

HAWAI'I COUNTY BOARD OF ETHICS

MINUTES – REGULAR SESSION

March 8, 2006, 10:30 a.m.
County Council Room
25 Aupuni Street, Room 230
Hilo, Hawai'i 96720

Present: Reeve Williams, Chair
Karl Kawahara, Vice Chair
Kerry Inouye, Member
Wayne Joseph, Member
Ann Lum, Member
Patricia K. O'Toole, Deputy Corporation Counsel
John D. Kim, Deputy Corporation Counsel (Maui)
Mary Crosson, Secretary
Karen Delimont, Secretary

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1. CALL TO ORDER

The Chair called the meeting to order at 10:00 a.m.

2. STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS

None

3. APPROVAL OF MINUTES

2-8-2005, Regular Session: Mr. Joseph moved to accept and file the minutes; Mrs. Lum seconded the motion; all members voted aye, motion carried.

2-8-2005, Executive Session: Mr. Joseph moved to accept and file the minutes; Mrs. Lum seconded the motion; all members voted aye, motion carried.

4. COMMUNICATIONS

Communication No. 2006-08: A letter from Mayor Kim to the County Council, nominating Kendall Sharpless of District 6 to the Board of Ethics, to replace Karl Kawahara, who desires to resign from the Board was reviewed.

Mrs. Lum moved to accept and file the communication from Kendall Sharpless; the motion was seconded by Mr. Inouye; all members voted aye, motion carried.

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Board went next to Unfinished Business, Item 6 on the Agenda, pending the arrival of John D. Kim, Deputy Corporation Counsel from Maui, special counsel whose presence is required to address Petition No. 2005-08.

5. UNFINISHED BUSINESS

- a. Petition No. 2006-01: *Review of draft Informal Advisory Opinion regarding Lincoln Ashida’s petition seeking an opinion concerning the appointment of Claude Onizuka to the Hawai‘i County Liquor Commission.*

At the February 8, 2006, the Board found that Mr. Onizuka’s appointment to and service with the Hawai‘i County Liquor Commission, while employed by Ocean Side 1250, does not present a conflict of interest. Motion to adopt the Informal Advisory Opinion was made by Ms. Lum, seconded by Mr. Inouye; all members voted aye, motion carried.

- b. Petition No. 2005-04: *Review of draft Informal Advisory Opinion regarding Richard Ganigan’s petition on an alleged conflict of interest involving training and promoting of employees within the Department of Public Works.*

The board reviewed the draft informal advisory opinion which concluded that Mr. Hiram Keliikoa and Mr. Harry Jose did not violate Sections 2-83(b)(2) through (4) and 2-84 (b) of the Hawai‘i County Code of Ethics (“HCCE”). Motion to adopt the informal advisory opinion was made by Mr. Joseph, seconded by Mr. Inouye; all members voted aye, motion carried.

- c. Petition Nos. 2005-09 and 2005-10: *Review of draft Informal Advisory Opinion regarding Robert Cambra’s and Richard Gilman’s petitions on alleged unfair treatment and conflict of interest involving training and promoting of employees within the Department of Public Works.*

The board reviewed the draft informal advisory opinion which concluded that Mr. Hiram Keliikoa and Mr. Stanley Nakasone did not violate Sections 2-83(2) through (4), and 2-84 (b) of the HCCE. Motion to adopt the informal advisory opinion was made by Mr. Joseph, seconded by Mr. Inouye; all members voted aye, motion carried.

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6. NEW BUSINESS

a. *Review of Disclosure of Financial Interest statements filed pursuant to §2-91.1(d), Hawai'i County Code, requested to be reviewed in Regular Session, of:*

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|----------------------------|---------------------|
| (1) Carl Dionne | Liquor Commission |
| (2) Joel Gimpel | Board of Appeals |
| (3) William Graham | Planning Commission |
| (4) Paula Helfrich | Water Board |
| (5) Wayne Joseph | Board of Ethics |
| (6) Karl Kawahara | Board of Ethics |
| (7) Melvin Morimoto | Police Commission |
| (8) Yukio Takeya | Liquor Commission |
| (9) Reeve ("Bob") Williams | Board of Ethics |
| (10) Claudia Woodward-Rice | Tax Board of Review |

The Board noted Yukio Takeya's disclosure was missing the attachment and requested its secretary to look for it and review again at next meeting. A motion to accept and file all other disclosures was made by Mr. Joseph, seconded by Mr. Inouye; all members voted aye, motion carried.

Mr. Inouye moved to enter executive session for the purpose of the review of the review of Disclosure of Financial Interest statements filed pursuant to §21.1(d), Hawai'i County Code, Mr. Joseph seconded the motion; all members voted aye, motion carried. The Board entered into executive session at 10:30 a.m.

REGULAR SESSION RECONVENED AT 11:00 A.M.

A request was made to the Board's secretary to obtain clarification or completed disclosures on the following: Erik Flores, Kenneth Kaneshiro, Daniel Leyva, Florence Mitchell, Caroline Niimi, Wayne Ono, Robert Price, Riley Smith, and Ruth Walker. A motion was made to accept and file the remaining Disclosures of Financial Interest by Mr. Inouye, seconded by Mr. Joseph; all members voted aye, motion carried.

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At 11:10 a.m., due to the arrival of special counsel for the Board, John D. Kim, the Board moved to agenda Item 5(a). John D. Kim replaced Pat O'Toole as staff counsel, following procedure to protect against Board of Ethics conflict of interest.

6. NEW BUSINESS (CONT.)

a. *Petition No. 2005-08: Roger Christie seeks an opinion regarding Sections 2-83(b)(2) and 2-84(a)(1) of the County Code as they relate to the actions of various council members voting to receive money for reimbursement of legal fees in a civil impeachment case filed against them.*

RW: JD Kim is joining us as our staff counsel today as we follow procedures so as not to create any effects of our conflicts of interest, and we are waiting for Mrs. Lum, a member of the board, who would like to know who you are too. So I'll just defer the introductions, except to say that I am Reeve Williams, Chair, Karl Kawahara is Vice Chair, Kerry Inouye is a member, Wayne Joseph is a member, and Ann Lum is a member, and we come from different parts of the island, different backgrounds. So when Mrs. Lum returns, we will get on with things here. Okay, so she is back from her emergency, and Mrs. Lum is also a member, and may I ask that you all introduce yourselves starting with the gentleman seated in the front here.

