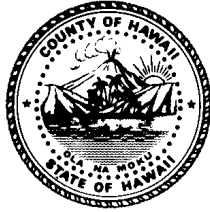


William P. Kenoi
Mayor



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September 14, 2009

John Dill, Chairman
Hawai'i County Board of Ethics
Hilo Lagoon Centre
101 Aupuni Street, Suite 325
Hilo, Hawai'i 96720

Aloha, John,

Mahalo for your service on the Hawai'i County Board of Ethics. Effective administration and interpretation of the County Code of Ethics is an essential part of creating and maintaining an ethical environment. You and your colleagues on the board perform a critical role, and your work helps to build public confidence in county government.

I am writing today to offer a package of proposed amendments to the County Code of Ethics to further your efforts, and I hope these proposals will encourage a meaningful debate in our community about both ethics and accountability.

The code has served our county well, but it needs to be the kind of "living document" that evolves with the times and changes as community standards change. Behavior that was commonplace or even thought to be meritorious a generation ago may no longer be acceptable in our community, and carefully considered amendments to the Ethics Code are an appropriate way to reflect these evolving standards and expectations.

Today I ask you and the board to consider these amendments, weigh the benefits and any drawbacks you may see in the proposed changes, and submit these proposals with your comments to the Hawai'i County Council for consideration. The board's input is critical because you and your colleagues have years of experience dealing with the existing code, and you are most familiar with its strengths and shortcomings.

As part of your deliberations, I strongly encourage the board to invite community input by holding public hearings on the proposed changes in both East Hawai'i and West Hawai'i.

A short summary of our proposals follows:

- The first proposal would amend the Hawai'i County Code of Ethics Fair Treatment Section 2-83 to prohibit county employees and companies in which county employees or their spouses or dependent children own a controlling interest from engaging in business arrangements with any county agency. While I am aware that enterprising county workers have a long history of providing goods and services to the county through their private companies, I believe the larger community no longer considers this practice to be acceptable. This proposal is not meant as a commentary on any past arrangement. It is simply an acknowledgement that today our community expects that we will be either county employees or county contractors, but not both.
- The second proposal is a technical change deleting the Hawai'i County Code of Ethics Contracts Section 2-85(a) because the conduct described and specifically authorized in Section 2-85(a) would be prohibited under our first proposal (see above). The existing Section 2-85(b) would be renumbered as Section 2-85(a). This proposal also makes a technical correction by including the word "is" in the new Section 2-85(a) where the word was apparently excluded in error.
- The third proposal adopts into the Hawai'i County Code of Ethics Conflicts of Interests section language prohibiting any elected or appointed officer or employee from appearing on behalf of any private interests before any county agency except as specifically provided for by law. The narrow exceptions to this prohibition assure that employees will continue to enjoy the right to appear before county agencies to petition for redress of grievances.

This proposed language is virtually identical to language already in place in the Honolulu City Charter and Honolulu Code of Ethics. Again, this proposal is acknowledgment that today the public believes our roles as county employees make it inappropriate that we engage in certain outside activities. The public expects we will be county employees, or we will be representatives of private interests before county agencies, but not both.

- The fourth proposal would redefine the use of the term "agency" in the ethics code to make it more encompassing, and to make the use of the term more clear.
- Finally, we hope to join forces with the Board of Ethics in supporting changes to state law that would empower the Board of Ethics to levy administrative fines for infractions of the County Ethics Code.

As you know, the County Council in 2008 adopted Ordinance No. 08-57 authorizing the board to impose administrative fines, but the intent of this language has been stymied by two provisions in state law.

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The first problem is that HRS Sec. 46-1.5(24)(A) has been interpreted by some to mean that a county agency may impose a civil fine only when a) a violator has been found in violation, and b) the violator continues the violation without modifying the offending conduct. We agree with Honolulu Board of Ethics Executive Director Charles Totto that this interpretation renders the power to fine useless because violators can simply terminate the offending conduct in order to avoid any fine.

