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October 3, 2016

The Honorable Michael P. Victorino
Chair, Policy and Intergovernmental
Affairs Committee
County Council, County of Maui
200 S. High Street
Wailuku, Maui, Hawaii 96793

2016 OCT -5 PM 2:25
OFFICE OF THE
COUNTY COUNCIL

Re: Status of Collective Bargaining Negotiations

Dear Councilman Victorino:

You have asked whether state law precludes mayors or their representatives from updating the County Council on the status of collective bargaining negotiations in executive sessions. Based on our research, we know of no state law that addresses the confidentiality of collective bargaining negotiations.

However, state law does require that the employer and bargaining unit representative negotiate in “good faith”. *See Haw. Rev. Stat. § 89-9.* “Good faith” is not defined in Haw. Rev. Stat. chap. 89 (Collective Bargaining in Public Employment), but in common usage, the term is ordinarily used to describe a “state of mind denoting honesty of purpose” or “an honest intention to abstain from taking any unconscientious advantage of another”. *See Black’s Law Dictionary* (5th ed. 1979) at 623-24. Accordingly, if broadly construed, the obligation to negotiate in good faith may require, among other things, that the county and union representatives keep confidential the status of their negotiations.

Further, it is commonly understood that collective bargaining negotiations require compromise and concessions from both sides; the parties’ positions on different issues may change during the course of negotiations and negotiations are fluid, dynamic and potentially volatile. In this context, disclosure of the status of negotiations to third parties may cause confusion or misunderstandings and thereby frustrate the legitimate government purpose to reach new collective bargaining contracts. As a practical matter, to avoid these

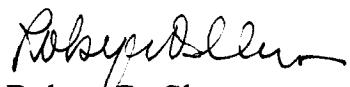
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potential problems, the County and union representatives may have entered into an agreement to keep the status of negotiations confidential and such an agreement may preclude the Mayors and their representatives from updating the County Council on the status of on-going negotiations.

If you have questions about this matter, please contact me.

Very truly yours,


Robyn B. Chun
Deputy Attorney General

Approved:


DOUGLAS S. CHIN
Attorney General