MU: Michael Udovic, on behalf of the part of the respondents.

RW: Okay

MU: Deputy Corporation Counsel

RW: Deputy Corporation Counsel, representing the respondents

MU: Yes

RW: Ummm, from left to right, that's you.

Audience: Joey Yoshimoto I'm a Legal Specialist with the Legislative Research Branch.

RW: Jump to Andy in the back

Audience: Andy Baclig, Council Aide to Chairman Stacey Higa

RW: And behind you? Who's that fellow behind you?

Audience: I'm Reverend David Zeissler.

RW: Reverend David Zeissler? From a church in town somewhere?

DZ: Yes, ummm, the church?

RW: Affiliated with a church of some sort?

DZ: Nondenominational.

RW: Name of the church? Is there.....

DZ: Earth First.

RW: Earth First. Okay. Roger?

RC: Roger Christie, Petitioner.

AA: Aaron Anderson, interested citizen.

RW: Okay. Is there someone back behind you Aaron?

AA: No.

RW: Okay, lets begin. So Board of Ethics, now, back in session dealing with new business which was deferred, awaiting the arrival of our Corp Counsel, our counsel, Mr. J.D. Kim from Maui, and we are addressing the business of Petition No. 2005-08 in which Roger Christie seeks an opinion from the Board of Ethics regarding Sections 2-83(b) sub (2) and 2-84(a) sub (1) of the County Code, in which the council members are seeking public defense for their impeachment trial. And, uh, I would like to ask if we can begin, if I may, JD would you be comfortable to sort of summarize, summarizing, or we can have Mr. Christie summarize his action. Yeah, lets have you summarize the petition and ah, basically we have determined that, I think, that that we are dealing with one section of the Code 83 (b) sub (1), take us in a summary direction there.

JD: As I understand, from Mr. Christie's petition he seeks an opinion whether or not there is a conflict of interest wherein eight members of the County Council voted, or had on their agenda, an issue of reimbursement for legal fees on an impeachment action filed by Mr. Christie. He cites to Section 2-83, Fair Treatment, subsection (b)(2) which states that no officer or employee shall use, or attempt to use the officer's or employee's official position to secure or grant unwarranted privileges, exemptions, advantages, contracts or treatment, for oneself or others; including but not limited to the following: sub section (2); Accepting, receiving, or soliciting compensation or other consideration for the performance of the officer's or employee's official duties or responsibilities except as provided by law. And then he also cites Section 2-84, Conflicts of Interest, subsection (a) No officer or employee shall take any official action directly affecting: subset (1) A business or other undertaking in which that officer or employee has a substantial financial interest.

RW: Okay, and so Mr. Christie, Roger, does that essentially summarize it?

RC: Yes, very well, thank you.

RW: Would you like to make your case.

RC: Yes, I would. Good morning and aloha to everyone. Its my pleasure to be here. I love this county very much. I've been a happy resident for almost 20 years and I feel like I'm a citizen performing a citizens responsibility to help keep government in check and accountable. Our beautiful state constitution says that all political power of this state is inherent in the people and the responsibility for the exercise thereof rests with the people. All government is found upon this authority and it is my pleasure to be a long-term resident here and if I see something that seems to be in conflict or out of integrity, I feel it is up to me to speak out about it. I have full respect for all parties involved in this case and my feelings in doing a political action like this remind me of Desmond Bishop Tutu when he won the Nobel Peace Prize and said "...people sometimes do bad things, but there is no such thing as a bad person." I do my best to come from that point of view. So, Albert Einstein said many years ago we need a new standard of ethics in order for humanity to survive. I believe that it is true today as well. It's my pleasure to exercise my civic responsibility. It started over my opinion that a perpetual prejudice and a form of civil war has existed on this island for over 30 years, it is known as the Marijuana Eradication

Program. It's funded and, I believe, improperly reviewed by a majority of the County Council. That has led to conditions of poverty and the highest per capita ice and methamphetamine abuse in the USA, right here on this island. The program is the Marijuana Eradication Program. It's so terrible that it creates a substitution factor of ice for cannabis in some people, all too many people, and has led to such a sorry state of affairs that we have wound up actually buying and renting prison beds on the mainland and sending some of our residents to jail, disconnected, not only incarcerated, but disconnected from their families support system and legal representation. I think in the Bible they call it banishment and it's a very horrible form of punishment in addition to going to jail. The location of the jails also part of that. Now, because of my appreciation for the cannabis plant, itself, and those who revere it is so strong, it's my pleasure, my honor, I feel it is my duty to expose the workings of the war on marijuana and help to lead this situation from a situation of war to a situation of peace and harmony, and end the Marijuana Eradication Program forever. That is my eventual goal. The petition for impeachment, I wrote a petition for impeachment and because I view the County Council as not properly reviewing the eradication program. Charter states very clearly that it is to be reviewed critically every four years or the program shall terminate. There are many program reviews that the county has, they can put them on the table when requested, there is, in my opinion, no program review for the Marijuana Eradication Program and I invite you to investigate for yourself if you would like to call the Council and ask them. If you would like to see a copy of it.

RW: May I ask at this point, that those are not the specific charges that you are concerned with here?

RC: That's correct, but...

RW: But, the background leading up to the charges.

RC: That's correct, leading up to the charge here, I wrote it because I felt that was out of integrity and also leading to the ice epidemic, which didn't just happen here. I believe it is a created circumstance and can be changed. If there was a program review done in the early 70's, late 70's, early 80's, mid 80's it would have picked up the ice epidemic at its infancy and it could have been corrected, that didn't happen.

RW: So is your impeachment proceed, I don't know, I just don't even know how did that go?

RC: Yes, well it was ruled against, a closed issue last week, but I'm back with a new hearing to reconsider that motion, so it is still very much alive.

