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Mayor



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April 14, 2010

MEMO TO: Joseph Pontanilla, Chair
Budget and Finance Committee

F R O M: Traci Fujita Villarosa ^{TF}
First Deputy Corporation Counsel

SUBJECT: Requests/Questions from the March 29, 2010 Meeting
(CC-1) (BF-1)

The purpose of this memorandum is to respond to your memorandum, dated April 6, 2010, requesting legal advice.

1. Can the Council, by ordinance, require the Administration to videotape and exhibit board and commission meetings?

Yes. The Council may adopt an ordinance requiring that board and commission meetings be video recorded and exhibited. Such an ordinance could be codified in Title 2 of the Maui County Code, which includes other ordinances relating to boards and commissions.

The precise legal consequences of any such ordinance will depend on the scope and provisions of the ordinance.

2. Can the Council itself contract with a private party to videotape and exhibit board and commission meetings? Does the answer to this question depend on whether the Administration has declined a Council request or failed to comply with an ordinance to videotape and exhibit board and commission meetings?

In general, matters relating to the operation and administration of County boards and commissions involve the exercise of executive power, not legislative. Under the Revised Charter of the County of Maui (1983), as amended ("Charter"), and the Maui County Code, County boards and commissions are assigned for administrative purposes to a department or office within the County's executive branch.¹

¹ See Articles 6, 8, Charter; Title 2, Maui County Code.

Whether the Council may nevertheless contract with a private party to video record and exhibit board and commission meetings depends in large part on whether the Council identifies a legislative purpose for such a contract. Legislative purposes include carrying out one or more of the functions and powers of the Council provided for under the Charter, such as the power to investigate County operations, or to investigate matters upon which it may legislate,² or to nominate and approve the appointment of individuals to boards and commissions.³

² See Section 3-6, Charter, which states:

Powers of Council. The council shall be the legislative body of the county. Without limitation of the foregoing grant or of other powers given it by the charter, the council shall have the power:

1. To legislate taxes, rates, fees, assessments and special assessments and to borrow money, subject to the limitations provided by law and this charter.

2. To legislate appropriations for county purposes subject to the limitations provided by this charter.

3. To conduct investigations of (a) the operation of any department or function of the county and (b) any subject upon which the council may legislate.

4. To fix the salaries of such employees and officers as may be necessary.

5. To require periodic and special reports from all county departments concerning their functions and operations. Such reports shall be requested and submitted by and through the mayor.

6. To retain or employ, by a vote of two-thirds of its entire membership, special counsel for any special matter presenting a real necessity for such employment. Any such employment shall specify the compensation, if any, to be paid for said services.

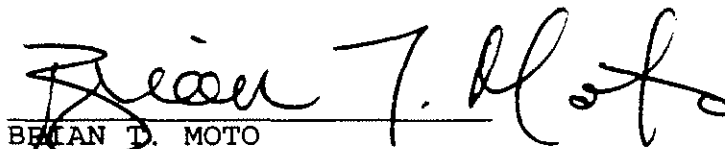
³ See Sections 13-2(16), 13-2(17), pertaining to the filling of vacancies on a commission or board due to the expiration of a member's term, or due to death, resignation, or removal of a member, respectively.

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Because Council has not yet determined the legislative purpose of such a contract, and in the absence of an actual appropriation for, or procurement of, such a contract, we cannot opine further.

We express no opinion regarding the cost, practicality, or technical feasibility of the video recording and exhibition of board and commission meetings by a third-party contractor retained by the Council.

APPROVED FOR TRANSMITTAL:

A handwritten signature in cursive script, appearing to read "Brian T. Moto". The signature is written in black ink and is positioned above a horizontal line.

BRIAN T. MOTO
Corporation Counsel

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xc: Charmaine Tavares, Mayor
Webpage