you, from the Council as a whole through the Chair, that we need to hear more of things like this, because I didn't know about the road improvements and how much money was being spent in a Puna area verse other areas and other districts. And a lot of people that I talked to through political action have the same question. What's happening in Puna, well here is the answer. And that's part of it right there. And I'll quote Mark Twain to end this. Mark Twain said "If you don't read the newspaper you're uninformed, but if you do read the newspaper you're misinformed." We need to have all the sources of information other than the press. And so that's my testimony today.

RW: So that was the previous editor of the Kau Times, eh, Mark Twain?

ND: No, no.

RW: Thank you very much for your testimony.

ND: Thank you.

RW: Are there any other questions from the members of the Board?

AL: Mr. Dionne, would you tell me your last name again?

ND: Dionne, D-I-O-N-N-E.

AL: Thank you.

RW: What is your title?

ND: I am an Information Technology Specialist at UH. I have been there, as a student too, a total of 19 years, and as employee, 13 years. And I have been given the responsibility of that "Ohana List" because no one else wanted to do it, basically. And so, like I said, the purpose of that list was communication, was discussion. To promote open discussion on faculty who were very busy. And so I hope that things like this will continue. That we get things in the mail from anyone, from everyone, equally. Thank you.

RW: Thank you. Questions from the Board? Okay, moving right along. I'm just debating if we want to change the agenda from all of these filings. These communications. Our time is your time, uh--we can get right to the heart of the matter. Let me review this. Communication number, uh our third item on the Agenda. I presume all of you folks in the audience have a copy

of the Agenda here? Our third item is communications in 2006 in which is the letter from me to Mr. Safarik just informing him of this special meeting. And, is there a motion to accept and file that, have you all read that, Communication No. 2006-83?

AL: 83?

RW: Yep.

AL: I move to accept and file.

RW: Is there a 2nd?

WJ: Second.

RW: All in favor?

RW: Aye.

AL: Aye.

KI: Aye.

WJ: Aye.

KS: Aye.

RW: Ayes are unanimous. And Communication (b), 3(b), Communication No. 2006-84 which is the same, similar type of letter to Ms. Stocksdale. Chance to see that and review that? A motion to accept and file?

AL: So moved.

RW: Second.

WJ: Second.

RW: Go for a vote, all in favor...

RW: Aye.

AL: Aye.

KI: Aye.

WJ: Aye.

KS: Aye.

RW: Alright, number (c), 3(c). Communication No. 2006-85 from, why don't I have my announcement of a special meeting...

AL: 2006-85 is an announcement of special meeting to Mr. Olesen.

RW: Oh, okay that's Mr. Olesen. Okay so it is almost identical to the letter sent to Ms. Stocksdale, okay. So is there a motion to accept and file?

AL: So moved.

RW: Second.

WJ: Second.

RW: All in favor?

RW: Aye.

AL: Aye.

KI: Aye.

WJ: Aye.

KS: Aye.

RW: And finally on Communications Nos. 2006-88, which is 3(d), Petitions No. 2006-02 and 2006-03 which is a Return and Acknowledgment of Service for Gary Safarik on August 10. And you have that in front of you. And that might be very germane toward what we are going to talk about here. Let me double check and make sure I have the right communication. That's his, Karen correct me if I am wrong, that's his August, that's his long reply, right? Okay so is there a motion to accept and file? Have you all reviewed that?

WJ: This one?

RW: Yeah, that's the where he.....

KD: There wasn't a date on the letter, but there was a date when it was received stamped on the back.

RW: All his mailings--there is his June 6th news letter, there is a July 6th, which is called second quarter newsletter, cover letter I should say. So this is a key document here, we'll talk about... Uh, so I guess we are going to need to simply at this point have a motion to accept it and file if there is no further discussion.

BLT: What?

RW: Communication 2006-88, Petitions 2006-02 and 2006-03 the Return and Acknowledgment of Gary Safarik's...

RW: Do you see that, Mr. Safarik's letter back to us?

AL: 02 and 03 are the Petitions...

RW: I'm lost.

AL: So those are also going to be under new business?

RW: Yeah.

KD: Oh, I'm sorry...

AL: So what we are accepting and filing is?

RW: Wait, let's get some clarification here. Help us get organized here. Thanks.

KD: It's this.

RW: Ah.

KD: It's the Acknowledgment of Service of the Petition on Gary Safarik.

RW: Just that?

AL: So just this piece. This we can accept and file.

RW: So moved, second?

WJ: Second.

RW: Okay, all in favor?

RW: Aye.

AL: Aye.

KI: Aye.

WJ: Aye.

KS: Aye.

RW: Okay. Moving ahead to New Business. Ah, 2006-02 and 2006-03 seeks opinions regarding possible charges of electioneering by Gary Safarik, Councilmember for District 5, using the County of Hawai'i stationary from County Offices with the County of Hawai'i postage, as alleged by Ms. Stocksdale and Mr. Olesen. Would you flip a coin and decide who would like to talk first? Would you like to talk to this issue?

KKS: Everything is stated right? (Inaudible)

RW: I think so, yes. Do we need any further elaboration from Ms. Stocksdale?

KKS: Do you need elaboration? I just want to say one thing about the enclosure. (Inaudible.)

RW: Why don't you come forward and identify yourself.

KKS: Mahalo, my name is Kaniu Kinimaka-Stocksdale. Um, according to all the documents we received only this morning regarding the enclosure of Mr. Safarik's omission to his--he is acknowledging, I'm using my words very carefully, because it was never my intent to hurt anyone. This is an intent to call even plane across the board. If one council person can do this, then why can't the other council people do the same? I commend Mrs. Hirayama for her comments. There was never any question about the goodness of the Safariks. It was just to call

an even plane across the board. I commend the gentleman, from Kau, Mr. Dionne. Am I saying that correctly?