RW: What is your recourse to deal with this specific issue? In other words, the issue of failure to conduct program review, that, per se, is not, certainly is not an ethics issue, right?

RC: Correct.

RW: That is what has lead to this next step, right?

RC: Right, we have this beautiful County Charter, and I am very proud to be a resident of the Island of Hawai'i, because of our County Charter, for one thing. It provides a remedy for citizens that feel that something is out of order here and that remedy is impeachment.

RW: That is the next step? No program review, therefore impeach them? Is that ...

RC: That's the way I see it, because I have personally delivered testimony, information, and many witnesses over many years to the Hawai'i County Council at appropriate agendized meetings to take testimony about the eradication program. Uh, a few years back the chairman of the County Council saw fit to end those hearings, so they have kind of moved the goal post further away from citizen participation. The meetings were contentious, they got heated but it is democracy in action, and I think the County Council didn't like those meetings so much that they denied access for the citizenry to have, to be heard.

RW: Did you try a referendum?

RC: No. And then what happened was the Council decided that their yearly budget hearing was going to be enough of a program review, plus monthly reports. I don't think any accountant would verify that that is a mandatory program review. Voted into the County Charter in the late 1970's, after the abuses of Watergate, when the good people of the Big Island felt we needed another level of ethics here to watch our government, because they saw that the Federal Government could make some real bad moves, and they wanted to get a handle on it, and good for us, and good for them.

RW: Okay, so you brought separate charges now because you are seeking defense, right?

RC: Correct

RW: Public defense?

RC: I brought impeachment charges and then I know that part of the bringing of the charges is that Corp Counsel is not allowed to represent the defendants, the officers, and that they have to hire outside attorneys to pay their own legal bills, which, obviously, is a stress, and it is a cost for them, and it is part of the process. So, then, that led to, I wrote the impeachment charges. I filed it in court. We have a civil lawsuit, which is ongoing at this point and time, which led to an agenda item on October 18, 2005. Communication 461 of that day says that there is a petition for impeachment seeking the impeachment of the Mayor and eight City and Hawai'i County council members, this was from Corporation Counsel Lincoln Ashida, dated September 28, 2005, recommending that this matter be agendized for the purpose of establishing, prior to the conclusion of the court case, the ground rules and process for hearing, considering, and then voting upon the reimbursement of legal expenses at the end of the impeachment case. Reimbursement, as if the Council would have to pay first, then get reimbursed. Now, I sat in the council room that day and witnessed it with my own two eyes and ears and the Council debated that issue and then voted upon it. The entire Council, nine members were there that day, eight of them voted, eight of them were my defendants in the impeachment case and they voted on getting reimbursed for themselves. So money that they paid out of their own pocket would come back.....

RW: What was their rationalization, or justification for that?

AL: What, excuse me, what motion did they vote on? This is a communication, did they vote to accept the communication or did they make another action?

RC: I believe they made another action; can you correct me if I am wrong on this here, Mike?

MU: I don't know.

RC: Yeah, it was, it was a, it was a little hard to follow. I thank you very much for bringing that up. It was, that very issue was--only raised their hands, say hey, that's not even procedurally proper to do that today, and something happened in that meeting that allowed that to go through. I thought it was out of order at that time, but it wasn't my place at that part of the hearing to stand up, at that point, and stop the action. That's what I felt like, hey, stop these things right now, something is out of order here. They proceeded with it and the vote happened and the majority voted to pay themselves back, and I thought well that's interesting because I had just read a letter from Lincoln Ashida to, on this very subject, to the Mayor, the Council, and to myself and I included it as evidentiary. In the evidentiary package there, thinking you might have on page six, that says hiring special counsel for payment of legal expenses in this impeachment process and, let's see, if you went to the third paragraph down it says "...one thing however is clear, our Charter provides in no uncertain terms, that the Corporation Counsel is prohibited from representing any official in an impeachment proceedings. In our opinion this pre-supposes that the use of public funds for this purpose is, likewise, generally prohibited." I thought, wow, Lincoln made that very clear. I'm surprised that he didn't reiterate that at the meeting, because he was at that meeting and it proceeded, the vote proceeded, and then all the sudden the matter was over and the Council had in effect voted in order to get themselves reimbursed. For what I was guesstimating, and Mr. Udovic can enlighten us here, substantial financial interest. I don't know what the financial interest is at this point in time, how substantial it is, I just know that lawyers cost a lot of money.

RW: Well, so what, were they represented in their actual impeachment hearings, can you tell us that Mr. Udovic?

MU: Yes.

RW: They were?

MU: Yes.

RW: They were represented?

MU: Yes.

RW: And what was the rationale for representing them?

MU: The rationale is that they are entitled to have representation. They hired their own attorneys.

RW: Oh.

MU: They hired their own attorneys.

RW: They did?

MU: Yes.

RW: Okay, so, so that has become a moot issue, then, I guess as far as you are concerned, 'cause during the impeachment the hearings they didn't have the county representing, but your issue is that they are now seeking reimbursement for those attorneys that represented them.

RC: My charge today, is on the agenda today, the reason that I am here is that at that meeting on October 18, I witnessed eight County Council members who I clearly see have a substantial conflict of interest voting to get reimbursed monies back into their own pocketbooks, which they might have to spend during the impeachment process. And I thought, wow, I think I've seen that in the County Charter under the ethics.

RW: Uh huh....

RC: ...and when I read it, it seemed very clear to me that they were, these were officers of the county who were attempting to use their official position to secure an unwarranted privilege and advantage or treatment for themselves, personally, and their co-defendants, umm, to receive compensation for the performance of the officers official duties or responsibilities, and that they're, as it says here in Section 2-84, that they're being an officer, it says that conflict, no officer shall take any action directly affecting or undertake a business or other undertaking in which that officer has a substantial financial interest. It's my, even I don't know what that total bill is for themselves, I'm presuming it's substantial and that it is a financial interest, it is a monetary issue. Now, we are all human beings and when our own pocketbooks are at risk here, and we have to pay things, you know, it's....