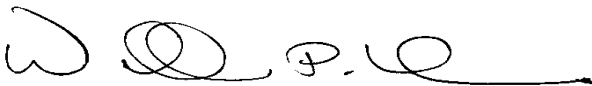
The Legislature has had proposals before it in 2007, 2008 and 2009 to clarify this language to allow fines to be imposed when violations are first discovered, but the bills stalled. We understand the Hawai'i Board of Ethics voted in August to support the efforts of the Honolulu Board of Ethics in pressing for this reform. We plan to partner with both ethics boards to pursue this issue aggressively at the Legislature in 2010 to finally give the Board of Ethics the powers that the Hawai'i County Council intended.

A related issue is that state law requires that when an offender is fined administratively, that offender must have an avenue by which he or she can appeal that fine. Under existing law, the county may be required to create what amounts to an appeals panel for the Board of Ethics to hear appeals of administrative fines imposed by the Board. This would be a cumbersome and little-used process. As an alternative, we would like to collaborate with the Hawai'i County Board of Ethics and the Honolulu Board of Ethics to lobby the Legislature to amend state law to explicitly state that appeals of administrative fines for ethics violations are made directly to Circuit Court. This will fulfill the requirement for a fair appeals process, and will avoid the need to create an entirely new county board to hear appeals cases.

The Ethics Code serves as a guide for both employees and the public to encourage proper conduct, and it also helps define the community's expectations for public employees. I believe these proposals will advance the Ethics Code in a way that promotes public confidence in county government, and fosters accountability.

I welcome your suggestions and comments, and look forward to working closely with this board on these proposals in the weeks ahead as we advance this package for review by the County Council.

Aloha,



William P. Kenoi
MAYOR

Proposal 1

Purpose: Prohibit county employees and companies in which county employees hold a controlling interest from contracting with the county.

Section 2-83. Fair treatment.

(a) Officers and employees of the County, while discharging their duties and dealing with the public, shall adhere to the following precepts:

(1) All public property and equipment are to be treated as a public trust and are not to be used in a proprietary manner or for personal purposes without proper consent.

(2) No person in a supervisory capacity shall engage in personal or business relationships with subordinates, which might intimidate said subordinates in the discharge of their official duties.

(3) All persons shall be treated in a courteous, fair and impartial manner.

(b) 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:

(1) Seeking other employment or contract for services for oneself by the use or attempted use of the officer's or employee's office or position.

(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.

(3) Using County time, equipment or other facilities for private business or campaign purposes.

(4) Soliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate or a person or business whom the officer or employee inspects or supervises in the officer's or employee's official capacity.

(5) Using County property or personnel for other than a public activity or purpose.

(c) No officer or employee, or any business in which an officer or employee or the officer or employees' spouse or dependent children has a controlling interest, shall contract for goods or services with any county agency.

~~[(c)]~~ (d) Nothing herein shall be construed to prohibit an officer from introducing bills and resolutions, serving on committees or from making statements or taking action in the exercise of the officer's legislative functions. Every officer shall file a full and complete public disclosure of the nature and extent of the interest or transaction which the officer believes may be affected by legislative action.

Proposal 2

Purpose: Makes technical changes in Section 2-85 “Contracts” to eliminate the ability of county agencies to contract with officers or employees, thereby making the “Contracts” section conform to Proposal 1.

Also, inserts the word “is” where that word was inadvertently left off of what was Section 2-85(b); renumbers Section 2-85(b) to make it Section 2-85(a).

Proposed language:

Section 2-85. Contracts.

[(a) A County agency shall not enter into any contract involving services or property of a value in excess of \$10,000 to procure or dispose of goods or services, or for construction, with an officer, an employee, or a business in which an officer or an employee has a controlling interest unless:

- (1) The contract is awarded by competitive sealed bidding pursuant to the state public procurement code;**
- (2) The contract is awarded by competitive sealed proposal pursuant to the state public procurement code; or**
- (3) The agency posts a notice of its intent to award the contract and files a copy of the notice with the County board of ethics at least ten days before the contract is awarded.**

(b)] (a) A County agency shall not enter into a contract with any person or business which is represented or assisted personally in the matter by a person who has been an employee of the agency within the preceding two years and who participated while in County office or employment in the matter with which the contract is directly concerned.