ND: No, from Puna.

KKS: From Puna. I commend him as well as he's correct. Our constituents need more information. They need to be informed more readily. They need to see their public officials more often so they can talk story and express their concerns. My doing this letter was only to call attention the first article that was written. I believe Mr. Safarik gave a news, a press release of some sort, that mentioned it may have been politically motivated. Well, if he sees it that way then that is his opinion. I never once mentioned it in my letter to the Mayor--I believe you folks have copies--that there was a website in question. I left it to the intelligence and the goodness of the people to find it on their own. I only called attention to "was this appropriately done." Now we find that Mr. Safarik has admitted that it was not appropriately done. And that is all. That is fine with me, because now we are back to the even plane across the board with all the other County Council members, not just one. So, the documents we received this morning that we quickly reviewed states that he's agreed to and he's paid restitution, I am fine with that. As a citizen of Puna Makai, an area where Mr. Safarik serves, I live in the area, I'm content. I'm pleased, and now I put this baby to rest.

RW: Okay, um any questions?

KKS: Any questions for me? Thank you.

RW: Thanks.

WJ: Mr. Chair, before we--I would like to make a public disclosure. First of all I am a constituent of District 5, Council District 5, and I was also a recipient of one of the letters sent by Councilman Gary Safarik. But I remain unbiased in making a determination on this case.

RW: And thank you for the (inaudible). I too would like to make a disclaimer and say that I am personally from that area and personally friendly with Mr. Safarik, Ms. Stocksdales, and have met Mr. Olesen a time or two in my travels when I was previously working with the Department of Education and also issues involving Mrs. Hirayama. So I too think I bring no bias whatsoever to the meeting, as the Chair of the Board of Ethics. And I think this has becoming increasingly irrelevant as we progress. So, Mr. Olesen do you want to hold forth?

NO: Yes. I just have a few (inaudible) points that I want to bring up, and the first started with the mailing. It was a very unusual mailing that I received because it was mailed to Elizabeth and Norman Olesen. I haven't the faintest idea on which database we are listed as Elizabeth and Norman Olesen. Certainly not a voter database. It has got to be something else. So I said, well okay, it came out as an official piece of correspondence. I'd like to know where I received this and who else received this, understanding that it was an official documentation from the County of Hawai'i, and I would like to know who got the rest. Well I tried two or three times to get the database who received this communication with no luck whatsoever. They refused to acknowledge who received it, which is important because I happened to agree with what the gentleman here said, that information out to the public is very important--if this was a selected

mailing, and not the 8,800 registered voters in lower Puna. I even questioned that part. The thing I want to know is, it is not the honesty of Mr. Safarik that I am questioning. I'm questioning the propriety of what he is doing. He is an elected official. His ethical standard has got to be just a little bit higher than the general public. I feel this is very important. If there was any question or doubt in sending this out he should have contacted the ethics committee ahead of time and said "Here, is there a problem with this mail out." Now, I believe that is a common mistake. If there is a questionable mail out or a questionable thing, they do go to the ethics committee and find out do I have a problem with this particular mail out, or do I have a problem with doing certain things. Am I violating the ethics law? I feel that should be adamant with the elected officials because they are responsible for public trust. If it was inadvertent, fine. Hopefully that inadvertent (inaudible) does take place in the future and that everybody can understand or learn from it. This particular session, you folks have to be very, very careful when you put something out there on public stationary because then it becomes public knowledge. And that is about all I have. I hope this can be resolved very easily. Like I say, it sounds like it's an honest mistake made by Mr. Safarik. If it is so, and you the Ethics Board feels that that is correct, I have no problem with that. No problem whatsoever. Thank you.

RW: Sounds good, thanks. Are there any questions for Mr. Olesen? Let the record reflect, I think at this point I want to make the record reflect that both Mr. Olesen and Ms. Stocksdale were referring specifically to the package in their Petition filing which was the so called Second Quarter 2006 report. That's the one, specifically which has the last line, as an afterthought, I gather on the 2006 report which was mailed to the majority of the constituents, as I understand. That is the one with an afterthought, it almost seems "Please check out my website at <http://Garysafari.org>." which was a campaign website. And I think that is the heart of the issue here. Not prior to June 2006, which was a letter Mr. Safarik put out on County stationary. It's a cover letter, with the same identical enclosure attached. So, we will come back to that point and we can discuss the pros and cons of that in a moment. I want everyone to understand that the specific charges that you two brought was related to that July, we presume July, Second Quarter 2006 mail out. Correct? Okay.

NO: We didn't receive it.

RW: You didn't? You did not receive it?

NO: We didn't receive the first one.

RW: Ah, you didn't receive the first one. Well okay. Well okay.

KKS: May I ask a question?

RW: Yes.

KKS: Mr. Joseph, with you living in Puna Makai, did you receive the first?

WJ: I did not receive the first. I only received the second mailing.

KKS: Did you receive the first, Mr. Dionne? The first mailing?

ND: Which one? The June one? Yes.

KKS: You did?

ND: Yes. I did.

RW: Can we ask Gary Safarik to go to the mike and continue this same thread of conversation?

GS: Right here?

RW: Yeah, sure.

GS: Thank you.

RW: So please identify yourself.