RW: I do now notice that you say, Ashida's opinion on that is he applying on that they cannot, the Council cannot represent them at the impeachment hearings....

RC: ...and

RW: He did say, he went on to say that there is case law at present, of course, and common sense would seem to indicate that the municipality may have to indemnify its officials only where expenses are incurred in the performance of official duties, or in defense or actions challenging official acts. So, I mean, isn't that the issue right there, you're saying, I want to say your working at that Charter very charismatically and I think, if I've got it right, and you're saying that, you're saying that, they reimburse themselves, that does seem like a rather strange way to do, to throw it right out to the Council who vote then vote on reimbursing themselves, that seems like to me, that is an unusual way to go. Perhaps Mr. Udovic, or our Counsel can elaborate a little bit on that, but Ashida opened the door for them to do that.

RC: Yes, he did, and he didn't get in the way of it that day.

AL: There is the aspect, too, that the County Council is the only body in the county that can vote funds, that can vote funds.

RW: Yeah.

AL: But, so, they must vote on their own reimbursement of, I assume, travel expenses and blah, blah, blah, because they're the only ones that can do that. So I don't see that we can take that away from them.

RC: May I, there was one councilman that did not have a conflict of interest that day, and that was Bob Jacobson. He wasn't a defendant in the impeachment issue. As far as I can tell he was the only councilman in the room that could vote on whether to give, to reimburse those funds to those council members. Because he had no financial interest, there was no money coming back directly into his pocket.

AL: There, there is also the rest of that Section 2-84 (a), the last paragraph of the department head, who is unable to be disqualified on any matter described in items (1), (2), and (3) above will not be in violation of this subsection if the department head has complied with the disclosure requirements of Section 2-91(1). So, I wonder if that comes into play as to whether they can vote reimbursement or not.

RC: That's a good question, what department head? I mean.....

AL: By department head I.....

RC: What department head?

AL: I'm being very wide on that, no officer or employee, then it's saying somebody, that maybe in charge, that can't be replaced, so I'm wondering we don't have anybody else to decide whether they should

RC: You had one councilman, one councilman there that day that did not. I would think that someone, coming from a purely ethical place of character, that wanted to remove any, you've heard the term, appearance of conflict of interest, not just a conflict, just even the appearance of a conflict would say excuse me I'm going to back off this. I can see that money, out of my checking account, I am going to potentially vote that money come back to my checking account and not to the people, the good people or the citizens of Hawai'i County, which they are supposed to be doing the county's business, the public business not their own business. Someone, I would think of high moral character and, and using an ethical standard to remove any, even appearance, that would lead us to this room today, would say, excuse me, I'm going to bow, back out, and let someone on the panel here that doesn't have a Bob Jacobson one-on-one personal loan vote on this.

AL: But then of course not a quorum, right?

RW: That's an interesting discussion.

AL: Ummm....

RW: Did he oppose it, did Robert Jacobson oppose it, did he vote against it, or did he just (inaudible) himself ?

RC: Yeah, no he voted against it, I think, I think.....

RW: You think....

AL: So....

RC: 'Cause he was against the eradication program, he was against, he's for the mandatory program review.

RW: But you didn't sue to impeach him?

RC: No, I didn't impeach him 'cause he was of this like-minded myself and the other petitioners. That a program review was no place to be seen, and it is required every four years.

AL: Well, I think the ethics board or that kind of point of view I also see a problem with, you know, we've got to reserve the right for citizens to question elected officials, we do have the electoral process to do that, but we have to reserve that right to question, but we also have to have people that come into public office who may not always be able to afford, we can't always have rich people that can afford if a suit is brought against them in the action of their duty, not if they were, did something really bad, or something, but, the actions brought against the person in public office for their duties in the public office, do we as citizens need to help them out to, especially if they're not impeached, or if they're not found guilty, or not found responsible, do we owe our public officials that protection as citizens?

RC: That's a great question, and I think we probably do. I agree with you. I think we probably do owe them, maybe even that legal defense reimbursement, they just don't get to vote on it.

AL: But they don't have anybody in our County else to do that. We have a real issue, a real problem here.

RC: The reason that I bring this up, and ladies and gentlemen with all due respect, we have a drug war on this island, we are the worst statistics in the USA. Now, that wasn't the case 20 years ago before operation wipe-out. Okay, something has happened here that's terrible, it's ugly to the core. It affects all of us, whether we use ice or don't use ice, okay. It affects all of us. And we are evolving to gated communities, and sending prisoners to the mainland because something is terribly wrong on this island, year, after year, after year, to the point that, I brought an article, I didn't include it, I apologize, in the package. I just found it. January 13, 2006, the largest workplace drug testing lab in the state says that drug use has increased, now over the past quarter, 6% of all employees tested positive showing indicators all over the state. Okay, this war on ice, the war on drugs, the war on marijuana continues, it's getting worse on some way to measure it, according to DLS, the Diagnostic Laboratory Service. Umm, methamphetamine is up, as of two months ago. Something is terribly wrong, which has led me to speak out, and say excuse me, that I, as a citizen I'm not too familiar with procedures of government. I am doing my best to say "Hey, stop this thing, somewhere, somebody has got to take a look at it" and if I have to, you know, throw something in the room here to get attention, so that we will take a new

look at it, so we will heal this thing, and be able to go as a healthy island community here. Brings me to this point today and when I watched that vote I thought “Bingo” not only do we have an unjust war, which is a prejudice against a culture of people that use cannabis, it goes unreviewed, now we’ve got the people who fund it and approve of this war leading to all these disastrous consequences, are now on top of that voting a financial benefit in their own pocket. I couldn’t take it. I have to raise my hand and say “No, pass.” I’ve got to put myself in the way and thank you for the County Charter and your consideration today for hearing my concern. It’s, it’s a great concern of something here. I think I have included this article in your package, do you recognize this, may I approach Right, pot eradication is seen as a gateway to hard drugs, researchers say program’s success leads to ice use. The success of Hawai’i Marijuana Eradication Program has led a significant number of peddlers and users to switch to crystal methamphetamine. The researcher said the only federal study that

AL: Who is that from?