Proposal 3

Purpose: Adopt language into the COH Code of Ethics that mirrors the Honolulu City Charter language in Section 11-102(e) on Conflict of Interest; and incorporate the exceptions to the Honolulu charter language into the COH Code of Ethics. This language bans C&C employees from representing outside parties before city agencies unless specifically authorized by ordinance.

In conjunction with the change above, the proposal is to adopt a new definition of “agency” in the COH Code of Ethics to match the definition of “agency” in the Honolulu Section 3 Article 8 “Additional Standards of Conduct.”

This is to prevent situations where, for example, a county official walks permit applications through a county department on behalf of an outside party including friends or family. This situation would be allowed under the current code provided there is no fee involved, but tends to undermine public confidence. The Honolulu code bans this practice.

Here is the language from the Honolulu Charter:

Section 11-102 Conflicts of Interest:

No elected or appointed officer or employee shall:

- (a) Solicit or accept any gift, directly or indirectly, whether in the form of money, loan, gratuity, favor, service, thing or promise, or in any other form, under circumstances in which it can reasonably be inferred that the gift is intended to influence the officer or employee in the performance of such person's official duties. Nothing herein shall preclude the solicitation or acceptance of lawful contributions for election campaigns.
- (b) Disclose confidential information gained by reason of such person's office or position or use such information for the personal gain or benefit of anyone.
- (c) Engage in any business transaction or activity or have a financial interest, direct or indirect, which is incompatible with the proper discharge of such person's official duties or which may tend to impair the independence of judgment in the performance of such person's official duties.
- (d) Receive any compensation for such person's services as an officer or employee of the city from any source other than the city, except as otherwise provided by this charter or by ordinance.
- (e) Represent private interests in any action or proceeding against the interests of the city or appear in behalf of private interests before any agency, except as otherwise provided by law.**

The Honolulu Code of Ethics ordinance then carves out a few narrow exceptions to the Charter language as follows (**in bold**):

Revised Ordinances of Honolulu:

Sec. 3-8.2 Additional standards of conduct.

No officer or employee of the city, except as hereinafter provided, shall:

(a) Participate, as an agent or representative of a city agency, in any official action directly affecting a business or matter in which (1) such person has a substantial financial interest; or (2) by or for which a firm of which such person is a member, an associate or an employee has been engaged as a legal counsel or advisor or consultant or representative in a matter directly related to such action; provided, that a councilmember is not precluded from voting on such matter before the council so long as a written disclosure has been made in the event there is a conflict of interest involving this subsection and relating to such matter.

(b) Acquire financial interest in business enterprises which such person has reason to believe may be directly involved in official action to be taken by such person.

(c) Appear in behalf of private interests before any agency other than a court of law, nor shall such person represent private interests in any action or proceeding against the interests of the city in any litigation to which the city is a party; **provided, however, that a member of any board, commission or committee may appear in behalf of private interests before agencies other than the board, commission or committee on which such person serves; provided further, that no officer or employee shall be denied the right to appear before any agency to petition for redress of grievances caused by any official act or action affecting such person's personal rights, privileges or property, including real property. This prohibition shall not apply to any architect, landscape architect, surveyor or engineer registered as such under the provisions of HRS Chapter 464, who is a city employee or officer, with respect to the affixing by such registered professional of such person's registered stamp to any plans, specifications, drawings, etc., to be submitted to the city for permits for such person's principal residence or that of members of such person's immediate family; provided, that the stamp is accompanied by a signed statement that the work was prepared by the person stamping the document or under such person's supervision; and provided further, that the registered professional may not, in the capacity of a city employee or officer, review, approve or otherwise act upon the plans, specifications, drawings, etc., such person has stamped. For the purposes of this section, "immediate family" means the employee's or officer's spouse, siblings, children or parents; spouse's children or parents; or children's spouses.**

Proposed County of Hawai'i language:

Section 2-84. Conflicts of interests.

