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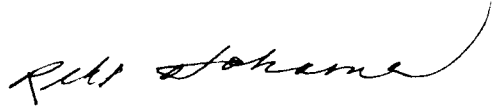


Director of Council Services
Sandy K. Baz

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

August 16, 2017

MEMO TO: Patrick K. Wong
Corporation Counsel

F R O M: Riki Hokama, Chair 
Budget and Finance Committee

SUBJECT: **PLAN OF AUDITS (FISCAL YEAR 2016) (AUDIT OF COUNTY
PROCUREMENTS (PCARD))** (BF-98(3))

At its meeting of August 1, 2017, the Budget and Finance Committee reviewed Audit Report 16-01, "Audit of County Procurements (pCard)," prepared by the Office of the Auditor, County of Maui, dated June 2017.

May I please request you provide a response to the following:

1. Explain the role of the Department of the Corporation Counsel as it relates to violations by a County employee of the State Cooperative Purchasing Program.
2. Explain the role of the State Attorney General's Office as it relates to violations by a County employee of the State Cooperative Purchasing Program.
3. In a response relating to whether an employee's retirement benefits may be withheld as a penalty of a civil or criminal violation, the Director of Personnel Services stated "While there is no general provision allowing for such forfeiture, there are provisions allowing the County to garnish the retirement benefits of a member if the member has embezzled, stolen, or otherwise unlawfully taken, received, retained, or failed properly to account for any property or funds belonging to the County which have not been returned or repaid." A copy of the correspondence is provided for your reference.

Patrick K. Wong
August 16, 2017
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- a. Have there been any incidents where the County has garnished retirement benefits? If so, please identify the specific incidents.
- b. Is garnishment of retirement benefits a viable option for the stated violations? If so, please explain the process by which your Department would obtain garnishment of a current or former employee's retirement benefits. In your answer, please indicate what findings would be necessary to support an action for garnishment. For example, are the results of a County-initiated investigation sufficient? What would be the required findings? Or, is a civil or criminal action in court necessary to establish that an employee, or former employee, has embezzled, stolen, or otherwise unlawfully taken, retained, or failed to return County property or funds?
- c. May retirement benefits be garnished without a court judgment? Or, is a court order or judgment required showing the employee or former employee owes the County money? Does the authority to garnish retirement benefits require a court order separate from the action to establish that money is owed to the County?
- d. Is the amount of income garnishment limited under federal or state law? If so, what is the maximum amount or percentage of an employee's or former employee's retirement benefits that may be garnished?
- e. Is the availability of garnishment affected if a former or current spouse of the employee is entitled to a portion of the employee's retirement benefits or is a future beneficiary of those benefits?
- f. For your analysis above, does it matter if an employee is found guilty of a violation prior to or after retirement from County employment?

I would appreciate receiving a response by **Friday, August 25, 2017**. To ensure efficient processing, please include the relevant Committee item number in the subject line of your response.

Patrick K. Wong
August 16, 2017
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Should you have any questions, please contact me or the Committee staff (Michele Yoshimura at ext. 7663, or Yvette Bouthillier at ext. 7758).

bf:ltr:098(3)acc01:mmy

Attachment

ALAN M. ARAKAWA
Mayor



DAVID J. UNDERWOOD
Director

CYNTHIA M. RAZO-PORTER
Deputy Director

RECEIVED

2017 AUG -9 PM 1:39

COUNTY OF MAUI
DEPARTMENT OF PERSONNEL SERVICES

200 S. HIGH STREET * WAILUKU, MAUI, HAWAII 96793-2155
PHONE (808) 270-7850 * FAX (808) 270-7969

Website: www.mauicounty.gov/departments/Personnel * Email: personnel.services@mauicounty.gov

August 8, 2017

2017 AUG -9 PM 4:24
OFFICE OF THE
COUNTY CLERK

RECEIVED

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

For Transmittal to:

Honorable Riki Hokama
Chair, Budget and Finance Committee
Maui County Council
200 South High Street
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

Mayor

8/9/17
Date

Dear Chair Hokama:

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

We are in receipt of your communication (BF-98(3)), which poses several questions regarding employee retirement benefits. Please find our answers below.

1. *May an employee's retirement benefits be withheld as a penalty of a civil or criminal violation? Please explain.*

The benefits of the Employees' Retirement System are set forth by state statute. As far as we are aware, there is no provision that allows a member's retirement benefits to be withheld as a penalty for a civil or criminal conviction. Our understanding is that legislation has been proposed in prior years to provide for this, but the proposed legislation has not been enacted.

While there is no general provision allowing for such forfeiture, there are provisions allowing the County to garnish the retirement benefits of a member if the member has embezzled, stolen, or otherwise unlawfully taken, received, retained, or failed properly to account for any property or funds belonging to the County which have not been returned or repaid.

Honorable Riki Hokama
August 8, 2017
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2. *Has there been any instance in which a County employee was not entitled to retirement benefits as a penalty of a civil or criminal violation? Please explain.*

We do not know if there were any instances in which an employee's retirement benefits were withheld or garnished by the County. We are not aware of any, but garnishment would be initiated by the Director of Finance, with the assistance of the Department of the Corporation Counsel, in communication directly with the Employees' Retirement System. As our department would not necessarily have played a role in this process, there may be incidents of which we are unaware.

3. *Do any of the bargaining unit contract agreements contain provisions addressing retirement benefits in the event of a civil or criminal violation? If so, please provide a copy of the provision.*

None of the County's collective bargaining agreements contain provisions addressing retirement benefits. Under §89-9(d) of the Hawaii Revised Statutes, retirement benefits are specifically excluded from the scope of bargaining for our bargaining units, so the parties could not legally negotiate such a provision.

I hope this addresses your request. If you have any questions, please feel free to contact me at extension 7850.

Sincerely,



DAVID UNDERWOOD
Director of Personnel Services

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Attachment