RC: The National Institute On Drug Abuse, and I believe I did include a synopsis in your package of the of the anti-pot efforts boost ice use, do you recognize that?

KI: No.

RW: You know what? I think that, basically, you’re talking to a sympathetic audience here and you have described the larger, the larger problems, and I don’t think that anyone will disagree with you, but you are making good points, but I think we have to kind of narrow it down to the issue here, though, of the conflict of interest for them to vote, to reimburse themselves, to defend themselves against the impeachment charge, which you brought against eight of the nine members who basically said “Now we will go without sufficient program review.” Probably a good call, but impeachment was a pretty extreme measure, one that you have used in the past on a simpler issue, right and so, and you have an agenda there and your agenda is the proselytized legalization, I suppose, or the non-criminalization of the use of cannabis, right?

RC: Yes, it is.

RW: ...and that’s fine, I mean, it seems to me that there are other venues that you could use, whether it be a referendum, information campaign, run for office, get elected, build a majority in the Council, get program reviews or even sue, or pursue on program review violation, per se. But, you are taking on a way broader shot here, you are shooting at a bird with a shotgun, I see. How you.... Any reactions from the Board on this so far, any response?

WJ: I have one. My whole question here would be did the County Council vote on reimbursement prior to the court hearing?

RC: Yes.

WJ: And the reason I would bring that up is, are they asking the county to pay for their legal defense before we even know if they are guilty or not? I think more appropriately, the Council may have, or should have asked for reimbursement after the proceedings.

RW: Can you help us out on that JD, or Mr. Udovic?

MU: They have not asked for any reimbursement yet.

AL: They have not...

MU: (inaudible) to higher counsel and to get the process to establish as to how to get reimbursement.

RW: Okay, and can you jump in at this point, and is that, is there precedent for that?

MU: Probably not, you know, I haven't been able to find any. I presented a position statement which I think pretty clearly establishes what the position of the county is. I mean Section 2-188 of the Hawai'i County Code provides that the officers will have a defense, provided a defense, but the County Charter says that the Corporation Counsel cannot defend these officers in an impeachment proceeding, and there is ample case law which states that they are allowed to hire outside counsel, and they are the only people who can vote on it, nobody else, they can't give that to someone else. They can't say that they are going to give it to the Mayor to decide whether they should get reimbursement or not, they are the only ones who do it, and what Mr. Christie is saying is entirely correct, this is a political question. A political question has to be borne out in the polls, not in front of the Council. Financial interest, if you also look at the County Charter, specifically defines, seven, pardon me, five, six different things which are considered financial interest; ownership of a business, a creditor in an insolvent business, employment or prospective employment where negotiations have begun, ownership of personal or real property, a loan or other debtor interest or directorship or officership in a business. None of those things are here. None of those things have been done by the County Council, they haven't done anything wrong. They are the only ones that can do, that can spend the county's money, essentially, and they have a duty to be defended and we can't deny them that responsibility, quite frankly, they have that privilege. We would do the same thing for any County officer who was sued; I mean the Corporation Counsel would represent them. We would come if you got sued for one of your actions. We would provide a defense and if we couldn't do so we'd have to hire outside counsel, I mean, to do that and it's just inappropriate to ask them to do something else, and if he's unhappy with the way things are done in the County Council then he has to get new council members in there to do things differently, but this is not the process that we use to provide that.

RW: ...and I want to pick up on that, I tend to concur with all that, but we actually took Mr. Arakaki to task for his legal trust fund, that was the result, you know, he resulted in getting the (inaudible) to kick in and crank up a good legal defense fund. (Inaudible) Councilman Bob Jacobson, for example, they didn't pursue that tact, we called him on that legal defense fund and made him send that money back, comes back at him as campaign contributions, for transparency and so forth. So, what other alternatives do our public elected officials have in the performance of their duties but to vote within the confines, within the precedence, and within the Charter, within the limits of the Charter in this case to set up precedent to defend themselves? Now, I don't know....

RC: I'd like to make a comment before we get too much further down the road

RW: Yeah.

RC: Mr. Udovic has properly defined what a financial interest is. That we actually have three words, I think, substantial and financial interest here to define. They are clearly not allowed to vote on something with a substantial, financial interest on the table. Substantial, I don't know yet what the dollar amount is, I am presuming it's substantial because it is a legal bill, and it's an ongoing one. Number two, financial interest does have a definition, according to the Hawai'i County Code and under point E it says a loan, or other debtor interest. In my understanding that nails it perfectly. That is a debtor interest, they want to get paid back, they used the phrase in the agenda, reimbursement, voting upon reimbursement of legal expenses at the end of the impeachment case.

AL: But, I also think that under that it is an important little paragraph at the bottom of 2-84, even though they say department heads, they talk about sole disclosure, that if it becomes a problem, if it something is an issue where it can't be, where it can't fit, that this takes the appearance, there is an appearance then you need to have public and sole disclosure of what's going on and that is like a safeguard for the public, so that if you do have a reimbursement situation going on where there might be an appearance, but again we can't take away their duty of budget--

RC: Why not? That's what ethics is about, you've got to step back..

MU: But that requires a Charter amendment.

AL: A Charter amendment, yes.

MU: (Inaudible)

RW: (Inaudible)

AL: But, I think that we are looking at a conflict of interest here. Umm, they are mandated to vote. I see it this way, they are mandated to vote the financials. They are public officials, and deserve, if they are not found guilty in a suit, they deserved the support of the public for their defense, it is not a personal thing it's in what they were doing in their job. And since those two have this appearance that we need to look at that being required as being looked at as public disclosure of this interest.

RW: You brought up the point about the impeachment proceeding, per se. Is that relevant JD? The impeachment proceedings, is that relevant to our hearing? Do we need to know how the impeachment proceedings went? Can anyone make a case for that or advise us on that? I mean....

AL: How's that, the case went?

RW: Yeah.

