



COUNTY OF MAUI  
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**INTER-OFFICE CORRESPONDENCE**

May 29, 2002

MEMO TO: Sue Fukushima, Staff Services Assistant, Department of Housing and Human Concerns

F R O M: Madelyn S. D'Enbeau, Deputy Corporation Counsel 

SUBJECT: Employee of County Department of Housing and Human Concerns serving on the Commission on Children and Youth.

This is in response to your question: May Theresa Lock, an employee of County Department of Housing and Human Concerns, serve as the Chair of the Maui County Commission on Children and Youth?

The answer is yes. However, Ms. Lock must be alert to situations which may require her to recuse herself from voting on a particular matter. Her dual duties are discussed below.

**DUTIES AS A COUNTY EMPLOYEE**

The laws of the state of Hawaii clearly allow employees of the County of Maui to serve on county or state boards and commissions "unless service on the board or commission would be inconsistent with or would tend to interfere with the duties and responsibilities of the other office, employment, or position held by the employee." HRS 78-4(b). Section 13-2(7), Revised Charter of the County of Maui (1983), as amended, provides that, "Employees and officers of the State or county shall be eligible to serve on boards and commissions, provided that such service does not result in a conflict of interest."

In further support of County employees' service on boards and commissions, § 78-4(c) HRS, provides that "When any employee must be away from the employee's regular work because of service as a member on a board or commission, the employee shall not, as a result of the absence, suffer any loss of the employee's regular salary or wages. The time spent in service as a board or

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commission member outside of th employee's regular work hours shall not be considered as time worked."<sup>1</sup>

The Commission on Children and Youth (hereinafter "Commission"), which was established in 1997 by Maui County Ordinance 2584 is staffed by the County Department of Housing and Human Concerns. The mission of the Commission is to advise the mayor and council on children and youth matters and make recommendations to the county council relating to youth programs proposed for adoption by the council. MCC 2.39.030

Based on the information provided, Ms. Lock's service on the Commission would not be inconsistent with her duties and responsibilities as an employee of the Department of Housing and Human Concerns.

#### **DUTIES AS A COMMISSIONER**

However, she must also consider her obligations as a commissioner, Chair or otherwise, as those are set forth in the Maui County Code of Ethics. The Code of Ethics governs all members of boards and commissions and mandates that they may not: "engage in any business transaction or activity or have a financial interest, direct or indirect, which is incompatible with the proper discharge of his official duties or which may tend to impair his independence of judgement in the performance of his official duties."

Matters may come before the Commission which could result in a direct benefit, or conversely, a direct detriment to County Department of Housing and Human Concerns. Ms. Lock's duties as a commissioner would require her to look at the matter without regard to the effect on County Department of Housing and Human Concerns. But as an employee of that department she would also have duties to the department which might tend to impair her independence of judgment. For example the county council might be considering moving a program from a private non-profit to the County Department of Housing and Human Concerns.

The Code of Ethics establishes a Board of Ethics (hereinafter BOE) to advise elected and appointed officers and employees of the

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<sup>1</sup>HRS 78-4(b) and 78-4(c) HRS as cited, take effect on July 1, 2002, replacing versions in effect until June 30, 2002. The versions in effect until June 30, 2002 do not change this opinion.

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County with respect to their ethical duties. If a commission member seeks an advisory opinion from the BOE and acts in accordance with that opinion, the member is not liable for violating the Code of Ethics.

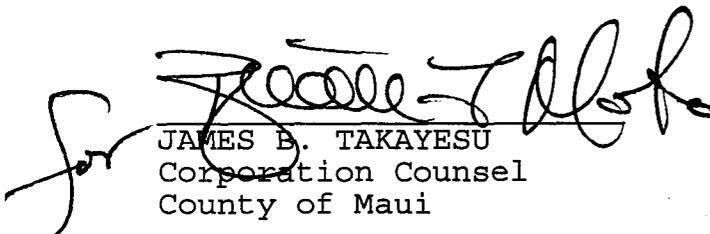
On March 13, 1997 the BOE issued its Advisory Opinion No. 97A-3 advising Maui County Council members that " if they serve on a board of directors or executive committee of a non-profit agency....they should not vote on matters before the Council that directly affect that non-profit agency." The BOE was of the opinion that the Council member, after disclosing his or her involvement with the non-profit agency, could participate in the discussion on the matter.

The BOE's opinion reflected its concern that the best interest of the County as a whole might conflict with the best interest of the private non-profit board. A council member who owed a duty to the non profit could find that duty in conflict with his duty to his Maui County constituents. In the same way, the Commission's duty to make recommendations to accomplish the County's goals and objectives with respect to proposed programs for children and youth might conflict with the more specific interests of the County Department of Housing and Human Concerns. In those instances Ms. Locke should recuse herself from voting.

If she is uncertain how to respond to a specific fact situation, Ms.Lock is encouraged to seek an Advisory Opinion from the BOE.

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APPROVED FOR TRANSMITTAL

  
JAMES B. TAKAYESU  
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