GS: I'm Gary Safarik, and I reside in the Ainaloa Subdivision. And I represent--this is my third term on the Hawai'i County Council, my first term beginning in 2000. First of all, it seemed that when I reviewed the way that we normally communicate with our constituency in Puna, it struck me that we don't have all the necessary avenues that, let's say, somebody that would have cable, that would have access, let's say, to other means of receiving the news. And so, in my three terms on the Council I discovered that even though we did mailers and we did radio, and that we did town hall meetings, and we communicated via internet there was always somebody that would come to me and say "I don't know what you are doing, you need to increase your communication capabilities." And that has been something that I have been sensitive to over the last six years, is how I can effectively communicate. When we sent out the first mailer, the first mailer, if you refer to your packet, you will notice that it's with my signature. I have a kind of unusual way of signing my name, looks kinda like chicken scratch. But that it's me signing it. And if you refer to that, it would be dated June 6, 2006, and I begin "Aloha Friends."

RW: Have you seen that Ms. Stocksdale and Mr. Olesen? Do you need to see a copy of that? It is the June 2006 mailing. It's the first one, right, in which there is no mention of the website. Okay.

GS: But on the back, or attached to that cover letter is documents that were not changed. And that, basically, just gives an outline on all the various capital improvement projects and programs that we were doing in Puna over this last 18 months. I felt especially a need to communicate with our Puna population because of our community development plans right now. We've got a steering committee and I needed to receive as much input back from our constituency as possible on some of the issues that we are going to be dealing with in our community development.

RW: Let me just interrupt. So, thank you. Let the record also reflect that the attachment or the enclosure to the letter, which is called "Subject: Update on Project and Program Funding for Puna Makai" is also dated June 6 and is identical to the case of both letters, both mailings. So the first mailing went out, was only around June 6. I don't know the exact date of that, but with this enclosure, here. The second mailing went out later. Subsequent mailing went out with the identical enclosure, with a different formatted cover letter, which was the offending cover letter. I think if I've got that right.

GS: ...and from, let me just back up. From my indication, all indications from the complaint did not reference a website. It just referenced that we weren't supposed to send out any kind of communication. That's how it was characterized. In fact, Mr. Olesen and Ms. Stocksdale both characterized it as electioneering, because I wasn't supposed to communicate, apparently, with my constituency. And that was based on this first, I should say that was based on the second mailing that they received, because they didn't receive the first one. However, I think the research will show that it is an authorized expense and that we do have a budget in our council contingent funds, I should say our council district funds, to allow for this type of mailing. It was characterized by Ms. Stocksdale and Mr. Olesen that this never has been done in the past. And Mr. Olesen characterized it as being a 17-year resident and saying that in his past he has never seen these types of mailings, when in fact we have done mailings in the past. And I can reference those if this body requires it. But I don't think that was germane to the issue. I think the issue is that according to our ethics laws that, I've done some of my own research and I believe you Corp. Counsel personnel have, that it is an authorized expense of taxpayers money to communicate with the tax..., with the constituency on. I can't recall it's... based on legislative updates, that you may send letters of updates to the constituency. And that is purely what I was trying to achieve with both mailings. Now, I would like to reference to the first mailing...

RW: Can I interrupt, just for a moment or two, because this is point in which I need to make crystal clear I would like the record to include all of this. BJ, can you help out with that? Staff attorney.

BLT: If you reference the handout that I presented to the Board I collected a number of informal advisory opinions and documents from both the Hawai'i State Ethics Commission, the Honolulu Ethics Commission, Campaign Spending Commission, a copy of the Hawai'i County Council Rule 33 regarding the district allowance and also have some references to my emails with Ms. Kiriū regarding the cost, and my phone conversations with Mr. Safarik. I've also included, as an attachment, number nine, a legislative newsletter which was sent out by Representative Jerry Chang. And that is one of the standard legislative newsletters that is frequently mailed out from the State Legislature and paid for by the State Legislature's legislative allowance. To summarize the opinions it's basically saying that legislative newsletters are an appropriate expenditure from a legislative allowance, so long as you do not mix the legitimate legislative functions with any campaign function, and the Informal Advisory Opinion 2005-5 from the State Ethics Commission...

RW: Which you all have copies.

BLT: ...addressed a similar situation where there was an official piece of information that was sent out and the information in the publication was legitimate except for the fact that the public official referenced what turned out to be the campaign website. And they looked at that and having determined that it was a campaign website said that it was an inappropriate mixing of those two functions and the end result was the legislator reimbursed the State for the cost of that inclusion. And what I find interesting is that they did not ask him to reimburse the entire cost. What they did is they calculated what the cost of including the reference to his website was because they didn't invalidate the entire mailing. In this case, my understanding is that Mr. Safarik has already done his own calculations and has submitted a check to the County.

RW: And he having already been aware of the State Ethics ruling, I presume.

GS: Yes sir, Mr. Chairman, when I looked at the complaint and I thought to myself that I am allowed to send the information out. So I looked at the first one. I couldn't find anything wrong with it, but I sat down with my aide Ashley, and I said that I think maybe there was an inadvertent situation that occurred here. And that is where I was getting to in my explanation, if I am allowed to continue....

RW: Yes.

GS: So, when we sent this out, I had personally seen this document and signed it myself. Reviewing it and feeling that there was no impropriety at this particular document...

RW: What was the date of that?

GS: That's the date of June 6, 2006.

RW: Okay.