JD: The results of the case. You're looking at the oriented results and whether or not you have a duty, or whether or not the County Council has a duty to pay for defense for one of its officials or employees. That's the issue. For example, as I understand my civics classes, the Mayor's

administration, the judiciary, the legislative bodies of the counties control the purse strings. They annually vote on a budget every fiscal year, what's included in the budget.

RW: Marijuana Eradication for example.

JD: And are also salaries included?

RW: Salaries...

JD: Okay, now are their salaries included in the budget? Is that a financial interest? Are they doing their job? Is that a substantial financial interest? Well, I don't know how much your County Council members get paid.

RW: \$35,000

RC: I'm not bringing it up, but I want the County to operate smoothly, I really do. I want to (inaudible) along so we can get along. However, the house is on fire on this island with the ice epidemic and I want to jam up the Council, and maybe in this way, so that we can get some new energy and say, hey, wow, we've caused it

RW: We are talking about the ethics issue now, not the social issue

JD: To finish my point, umm, under the County Charter it is the duty of the County Council to control the purse strings, they are the only ones, even in the case law that was pointed out to him in the position statement, are they only allowed to hire special counsel, or to reimburse special counsel, so the outcome of the case whether you like it or not. Say it was a police officer who got in trouble and wanted a defense, and if the police commission said well it was in the course and scope of your duties, you are going to have to get reimbursed for special counsel, and there may be a conflict. If the County Council took that up and he got convicted, he would still be obligated to pay for his defense -- he is an employee.

RW: Do you get that?

RC: Yeah, it's not the paying them that I disagree with. I think that they deserve, they are doing the public's job, and on the part of the public, and I'm glad they are doing it. My complaint to the ethics, what brought us here today, is that they had a conflict of interest on that matter on that agenda item. Money going back into their own pocket was on the table. It's a debtor interest; it's a loan of sorts. Okay, and ah, and we don't have financial disclosure, Ms. Lum, Mrs. Lum, and financial disclosure hasn't been made and the impeachment trial is not over, so we don't know how much to determine whether it is substantial, and again I think I have an argument, and propose to Mr. Udovic, it's equal to if not stronger that there is a debtor interest here, that it is a financial interest in that it is substantial and they voted on it and they should have backed away.

JD: I think Mrs. Lum did not say a financial disclosure, I think what I heard her say was that they would have to disclose to the public that this is the action to take, and it was nothing, like they went into executive session, and said okay this is what will be, and this is what we will do, we will pass this measure out, but we are not going to say it's for us, we are going to say it's for a public official.

MU: There was complete transparency.

JD: So, I mean if there is a disclosure, I think Mrs. Lum was talking about, that yes the public does know that the County Council are voting to reimburse legal fees for an action which Corporation Counsel could not defend.

RC: As part of the public, I am here to say, wow, that looks like an ethical violation. I may be wrong, but I think maybe we need to continue this for two good reasons: number one, to get full disclosure from the County Council as to how much money is involved here so you can decide if it is substantial or not, and, also so the impeachment case is over.

KK: Does it matter how much?

RC: Does it matter how much to me?

KK: What if they got \$10?

RC: Yeah

KK: Does it matter the amount, if the amount is of concern to you then it is not a matter of action.

RC: The principle is voting on something that is money coming back to yourself.

RW: Which the Charter actually allows them to do, you know, it does allow them to do that.

RC: I don't know, for some reason the word "Halliburton" just comes to my brain here, to stretch it, you know what I mean. At what point do we say, and again because we have an extraordinary situation that's not solved on this island. I'm using this venue to raise my hand and say, hey ladies and gentlemen, we've got something terribly wrong going on here and maybe this is a way to put the microscope on this particular issue and say, hey, I wonder, you know, is that proper, and then was... Maybe that's the poisoned seed that's grown to a poisoned tree here.

KI: Well, right here in the Charter it says hiring special counsel or paying of legal expenses. Article 6, Chapter 2, Section 6-2.5 of the Charter which provides for the hiring of special counsel provides in pertinent parts as follows: The Council may, by two-thirds vote of its entire membership, authorize the employment of special counsel for any special matter presenting a real necessity for such employment. Any such authorization shall specify the compensation, if any, to be paid for said services. To me, this says that the Council has to vote on its own reimbursement, there is nobody else.

RC: Well, that's a good question, that is. It's just that, you know, did the ethics consideration override their public responsibility to take a vote, and I

RW: What is the ethics charge, then? I don't get....

RC: Well, I'm charging that they voted that day a special treatment for themselves.

RW: Which is prescribed...?

RC: But, they have a special... If they can have a financial interest in it, fine. I can see that somebody is ethically clear, but when you talk about five or 10 or 20 or maybe 50 thousand dollars here to go back into their pocket, that's a substantial benefit for themselves, and would you be tainted, ladies and gentlemen, if that was your money on the table?

RW: If a fire truck runs out of control....

RC: Would that cloud your public responsibility to act in a fair and impartial way? I think I'd be interested, my own self.

RW: I mean, I don't know what the alternative is short of anarchy. I mean, you know, I almost said that if a fire truck runs out of the central fire station, the brakes fail and it plows into three cars and kills six occupants, you know, is the fire department or the individuals that drove the truck responsible, do they have to defend themselves in court. Do they take on the liability for their actions and the performance of their duties? I mean, you see, there is no end to this; it is a Pandora's box.

RC: I'm glad we get this system of government and our community gets to discuss these issues here. I really think it needs to come up because, again, I have a purpose, I have an agenda, and that looked like one, it was like the straw that broke the camel's -- I thought, this is brilliant, now they're voting on money to go back into their own pockets. Yes, I agree with the Charter that you just read. Except for the ethics violation, if they've got a substantial, financial interest in it, then they are supposed to say, that has the appearance of a conflict, and let somebody else decide.

RW: Um hum.

AL: There is no one else, that's the problem.

RC: There was one councilman left.

KI: You need 2/3 of the entire membership, according to this. One person is not 2/3rds.

