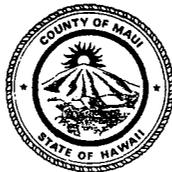


JAMES "KIMO" APANA
Mayor



JAMES B. TAKAYESU
Corporation Counsel

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March 12, 2002

MEMO TO: Honorable Alan M. Arakawa, Chair
Land Use Committee

FROM: Brian T. Moto
First Deputy Corporation Counsel

A handwritten signature in black ink, appearing to read "Brian T. Moto", is written over the printed name of the sender.

SUBJECT: Internal Committee Procedures (LU-18)

The purpose of this memorandum is to respond to your memorandum, dated February 28, 2002, relating to legal advice on ethics and the matter of the Maui County Board of Ethics ("Board of Ethics" or "Board") advisory opinion pertaining to Councilmember Michael J. Molina.

We take this opportunity to clarify certain matters relating to the role of the Department of the Corporation Counsel in the rendering of legal advice on ethics.

As the chief legal advisor and legal representative of the Council, the Mayor, all departments, all boards and commissions, and all officers and employees in matters relating to their respective official duties,¹ the Corporation Counsel and Deputies Corporation Counsel provide legal advice to many County officers and employees in the context of a wide variety and number of official matters and assignments. In the course of performing these duties, it is not unusual (indeed, it is, in our experience,

¹§8-2.3.b, Revised Charter of the County of Maui (1983), as amended.

Honorable Alan M. Arakawa, Chair
Land Use Committee
March 12, 2002
Page 2

inevitable) that, from time to time, the Corporation Counsel or Deputies Corporation Counsel will be asked for advice or information relating either to the substantive or procedural law of ethics, or both.

Requests for advice arise in a range of circumstances and may pertain to conflicts of interests, among other subjects. In many cases, though not all, the request is informal and poses a relatively simple set of facts and legal questions. In many cases, the request may be impromptu and in the context of an ongoing discussion in a public meeting. It is not unusual for the person or persons making the request, and the circumstances of the moment, to indicate that what is desired and appropriate is an immediate and brief answer. These types of requests may require that we simply show the person a copy of the Charter's Code of Ethics to inform them of certain provisions.

When presented with a request for advice on ethics, and as a service to County officers and employees, our Department's attorneys endeavor to respond as best they can, based upon the relevant and material facts provided and the substantive and procedural law of ethics extant to date. On occasion, the attorney present may decline to answer a request, especially if the facts or legal issues posed are complicated, uncertain, unusual, or novel. In such circumstances, our Department normally recommends that the person or persons submit the matter to the Board of Ethics in the form of a request for an advisory opinion. When appropriate, we may also inform the person of previous Board opinions that raise similar sets of facts and issues. Although such opinions are "fact specific" and are intended to guide primarily the conduct of the person who is the subject of the opinion, the Board's opinions serve as a useful and important record of the rationale employed by the Board in its decisions. Such opinions also help to indicate how the Board may analyze and decide similar ethical issues that may be presented to it in the future.

When our Department responds to a request for legal advice on ethics, the response is not intended to supplant the recourse that all County officers and employees have to seek and obtain advice,

Honorable Alan M. Arakawa, Chair
Land Use Committee
March 12, 2002
Page 3

at any time, from the Board of Ethics on matters relating to the Code of Ethics. And, whenever appropriate and circumstances allow, we will explicitly call this to the attention of the person or persons making the request. We also note that the responsibility for seeking such advice from the Board is one shared by each County officer and employee.

With regard to your inquiry regarding the recent actions taken by the Board of Ethics in connection with Councilmember Michael J. Molina, we note that the Board issued, pursuant to its rules,² an interim ruling, dated February 21, 2002, that summarizes the conclusion of the Board. The interim ruling is very brief and was not intended to fully explain the basis for the Board's decision. It is anticipated that the Board will meet in March to discuss the basis of its decision. This further discussion is necessary to enable our department, in its capacity as staff for the Board, to draft a full advisory opinion to be issued to Mr. Molina.

In view of the brevity of the interim ruling as well as the work yet to be done by the Board in issuing its full advisory opinion, we recommend that any questions, comments, objections, or other matters of concern relating to the Board's interim ruling be submitted to the Board for its consideration and review. In these circumstances, the Board is the appropriate authority from which to seek clarification or other relief.

²§04-101-45, Rules of the Maui County Board of Ethics ("Where a person requesting an advisory opinion indicates that, due to circumstances, that person must make an immediate decision, the board may issue, in its discretion, an interim ruling signed by three or more members, that briefly states the board's opinion and which shall be followed by a full advisory opinion within forty-five days after completion of board review.")

Honorable Alan M. Arakawa, Chair
Land Use Committee
March 12, 2002
Page 4

Such clarification or relief may be advisable in that the Board's ruling, as it currently stands, may have a profound impact upon a significant number of County officers, employees, and agencies.

BTM:ko

cc: James B. Takayesu, Corporation Counsel
Richard K. Minatoya, Deputy Corporation Counsel
Don Couch, Chair, Board of Ethics

APPROVED FOR TRANSMITTAL:



JAMES B. TAKAYESU
Corporation Counsel

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