GS: If you reference that one and look at that one and the other mailing, my signature situation is different. That is my explanation. Now come July of this year I had, we had made the website and it was going through some tweaking effort and which, incidentally, we really didn't reference it as a political website, it was just an informational website. I don't have anything to do with fundraisers there or any of that nature. It's just primarily the same information, but, I guess with a political stance to it. So when I reviewed it, I believe that there could have been an inadvertent issue there that I didn't catch at the beginning. But wanted to at least address this body so that you know that the minute we discovered this, I felt that rather than go any further we stop the mailing with that reference of website. And I decided that if there was going to be any reference to it from this body, that I should pay and at least acknowledge that if there is an impropriety--which I believe was inadvertent--and I don't believe that it was an impropriety, because I think you have to have a motive to do that. My motive was purely to communicate to my constituency. So moving back then, come July, my website finally was finished. And I was on the road at various meetings and my secretary, Linda Swallow said "I've got the second mailing document ready for your approval" and I said okay, go ahead and just read it to me over the phone. And so I was driving, I was on my cell phone. And so she read the whole thing and then she indicated, she said "Please check the... (you know, because everything was the same as the first mailing) but she said "I added, Please check out my website at my Garysafarik.org."

RW: Your secretary took up that issue on that?

GS: Yeah, she put--because I had said we needed to have an email address.

RW: I see.

GS: So, I didn't-- I really did not, as much as I thought about it that day--I didn't recognize that this was a political website, and that it needed to be at my County email address, there, rather than my website. When I discovered it, that's when we decided that we were going to--whatever the issue may have been as far as cost and postage type things--that we would just pay for it out

of my own pocket. And then allow this body to determine whether or not, in your wisdom, that this was an intentional or unintentional. Or if in fact it was--even in fact if you have determined -- if it is a political website, because I don't think that determination has been made officially. I would recognize that, if I was sitting in your seat, I probably would recognize it as a political website.

RW: Well, it certainly is not a legitimate County website.

GS: Its not. So therefore, I decided this inadvertent situation that I did, there was no motive to it other than it was a method of communicating.

RW: Questions?

AL: Well I think also, if I remember correctly, when I checked out the website I think at the bottom it does say "Paid for by Committee from Puna to re-elect."

RW: So, it's no disputing the website.

AL: So the blurb at the bottom I think that puts it...

GS: That's why I didn't, as much as I thought about that situation beforehand, it didn't dawn on me. It really didn't dawn on me that this was a situation that could be construed as being inappropriate or improper. So when I discovered it--and there was no mention of that in the complaint--but I took it under review, because I take this type of thing very serious and discovered that there might be something here we needed to correct. That is what I did. And so that will never be referenced ever again.

RW: I'm sure the constituents, nonetheless, and those in this room appreciate your due diligence in that sense, so... Yeah, I also want to clarify a point that that second quarter letter was a stamped signature and not Mr. Gary Safarik's personal signature.

AL: But he does say that it was read to him.

RW: It was read to him, right, okay. So the heart of the matter as it turns around to the second quarter cover letter. That's the real issue. That's the linkage of government communication; Official government communication making reference to some campaign matter, however vague. Check out my website, that was the offending linkage, per se. And, ah, Ms. Stocksdale and Mr. Olesen are you comfortable? Do you understand that the June 6th letter cover sheet was legitimate and legal, allowable, are you aware of that?

NO: I've never seen it.

RW: Right, okay, I get it.

NO: I didn't make any statement.

RW: I understand your comments as I pointed out already. Both your comments, charges, are based on the second quarter mailing. And whatever was it your research, your diligence or just your instincts that said that was a no, no? He just crossed a line here, in a sense.

NO: Essentially.

RW: Essentially. The opinion we have here from the State Ethics Board is just virtually identical to that. Although Mr. Safarik explained why he feels perhaps, that his offense is a lesser ones than this, even, the point is, was the second quarter cover sheet contained the link to the website--that was the issue. Mr. Safarik is taking the initiative, if I've got it straight to rectify that situation publicly and to refund the County Director of Finance for the amount incurred for all the postage and mailing expenses associated with that second quarter mail out. Is that correct?

GS: That is correct.

AL: I think it should be clear that, to me, it comes under this commingling. That would be advisory opinion of our little reference number six, the Advisory Opinion No. 04-04 references in the last line, it says "Its the commingling of" So that the part that's the update on project and program funding is not, doesn't seem to me, to be any different than the first one.

RW: We are scrambling to find where you are. Where are you?

AL: I'm looking at this document that was handed out that had all the little numbered... and its page 4, number 6, this one that Bobby handed out with all the little numbers on it.

RW: Yeah.

AL: ...and its number 6?

RW: Public doesn't have this document, I don't believe.

AL: Page 4. At the top the Advisory Opinion No. 04-04 references legislative rules that prohibit joint use of campaign funds and legislative allowances to pay for newsletters. So the opinions prevent the use, anyway that's campaign funds. But what it mentions here is the commingling so that's the...

RW: So (inaudible) to the exact offense, as it were.

BLT: Actually, that opinion there had been prior legislative practice where the legislative allowance has changed over the years and in some years there was not enough money in the legislative allowance for legislators to mail a newsletter to their entire district so they had gone to the campaign spending commission and asked "Can I use my campaign funds to pay for mailing out my legislative newsletter?" And earlier, back in 1998, the campaign spending commission said yes, you can spend your money because it is a legitimate, related duty to being an elected official. But, since 1998 there have been concerns at the State Legislature that by using campaign funds to pay for the newsletter there was an appearance that the newsletter was now a

campaign piece rather than a legislative newsletter. So they in enacted rules in the State legislature to say, no, if you are going are going to mail a newsletter it is going to have to be strictly paid with the legislative allowance. Or if you're going to send a separate newsletter paid by your campaign funds, it has to be paid strictly by campaign fund. But you cannot take a little bit of this money and a little bit of that and spend it on the same piece because they were concerned that the lines would get blurred in terms of what was an official legislative piece and what was a campaign piece.