KK: You know, you guys, I think part of the reason, correct me if I am wrong, but part of the reason for bringing up this whole issue up, is that there is no specific process to cover this situation, there is a kind of nebulous here, right? Isn't that true? That the reason this thing came up is because there is no, nothing specifically

RC: You guys get to decide. I mean it's -- I'm making specific charges on a specific vote and your wisdom gets to decide if that's reasonable enough to make that vote null and void, and to find another remedy, as far as I can tell. I mean, Lincoln Ashida, when asked his opinion, wrote "... in our opinion this presupposes that the use of public funds for this purpose, is likewise, generally prohibited..." and he felt it should go to the ethics commission and as far as I know it didn't, and I'm the one that brought it to the ethics commission. Lincoln said "...we are mindful

of the ethical implications of council members voting on whether to reimburse themselves for legal expenses incurred...,” page nine of that letter to Harry Kim.

RW: Then it goes on to say, “...none the less, there is a charter mandate, you know, blah, blah, this is okay.

RC: Well, maybe I am ...

RW: Yeah, yeah

RC: And thank you for your time here, I may be wrong, I just think something is wrong here in River City, this is an indication --

RW: Bay City.

KK: I think that you are doing a service to the public by bringing this issue up and something really, will be able to some specific law can be passed through to remedy this.

RW: And that might be a good way to go. Craft a law and have it introduced, get Jacobson or some other ...

KK: In Mr. Ashida’s letter, second to the last paragraph “...although our laws do not provide for a specific process to cover this unique situation, our performance remedy seek to reconcile and balance the competing interests of ...” it goes on to cite three different areas. The legal requirement that the (inaudible) remain with the Council. The legal maximum that government should use to pay for legal expenses of government officials when they have acted within the course, and the scope of their responsibility, in good faith and for a public purpose, in order to encourage persons to serve in public office. And the third part is about bringing this up as an ethical issue, and....

RW: They are just required to hold a public forum, which they did.

KK: This issue needs to be corrected; apparently, according to, well not needs to be corrected but maybe needs to be looked into.

RC: We’ve got a beautiful county and there is always room for improvement. Thanks for bringing that up.

RW: Yes (inaudible), would you like to come forward? Come forward so that we can hear what you are saying.

AA: Yes sir. I would like to bring this back, for my own purposes...

RW: Aaron Anderson

AA: The (inaudible) public reviews, and they haven’t done it, why?

RW: Good questions, not an ethical issue, but a good question

AA: Why? All they have to do, we'll back off, they will never see us again if they will just do the program review.

RW: What?

AA: I feel very confident that the program review will be a big step towards resolving this whole situation within our county.

RW: I think that is the issue

AA: ...and that's what I see, (inaudible) money out of their pocket, we have been, not officially, but through these things somewhat chilled by the fact that the petitioners will have to pay these guys back, that's floating around.

RW: Right

AA: There is nothing in the Charter, there is nothing about program reviews

KK: That is not what we are here to decide.

(interference on tape)

AA: (inaudible) to my knowledge, the only department that the county has done a review on is the dog catcher. They did a good one, and it is supposed to be on every program.

RW: Well, we have (inaudible) is not a government efficiency, but cost of government commission, I think maybe that's, I respect where you are coming from, I think we all do, but you know you really, this is not our purview, program review is not our purview, I think ethic violations are, you know I don't hear any case for what (inaudible). Why don't you put your energy into that and forcing the program review or forcing a replacement wholesale of the County Council, you know, which (inaudible).

RC: There have been over a hundred people in the council room and three to six times and they voted on a program review in 1996, they basically said, you're right lets do a program review and then they didn't do one, they did a special study, a wink, wink, report that didn't answer the crucial questions, are there any unintended consequences for the Marijuana Eradication Program? Thank you.

RW: Is that what the impeachment trial was about? The program review?

RC: Yes, and Aaron and I are considered cannabis-culture people and proud of it and so these helicopters and this war is against us and people we know and we love and associate with, or don't, or people we don't even know.

RW: They bother me, too.

RC: And uh, so something's wrong here, and this is a way in and I thank you for hearing my case. I presume with wisdom and judgment you will make the right decision.

RW: Is there any, uh, further testimony from anyone in the public or from Mr. Udovic, any summary statements or anything like that? I think you have summarized it already. Any questions or further questions before we proceed to the Board? Do we...

AL: There is another section we should look at, too. Two-eighty three, (b) (2).

RW: Isn't that ruled out?

AL: Was that ruled out?

RW: I think it was.

AL: Oh, I am sorry, I missed that.

RW: That was ruled out, thus, that's the only issue, sorry, that's the only provision which raises concern, 2-83(b).

AL: Umm, I was just looking at (c) under there, nothing herein shall be construed to prohibit an officer from introducing bills and resolutions, serving on committees so on and so forth, or taking action in the exercise of the officer's legislative functions. So I was thinking, that applies to again that little question about how it, your job is to vote finances, and we really can't say you can't vote finances.

KK: Does someone here know exactly how the salary commission operates? I think this was created in the last ten years or so and a the salary commission recommends that who ultimately says the council members will be paid so much, the mayor will be paid so much.

RW: The salary commission.

KK: No, who ultimately makes the decision.

RW: The council does, they vote themselves.

PO: The salary commission establishes those salaries.

MU: They establish it, a third party, then the county votes on it.

RW: Then the county votes on it.

KK: But who actually says, they make their recommendations don't they --

(Several voices talking, inaudible)

PO: If they say that is what it is, then that is what it is.

MU: The administration and the Council has no say in the matter

KK: ...and this includes what kind of pay, for department heads?

PO: The mayor.

KK: ...the mayor.

MU: ... the prosecutors.

KK: ... Council.

MU: ...attorneys that work with the county...

RC: Probably because if they voted on it themselves it would be a conflict of interest.

RW: You guys should apply for some commissions.

RC: Anyway, God bless everyone.

RW: I think we've got enough to roll on this, do we want to do this in open forum?

JD: You can deliberate, basically....

WJ: Maybe we should give ourselves a break.

JD: That's up to you.