(a) No officer or employee shall take any official action directly affecting:

(1) A business or other undertaking in which that officer or employee has a substantial financial interest;

(2) A private undertaking in which the officer or employee is engaged as legal counsel, advisor, consultant, or representative, or other agency capacity; or

(3) A business or undertaking in which the employee knows or has reason to know that a brother, a sister, a parent, an emancipated child, or a household member has a substantial financial interest, provided that the financial interests of these individuals shall not include those of any spouse or child. A 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.

A person whose position on a board, commission, or committee is mandated by statute, charter, code or resolution to have particular qualifications shall only be prohibited from taking official action that directly and specifically affects a business or undertaking in which that person has a substantial financial interest; provided that the substantial financial interest is related to the member's particular qualifications.

(b) No officer or employee shall acquire financial interests in any business or other undertaking which that officer or employee has reason to believe may be directly involved in official action to be taken by the officer or employee.

[(c) No officer or employee shall assist any person or business or act in a representative capacity before any County agency for a contingent compensation in any transaction involving the County.

(d) No officer or employee shall assist any person or business or act in a representative capacity for a fee or other compensation to secure passage of a bill or to obtain a contract, claim, or other transaction or proposal in which the officer or employee has participated or will participate as an officer or employee, nor shall the officer or employee assist any person or business or act in a representative capacity for a fee or other compensation on such bill, contract, claim, or other transaction or proposal before the council or agency of which that person is an employee or officer.

(e) No officer or employee shall assist any person or business or act in a representative capacity before a County agency for a fee or other consideration on any bill, contract, claim, or other transaction or proposal involving official action by the agency if the officer or employee has official authority over that County agency unless the officer or employee has complied with the disclosure requirements of section 2-91.1.]

(c) No officer or employee shall represent private interests in any action or proceeding against the interests of the County or appear in behalf of private interests before any agency, except as otherwise provided by law; provided, however, that a member of any board, commission or committee may appear in behalf of private interests before agencies other than the board, commission or committee on which such person serves; provided further, that no officer or employee shall be denied the right to appear before any agency to petition for redress of grievances caused by any official act or action affecting such person's personal rights, privileges or property, including real property. This prohibition shall not apply to any architect, landscape architect, surveyor or engineer registered as

such under the provisions of HRS Chapter 464, who is a County employee or officer, with respect to the affixing by such registered professional of such person's registered stamp to any plans, specifications, drawings, etc., to be submitted to the County for permits for such person's principal residence or that of members of such person's immediate family; provided, that the stamp is accompanied by a signed statement that the work was prepared by the person stamping the document or under such person's supervision; and provided further, that the registered professional may not, in the capacity of a County employee or officer, review, approve or otherwise act upon the plans, specifications, drawings, etc., such person has stamped. For the purposes of this section, "immediate family" means the employee's or officer's spouse, siblings, children or parents; spouse's children or parents; or children's spouses.

Proposal 4

In conjunction with Proposal 3 to COH Section 2-84, we should also tighten the definition of the term “agency” in Section 2-82 to match the Honolulu code.

COH Code of Ethics currently defines “agency” in the following way:

Section 2-82. Definitions.

As used in this article:

“Agency” means any office, department, board, commission, or other governmental unit of the executive or legislative branches of the County, but does not include subdivisions of department.

By contrast, Honolulu’s Additional Standards of Conduct Section 3-8.1 defines “agency” as follows:

"Agency" means and includes (1) the City and County of Honolulu; (2) the council and its committees; (3) all departments, offices, boards, commissions, committees; (4) all independent commissions and other similar establishments of the city government; and (5) any other governmental unit of the city.

Proposed COH language:

Section 2-82. Definitions.

As used in this article:

“Agency” means and includes (1) the County of Hawai’i; (2) the council and its committees; (3) all departments, offices, boards, commissions, committees; (4) all independent commissions and other similar establishments of the County government; and (5) any other governmental unit of the County.