AL: Okay, thank you.

RW: So, we are getting way too much detail here from (inaudible) on this thing. I think the selling point here is--for you to get it--that your link to the campaign website with the Government stationary was...

GS: Mr. Chairman, I would like to make a further statement. If you will allow me, that whatever your rulings are in this body, I would ask that you rule two things. First of all, the first mailing was an appropriate use of taxpayers' money, and that communication was authorized. The second mailing, although identical to the first, did contain reference to a website that was not appropriate. That I did not intentionally and it was an inadvertent situation, because although when I did get that information over the cell phone from my secretary, I really did not focus on that addition. It escaped me. And therein lays the truth of the whole matter.

RW: And that sounds like logical way to proceed if the Board feels...

WJ: I do have a couple of questions.

RW: Sure, shoot.

WJ: Your second mailing. Exactly how many people received this second mailing?

GS: We sent out 400.

BLT: There is actually a clarification. And that is because Mr. Safarik sent 400 pieces down to be mailed. But they had not all gone through the process and the complaint came in and the County Clerk, when the complaint went to her, immediately stopped the rest of the mailings from going out, because she did not want to, if there was a problem, she did not want to make it bigger that it had to be. So there were actually only 122 pieces that were mailed in July because the County Clerk stopped the rest from being mailed out.

GS: Well, I didn't realize that.

WJ: Well, I never won anything in my life but I was one of the fortunate few that got one.

(Laughter)

RW: Got your lucky stories.

WJ: But, if I could continue on that. It may be legal to do this, but as a constituent from your district, as a voter of the State of Hawai'i, I always thought this was an unfair advantage that an incumbent could do this during an election year. And...

RW: Or anytime, or only during an election year?

WJ: Well, specifically doing it in an election year. When I personally received it in July, I thought it was just a campaign message, and I had the same thoughts. It is on an official letterhead. You are using the power of incumbency to promote yourself during an election year and it does show an unfair advantage to those that are running against you. I personally would have hoped an elected official would have used their own funds and not use taxpayer dollars in doing this. I fortunately, again yesterday, received your beautiful color advertisement in the mail, promoting yourself as a politician and I know that was at your own expense. But what also bothers me is you say that when you discovered--now, if not for the fact that someone brought a petition against you--would you have discovered it?

GS: No. I think that I would have probably; it would not have been readily evident to me that this was a problem. That there was a problem with this website, it would not have been. I would have, I believe, caught it. I don't know that it would have been at that particular time. I think where I would have caught is after I was going to do the third mailing, because I think that on the third mailing we were looking at not doing a mailer, that I was going to utilize my district account which is authorized us to do that, because, come July, I believe it was July 25th was the last filing deadline for running for office. And I made a mental note that I wasn't do anymore district type mailers utilizing district funds anytime after that because I was following the rule of the State Legislature. We don't have a rule like that with the County, but I was sensitive to it. So, I think to answer your question, I would have found it. But, I probably would not have found it as quickly, sir.

WJ: I guess the only other comment I would have to say is when you make a mistake I think it is good to admit that you made a mistake, and unfortunately I haven't heard you say that.

GS: Well I sure admitted that I have made this error in this putting my website. There is no doubt about it. That's why I felt that I was compelled to pay that particular portion back, but I want this body to know that it was not done maliciously. I did not do it consciously to have an unfair advantage because I think I view that comment that you made from the stand point of being when I wasn't an elected official. I would have probably had the same feeling, 'cause that is the way the way you view the rule. When I am an elected official I wonder, just because it was an election season, does that mean that we stop representing the people. That is the other side of the brain that I thought about. I still represent the people, even though I have to go out and sign wave, like I did this morning. I still have to come over here and conduct my business, because that is what I am responsible for. I felt that the only way that the people of Puna are going to recognize what has been happening in a positive sense, because we've had such a bad reputation over the years, and very little infrastructure and improvements that this was a way of showing the people, especially at this time frame that even though, in the past Puna has not been identified as a priority, that Puna has now been identified as a priority for administration (inaudible).

WJ: Since you brought that up. I am real curious why did you select 400 individuals, why were those 400 targeted, rather than the entire district?

GS: I wasn't going to send it out to the entire registered voter list, what I was trying to do was hit all the associations that the community leaders, the neighborhood watch people, the people that I communicated with, but that were also registered voters.

RW: Was there any budgetary constraints?

GS: No I was trying to just be, it was a selective mailing, it wasn't a broad brush, and that's why I guess I didn't view it as political mailing, because it just was identifying what the...

WJ: But then in this event, Elizabeth and Norman Olesen, how did they make your mailing?

GS: Ah, we tried to send it to the various subdivisions, and it was done through a random nature that we just picked out names and did it rather than the whole mailing list, because we took it off the voter registration forms.

KS: I believe Mr. Olesen brought up the question, or the issue that he was not able to get information as to where his name appeared on what list. You were seeking the information about what was the source of the database.

WJ: I am real curious as to how I made the list.

KS: ...and so I'm asking you guys, is there also an issue of access to information in terms of where did you get my name for Mr. Olesen. I'm just asking as a point of discussion, and do we need to consider it. I'm just asking that.

GS: I can clarify that.

WJ: I know that I am on the voter registration list, and I know I'm a registered voter.

GS: That's how I made that list, it was purely through voter registration, we sent it out.

