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May 29, 2003

Honorable Robert Carroll
Vice-Chair
Maui County Council
County of Maui
200 South High Street
Wailuku, Hawai'i 96793

Re: Employee Hiring

Dear Vice-Chair Carroll:

This is in response to your inquiry of May 6, 2003 as to whether a conflict exists regarding the hiring of a department director's offspring to work in the same department.

Currently, there are no provisions in the Revised Charter of the County of Maui prohibiting nepotism. The subject matter of nepotism is addressed in the Maui County Code and the Hawaii Revised Statutes ("HRS") in the context of grant applications only.¹

¹Under the Maui County Code applicants for social grants must meet certain qualifications:

3.36.040 Qualifying standards for applicants. An applicant making a request shall meet all of the following standards: ...

C. Have by laws or policies which describe the manner in which business is conducted. Such bylaws or policies shall include provisions relating to nepotism and management of potential conflict-of-interest situations; (emphasis added).

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Under section 378-2, HRS, which pertains to employment practices, it is an unlawful discriminatory practice for an employer to refuse to hire or employ, or to discharge from employment any individual because of race, ancestry, and marital status, among other categories.

In a case decided in 1994 entitled, Ross v. Stouffer Hotel Co. (Hawaii) Ltd., Inc., 76 Hawai'i 454, 456, 879, P.2d 1037, 1039 (Hawai'i 1994), the Hawaii Supreme Court upheld the right of an employee to sue his employer under section 378-2, HRS, for employment discrimination after he was fired based on the employer's policy prohibiting persons related by marriage from working in the same department. The court held that the employer's policy of terminating an employee for marrying another employee who works in the same department violated section 378-2, HRS, unless the termination fell within one of the exceptions in section 378-3, HRS. Ross, 76 Hawai'i at 459.

However, the Court was also careful to say that it was not completely outlawing "no-relatives policies." Id. Therefore, the Court's decision does not necessarily mean that Section 378-2, HRS, prohibits an employer from adopting a policy excluding from employment certain persons based on consanguinity or blood relationship (in contrast to marital status). There is no Hawai'i case law on point that addresses whether, and to what extent, an employer may, for example, enforce policies that prohibit a son or daughter of an employee from being employed in the same department

Similarly, § 9-11(1)(C), HRS, provides:

§ 9-11 Qualifying standards for foundation grant applications. An applicant for a foundation grant shall meet the following standards:

(1) If the applicant is an organization: ...

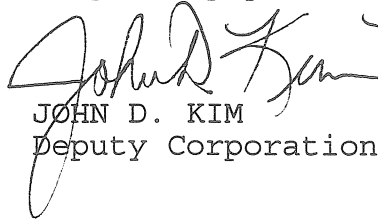
(C) Have bylaws or policies that describe the manner in which business is conducted, prohibit nepotism, and provide for the management of potential conflict of interest situations; (emphasis added)

Furthermore, § 9-1, HRS, defines nepotism as appointing persons to positions on a basis of their blood or marital relationship to the appointing authority, rather than on merit or ability.

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employee. It is likely that, if such a policy were adopted and subsequently challenged, the employer would have the burden of proving that such policy did not violate the provisions of Section 378-2, HRS. At a minimum, the county's hiring practice must be based on merit and ability, and cannot be based on discrimination because of race, sex, sexual orientation, age, religion, color, ancestry, disability, marital status, or arrest and court record.

Very truly yours,

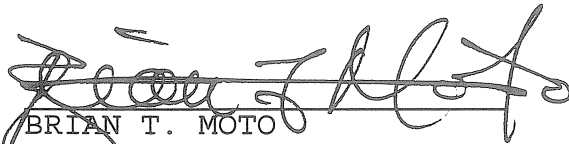


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APPROVED FOR TRANSMITTAL:



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