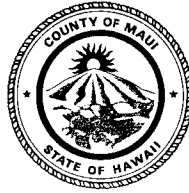


ALAN M. ARAKAWA
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August 23, 2017

Ms. Lynn Araki-Regan
Budget Director
County of Maui
200 S. High Street
Wailuku, Hawaii 96793

Alan Arakawa 8/25/17

Honorable Alan M. Arakawa
Mayor
Office of the Mayor
County of Maui
200 S. High Street
Wailuku, Hawaii 96793

Transmittal to:
Honorable Riki Hokama
Chair, Budget and Finance Committee
Maui County Council
County of Maui
200 S. High Street
Wailuku, Hawaii 96793

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RE: PLAN OF AUDITS (FISCAL YEAR 2016) (AUDIT OF COUNTY
PROCUREMENTS (pCARD)) (BF-98(3))

Dear Mr. Hokama:

I write in response to your August 16, 2017, letter asking our department to "provide various options of disciplinary action that may be exercised by the employer for the misuse of pCards by County employees" including "when prosecution is applicable." As Prosecutor, my response focuses specifically on criminal statutes and penalties that may apply.

The Hawaii Public Procurement Code (HPPC), under Hawaii Revised Statutes (HRS) Chapter 103D and its parallel code under Hawaii Administrative Rules (HAR) §3-131, requires all officers and employees of the State and Counties to "conduct and participate in public procurement in an ethical manner" and "act in good faith." Specifically, under HRS §103D-101 public employees must, among other things, "act as a fiduciary and

Ms. Lynn Araki-Regan
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trustee of public moneys," "act only in the public interest," "avoid the intent and appearance of unethical behavior," and "abide by the statutes and administrative rules relating to public procurement."

Any person who intentionally violates the HPPC (or any rules adopted pursuant to the HPPC) shall be guilty of a misdemeanor. Under HAR §3-131, this includes "[a] person who intentionally or knowingly contracts for or purchases goods, services, or construction, under a scheme or artifice to avoid the requirements of the procurement law" A misdemeanor carries a possible maximum \$2,000 fine and/or one year imprisonment.

Other mandatory penalties for intentional violation of the HPPC states the public employee shall be: (1) subject to removal from office; (2) liable to the County for any sum paid in connection with the violation, together with interests and costs; and (3) subject to imposition of an administrative fine under subsection (b) of HRS §103D-106.

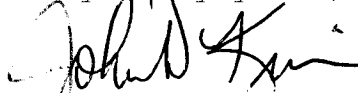
Depending on the nature of misuse of the pCard, a public employee may also be charged with criminal Theft. Theft in the Second Degree (over \$750.00) is a Class C Felony, and Theft in the First Degree (over \$20,000.00) is a Class B Felony.

If a public employee possesses a pCard without authorization, Unauthorized Possession of Confidential Personal Information (HRS §708-839.55), a Class C Felony, may apply. If a public employee uses or attempts to use a pCard number, without consent of the County, for purchases that exceed \$300.00 within any six-month period, the crime of Fraudulent Use of a Credit Card (HRS §708-8100(c)), a Class C Felony, may also apply. If the purchases do not exceed \$300.00, it is a misdemeanor.

This list is not exhaustive, but encompasses the most common types of offenses.

Please contact me at 270-7632 or 270-7777 if you have further questions or need clarification.

Very truly yours,



JOHN D. KIM
Prosecuting Attorney

JDK:kym