RW: For both mailings? For all mailing that you did, it was from the voter registration list?

GS: Except for the first one. I did not have a cover letter that I sent out to all the neighborhood watch programs and...

WJ: Now see, and I am sorry for doing this, but I need to clarify it in my own head. I'm an intelligent person. I read the newspaper regularly, and I take an active part in the community. I'm sure Mr. Olesen is too. Why would you select informative people to send your mailing out to, when earlier you said it was more important to get to the voters who may not be reading the newspaper or who may not be listening to your ads. Why were informative people selected?

RW: What do you mean by informative?

WJ: Well, I consider myself well informed. I read the newspaper daily, and I take part and I listen to political discussions and I was on his mailing list when earlier he explained to us that it was the other voters, the ones that not necessarily reads the newspaper or listens to the commercials.

GS: I think you misunderstood what I am saying. I purely picked out the names in a random nature. That is all it was, it has no method to it other than just a random mailing. What I mentioned is that we had a mailing that did not have a cover letter to it. That I sent out same information that just said legislative update that went to neighborhood watch programs and the community associations.

BLT: May I. I'm going to interject something here as legal counsel. While I understand some of the direction of some of the questions, the real issues before the Board is whether the--there are two issues--and one is was the letter legitimate legislative newsletter that's allowed as part of Mr. Safarik's duties and under the Council rules, which provide for this district expenditure fund. Then, actually there are three questions, that is whether the newsletter is legitimate expenditure. The second is whether the Garysafarik.org is a campaign website, which I think he has already acknowledged, and third is the reference to the campaign website and whether that was a violation of the Ethics Code because it reference a campaign website. And those are the real issues. I don't know that the Board has the authority to go into the methods or the rational for legislators' selection of who is on the mailing list, if it's a question of was it legal for him to mail it out. And if you look at the opinions I think you can, and the rules you can draw your own conclusions about the newsletter itself was appropriate.

RW: Yeah I was bothered. I would like to second that. By the way we are going way beyond the scope of what we are doing here, so I think we've pretty much discussed it. Now, if there are some really burning issues, Kendall, Wayne, any of you (inaudible). I think we are going way beyond the scope of this issue. You have heard the view of one decision at least, the opinions. I think that we all understand from Political Science 100 that incumbency is definitely an advantage across the nation, in all levels of government. So that just goes without saying. I understand the thrust of what you are saying though. It was a selective use of government funds to a selective audience, that is the gist of it. That's not really what the charge was here, so much. We have the June 6 mailing. We have basis up front, for knowing that was perfectly legitimate, legal, allowable, and legitimate. Any questions about that? Ms. Stocksdale?

KKS: Yes. June 6 was never in question in my petition. Our petition only addressed the July mailing so why is June 6th being pushed into the issue? I don't understand.

RW: Well, there were two mailings. How did this happen, that was the issue. How did this happen? Here came one that was signed...

KKS: Is this for a comparison? Was this also part of my petition?

RW: No, your petition, that's right.

KKS: Just the July mailing.

RW: Just the July issue and that is what we will narrow the rest of this hearing to, just July.

KKS: Just the July issue.

RW: Right.

KKS: Thank you.

RW: So on the July issue. Do we have a basis for an informal opinion? It seems to me that we do.

BLT: If the Board feels that you have enough information to render a decision you can do so today. And then when you make your decision you can direct me to write an informal advisory opinion, with specific findings, and then you would adopt it at the next meeting. You would actually vote today, and then you would vote at the next meeting to adopt the opinion that I will draft for you.

AL: So are we ready to do this?

RW: Well we have a (inaudible) that the July 7th mail out was inadmissible, basically and we have restitution for that from Mr. Safarik. Now the question was the \$252.00 for 400 or for 122 mailings, I think that is the...

GS: Mr. Chairman, if I could. Just in summary whether that is more or less, I'm sure that the clerk can determine what they need to do. But I can assure you that I do recognize the problems that this second mailing with that website reference has caused, especially for some of the constituency. Mr. Joseph, I address you as one of my constituents, and of course the whole Board. I can assure you I have soul searched and I have recognized I have crossed the line and never will I ever get into that situation again. There is really no excuse for it. It happened and I want to identify that and I discovered that this was wrong, a wrong reference that I sent out this website on this mailing.

RW: Thank you for being alert citizens, Ms. Stocksdale and Mr. Olesen for servicing...

GS: But I am not skirting any issues here. I recognize and I can tell you straight that I needed to correct that improper reference and that will never happen again, and I felt that by paying whatever my calculations methods was, whether it was up or down, I would rather just let that stand, and have this body decide. But I think it was a very good learning experience, not only for myself but for other people that are involved in that perception of being the incumbent and having what you, Mr. Joseph, characterized as an unfair advantage. I don't know that it's done, that advantage has... I think sometimes it is a perception and in this case it manifested itself in a newsletter, or a legislative update that had reference to a website that shouldn't have been there, and that I fully accept that responsibility.

RW: So properly chaste. Mr. Safarik, so thank you. Any further questions for Mr. Safarik, or any of the others?

AL: Are we going to do three parts to this decision?

RW: No, I think actually, I think Ms. Stocksdale is quite right, and we should rule basically on the issue that she brings forth...

AL: Yeah, just on that petition.

RW: ...July mailing. We assume July mailing and we can rule just on the basis of that for the reasons we have, essentially, in front of us from the Hawai'i State Ethics Commission is a perfectly legitimate reference, wouldn't you say?