RW: We heard all the testimony. We just need to get our own act together in house and wordsmith our, or arrive at our conclusion, wordsmith that, so if we have a move to go into executive session, if there is a motion to move to executive session, or if not we can stay in open session and proceed as we are right now. Any motions, any discussion? Want to make this decision right here right now? Or do you want to deliberate further?

WJ: I just think we can make a decision

KK: We didn't make the Sunshine Law for us to go into executive session to make this kind of decision.

JD: To deliberate, and to ask questions of me if you have any, and then vote in some other fashion or motion on this issue, and then on the record, then vote on the record.

RW: Well, so would anyone like to make a motion or propose the outlines of a motion that the Council --

(tape change)

RW: Any discussion, or comments from the Board?

KI: If I can make a comment, please. I understand where you are coming from; however, I feel this is not the correct venue, or avenue for this particular thing, I don't think it's an ethical violation, I think you need to get the Charter amended or something has to be done with the Charter. I don't think its an ethical problem.

RW: And specifically address the issue of program review, that's what triggered it, right, is no program review.

RC: Yeah, I'm trying every peaceful avenue I can think of from running for office to testifying to presenting mountains of evidence to the Council over a 20-year period here. I didn't just fall off a bus yesterday, I've been doing this a long time. And this looked like another respectful avenue to raise my hand and say "Something is wrong here..."

AL: It is certainly an interesting point.

KK: Can we add what Mr. Inouye stated -- that a remedy should be looked at to clarify specifically that particular provision, to make it doubly sure, triply sure that when the Council, well right now it is in the hands of the Council, maybe it can be taken out of the hands of the Council to some other agency to...

RW: Well the court sounds like the logical area...

KK: The (inaudible) for such legal...

AL: But I don't think that should be in our official, I don't think ...

KK: I think we, as an advisory opinion...

RW: Do we want to make a recommendation to ...

KK: I think we do that all the time...

RW: To clarify our review...

KK: We need to make an advisory opinion, well this is not a violation, it's an area that needs to be looked into further....

RW: The reimbursement issue or the program review issue...

AL: I think we are dealing with the reimbursement issue.

KI: I think the reimbursement issue, the program review is a non-matter. I see you shaking your head.

MU: I would say that that is something that is not really before the ethics commission

AL: It is the reimbursement issue, then...

KK: I am concerned about the reimbursement issue.

AL: But I am not concerned with the reimbursement of ordinary stuff, lunch, required travel and on and on and on, reimbursements.

RC: This is a perpetual war that they are funding here, this is not lunch at the beach. I mean if you are under a helicopter and it is spraying poison on your organic garden and your children, it becomes a little more of an important matter here. Thank you sir for bringing up that. I hope that you get your wish here, because there is a substantial financial matter on the table, they voted on and yes, they – somebody -- they're tasked with voting on such matters so that's -- there is a conflict here somewhat. I think it could be remedied that a third party when something like this happens, it goes to a third party, because it does have the appearance of a conflict.

AL: I think Mr. ...

AA: Just one more thing, I don't know about all these motions (inaudible), but it seems to me that the program review would be a hell of a lot cheaper than...

RW: Litigation.

AA: (Inaudible)

RC: They must be hiding something, is my thought. I may be wrong, I may be wrong.

RW: Okay, my comment, I've been making more than my share throughout, but we will pursue it, in our deliberation as to how we craft the opinion, since we can do that without...

AL: To put in Karl's ...

RW: Yeah, to put in a suggestion for review.

AL: Some review.

RW: Yeah, affects the way it is going at present, if there is way to do that, but I would like to call for a vote on the issue, can we reiterate the vote, the motion again. The motion is to find no violation, no actual ethical violation as to the Charter.

KK: And ah....

RW: And then we ah...

KK: Do we offer to make an amendment, in the motion or... are we going to assume that...

JD: Procedurally, if you want to amend it you would have to -- you would have to amend it. Mr. Joseph could accept it as a friendly amendment. You may oppose it and say that I want it to stand in the way of this so you don't have mixed messages and I can write in a blurb that there are some members on the board that believe this issue should be visited, whether or not the

reimbursement is before this board, or the voting (inaudible) or another means of getting the reimbursement for legal, or defense issues should be, I don't know if that is the purpose of the ethics board.

RC: Can I suggest a remedy?

JD: The public testimony has been closed; this is the deliberation by the Board of Ethics.

KK: Do you understand where I am coming from, you are accepting the amended motion, the amendment --

JD: Run it through me.

RW: The amendment is no violation --

KK: The amendment is that there should be a proviso that this matter, that was specifically brought up ethics question, should be looked into.

AL: I think we need to name which part of it, though.

KK: Pardon?

AL: You have to name what part, not just the issues but the conflict of...

KK: Conflict of council members voting on their own reimbursement for legal counsel, c-o-u-n-s-e-l.

RW: Do we have to go into executive session to deliberate further on this without tying up the public, or I think we are going to arrive at a, we are going to wordsmith, clearly, some sort of formal reply back to you, but we can dispense of that right now, if that suits you and everybody else, and just rule on the issue as proposed. Would you be willing to do that, Karl, save your amendment idea for further deliberation here. Okay, let's just rule on the issue, I call for the vote for a finding of ...

AL: I move that there is no violation.

RW: Yeah, do I have a second?

WJ: I second.

RW: Okay, all those in favor, vote aye.

KK: Aye.

KI: Aye.

RW: Aye.

RW: Any opposed? No opposed, no abstentions.

AL: Karl, I didn't see you vote

KK: No, I voted aye.

RW: We voted aye, there is no conflicts of interest, we will deliberate on finding

AL: ...advisory

RW: Yeah, now we need to word that, to say go back and look at whether there needs to be a Charter review, or what have you to preclude any appearance of a conflict of interest in this matter in the future.

RC: Thank you

RW: Okay, that issue is closed. I want a motion very quickly to move into Executive Session so we can deliberate on that. Okay, we don't. If there are no -- we concluded all our business.

8. ADJOURNMENT

Mrs. Lum moved to adjourn the meeting, Mr. Joseph seconded the motion; all members voted aye, motion carried.

Respectfully submitted:

Karen Delimont, Secretary