BLT: It's remarkably similar because it is an ethics opinion that addresses a reference to a campaign website. I, frankly, was surprised to find something that was that close to this situation had already been decided by the State Ethics Commission. So I thought that it was really the most relevant information that I could bring to the Board.

RW: And, I would also like to tell the public that we're blessed, really, that Bobby Jean Leithead-Todd is our staff attorney. She was a key person in drafting ethics legislation for the County of Hawai'i, (inaudible). She was a councilwoman, councilperson, and she is a diligent researcher who has hit the nail on the head in finding this State Ethics Commission ruling that is identical to this. So, we are not coming at this, as I say, with any bias. We are not coming at this with any blinders. We are coming at this coming at this in front of a community body. None of us are here for money. We are here to do a public service, and I think we have heard enough to make a ruling on this, don't you agree?

WJ: I do.

RW: So, unless you have any further testimonies offered, or further statements from the public I think we can get onto the business of making a ruling. Specifically in regards to the two complaints that Mr. Olesen and Ms. Stocksdale having to do with the July 2nd quarter mailing. So, is anyone brave enough to make a motion here. We are abiding by, by the way, by the rules of practice in which we will determine an informal advisory opinion, and...

AL: It's always the wording that gets you.

RW: Yeah, the wording. We just have to word it, essentially, ah we all know. I think, for the record here that Mr. Safarik has been up front in saying "Hey, I recognize that the 2nd quarter mailing that you attested was beyond the scope, (inaudible) he made restitution, made a public apology and again this morning, so we will proceed (inaudible).

WJ: Do you want me to try?

RW: Give it a shot.

WJ: I would like to make a motion that we find that Councilmember Gary Safarik was in violation of Hawai'i Ethics Code 2-83 and that on his second mailing he listed his campaign website.

RW: And can I put a qualifier in there and say that it was inadvertently or something to that effect? Or do you want to say he was directly...

WJ: I would like to leave the motion as it stands.

RW: ...as it stands...in violation...

AL: Can somebody write it down so we can repeat it?

RW: Where is our clerk-steno?

AL: That he was in violation of...

KD: We find Gary Safarik in violation of Hawai'i Ethics Code 2-83 on the second mailing when he listed his website...

KS: Section (b), (inaudible) as it references the specific (inaudible).

KD: Code 2-83(b), right?

RW: And ah, and has so acknowledged it? Can you add that, that he acknowledged that?

AL: And made restitution.

RW: And made restitution, fair enough.

WJ: And has so acknowledged and made restitution.

RW: Yeah.

WJ: Okay.

RW: Okay do we have an amended resolution there?

WJ: Give me a second.

RW: Okay so far so good. I was just looking at (inaudible). Okay is there a second to that? Would you, Ann you were taking notes, lets read that back.

AL: No, I didn't take notes. She is, Bobby is taking notes, and Karen has them.

RW: Please read it back Karen.

KD: Okay, so the motion is; We find Gary Safarik in violation of Hawai'i Ethics Code 2-83(b) and on the second mailing where he listed his website and he has so acknowledged and made restitution for it.

AL: We probably should say, campaign website?

KD: Campaign website

RW: Kendall?

KS: Um, Section 2-83 has a lot of points in it. I think it would be most fair and most clear communication to specify.

WJ: Section (b).

KS: Exactly.

WJ: Item number (3).

KS: Section (b) and which item? (b)(3)?

WJ: (b)(3).

RW: Okay, (b)(3).

WJ: To be very specific.

KS: Yeah.

KD: So 2-83(b)(3)?

RW: Will someone read that in its entirety?

KD: We find Gary Safarik in violation of Hawai'i Ethics Code...

RW: Councilman Gary Safarik...

KD: Councilman Gary Safarik in violation of Hawai'i Ethics Code 2-83(b)(3) on the second mailing where he listed his campaign website.

RW: Okay and what is 2-83(b)(3)?

KS: Well, wait...

WJ: but, but, "and he has so acknowledged and made restitution."

KD: ...and he has so acknowledged and made restitution for it.

WJ: And I think that's...

AL: There is only one other thing it should be. Okay, where it says we find Councilman Gary Safarik has violated Section 2-83(b)(3), in that he listed his campaign website, because it is not the whole thing, it is only the part where he listed.

RW: Yeah, that's good, that's good.

AL: ...in that he listed his campaign website in his letter.

RW: I second that. That is a good point.

AL: Yeah, the violation is because he listed the website.

RW: Good thing we don't have to write a whole paragraph, huh?

BLT: Actually, Mr. Chairman, I will probably be drafting something that looks similar to the State Informal Advisory Opinion where I will layout the various pieces of information. I will have references to the letters and quote the language of the letters, and I will also make references to the various informal advisory opinions that I presented to you so that it is a full and complete. And then at the next meeting you can review what I draft and if it does not reflect what the Board feels reflects what occurred at this meeting--the information that you had--you can make amendments to it. So I will provide it as a proposed order for you.

RW: So say it to me. Let me hear the following language one more time, Karen, and I will recap and we will give it to the real wordsmith among us.

KD: Okay, let me see if I have this right, now, motion; We find Councilmember Gary Safarik in violation of Hawai'i Ethics Code 2-83(b)(3) on his second mailing in that he listed his campaign website, and he has so acknowledged and made restitution for it.

AL: I second it.

KD: Thank you.

RW: All in favor?

WJ: Any discussion?

RW: Discussion first? Any further discussion?

BLT: There is one thing that you may want to address, and perhaps acknowledge. Mr. Safarik reimbursed the County to the tune of \$252.00. The information I have from Ms. Kiriu indicates that the actual costs of the July mail out, because she prevented further Xeroxing, and further mail outs, was actually in the neighborhood of \$125.34. The Board has the authority, though, to accept Mr. Safarik's payment even though it is above the actual cost of the mail out as a appropriate restitution and you could say that perhaps to reflect that it also takes care of any time that may have been spent by employees in the production of the document, that the \$252.00 dollars....

RW: Mr. Safarik are you willing to ante up.

GS: Yes, I would like that.

RW: So, is there a motion to accept the full \$252.00?

WJ: Well, I think there is a point of order here. There is a motion and a second on the floor and we need to vote on that first.

RW: I think you are right Wayne. We should settle our... and address this as a separate issue, yeah. So, we have the motion and we will come back to that. Bobby thanks for bring it up. We have the motion. The motion was the same essential language that Karen has read three times now, and it has been clarified, it does not need further clarification. We've had a second, we've had a discussion, all in favor?

AL: Aye.

KS: Aye.

KI: Aye.

WJ: Aye.

RW: Chairman votes aye. It is unanimously in favor of that. There is a second issue and as a closer to all this we ask Mr. Safarik if he is willing to, he has over submitted his payment for \$252.00.

BLT: No, the Board has the authority to accept it.

AL: Accept it...

BLT: Even though it exceeds the cost, as a fair....

RW: ...restitution....

BLT: ...restitution under the circumstances, and possibly including the cost of employee time.

RW: Alright is there a motion to accept the full restitution? The full amount made Mr. Safarik in good faith, to wit the cost of mailing and double that.

AL: I move that we accept it as fair restitution, the amount that he submitted as fair restitution that would include any unnoted time.

WJ: Excessive copy costs.

RW: Is there a second to that?

WJ: Are you adding an excess of County cost?

AL: The what kind of cost?

WJ: The excess of County costs.

AL: Excessive.

BLT: Incidental County costs.

AL: Yes, incidental County cost, exactly, thank you. It would include any incidental County cost.

WJ: I'll second.

RW: Discussion?

KS: Now, I have no concept of what incidental County costs are.

RW: That would be us being here today.

KS: Pardon me?

RW: That's us being here today, for example.

KS: Well, but in terms of how the Councilmen offices run, he has a paid secretary. I am not comfortable with making a judgment that anything other than \$125.00, which is the cost of mailing, be accepted because we have had no discussion of any kind of comment from Mr. Safarik or anybody about whether the secretary was using the Xerox machine, how much ink was used, yaddah, yaddah, yaddah... And we just don't know and I don't feel comfortable taking a guess at that.

RW: Actually, the County Clerk does know and she has sharpened her pencil on it that very issue. So when she came up with the number she sighted \$125.00. That was actual County costs as determined by Constance Kiri, the County secretary.

KS: No, I'm very, I'm not very comfortable. But I accept the accuracy of \$125.04. But the remainder, \$125.04 taken from \$252.00, I'm not comfortable in doing.

RW: You don't feel like we should take it?

KS: No.

RW: You don't think we should take it?

KS: No.

RW: Mr. Safarik has offered to give it.

KS: I know, but you're asking for discussion. That's my feeling.

RW: Okay. So we have one objection. So that is the end of discussion. We have a motion on the floor to....

GS: Mr. Chair, Mr. Chair.

RW: Yes?

GS: If it would be easier for this body, I can rewrite another check.

RW: No, we understand your willingness to comply. You also demonstrated good faith in offering to just leave it as is. So there is \$125.00 extra into the County coffer as a result of this. Um, so that is the motion and we had a second, and we had a discussion. So I will ask for a vote on the original motion to accept the full \$252.00, all in favor?

AL: Aye.

WJ: Aye.

RW: Aye.

KS: Nay.

KI: Nay.

RW: One abstention, one, two, three ayes, and one against.

BLT: Mr. Inouye voted no.

RW: So we have three/two, guess the ayes have it, and the County is \$125.00 richer, and Mr. Safarik is \$125.00 poorer for his inadvertent lapse of judgment. Okay, any further business? Any disgruntled public members out there (inaudible). Okay so...

AL: I would like to thank Ms. Kinimaka and Mr. Olesen for being watchdogs. And I would like to thank Mr. Safarik for his action, and activity...

RW: Yes, done in good faith and the public...

AL: ...and the public for coming.

RW: Yup, thanks for coming and to the press for accurately reporting. So the announcement is the next regular scheduled meeting is scheduled for Wednesday September 13. We are back on schedule....

WJ: Ah, I would like to amend that to September 12.

RW: September 12, we have a hassle with September 13? What is September 12? What day of the week is that?

WJ: Tuesday.

KD: Tuesday.

RW: Everybody okay with Tuesday? Yes, yes, yes.

AL: Didn't you already check on this Karen?

KD: We did, but the thing was...

RW: Something came up.

WJ: We needed a formal motion, I believe.

RW: So September 12, Kendall are you okay with that? September 12?

WJ: Ah, Mr. Chairman I made a motion, I need a second.

RW: Okay so we have a motion on the floor to Tuesday, September 12, a second?

AL: Second.

RW: Discussion?

WJ: Kendall won't be here on September 12.

RW: All in favor?

AL: Aye.

WJ: Aye.

RW: Aye.

KI: Aye.

KS: Aye.

RW: Unanimous. Now, the formal announcement is that the next regular scheduled meeting is Tuesday, September 12, 2006 which is when we will further address this issue at that time. Meeting is adjourned.

Meeting adjourned at 11:20 a.m.

Respectfully submitted:

Karen Delimont
Secretary