

GET Committee

From: Samuel Small <info@mauicauses.org>
Sent: Wednesday, May 01, 2019 4:58 PM
To: GET Committee
Subject: RE: APPOINTMENT AND REMOVAL OF ADMINISTRATIVE HEADS OF DEPARTMENTS (CORPORATION COUNSEL) (GET-1(2))

Questions to be asked of any candidate for Director of Corporation Counsel:

Are Corporation Counsel attorneys allowed to make false representations to the court as part of a legal strategy?

If it is determined after the fact and brought to your attention as Director of Corporation Counsel that a declaration made by a staff attorney was indeed false, what action do you feel you should take to correct the record?

How would you hold a staff attorney accountable for filing a false statement with the court?

If a false representation to the court is made and not rectified, and it leads to further litigation, is there any burden on the County to defend the attorney's or the Department's actions?

Is there any burden on the County to legally defend any Director or Deputy Director if it can be shown that the Director made a faulty determination?

What if it is shown that the Director or Deputy Director acted outside their authority. Must the County still defend them in a legal action?

Former Director of Public Works, David Goode, testified to this committee that perhaps there should be greater accountability standards

held for Directors. How do you think a Director who acts outside their authority should be held accountable?

If a citizen comes to a Council Member seeking advice and support over an issue that arises out of Corporation Council's actions, where do you suggest the Council Member go to get advice or an opinion on the matter?

The current Time Share Tax litigation is an example where the Court determined that Corporation Counsel inappropriately went around the County's Tax Division to manufacture a tax to use as "a weapon" against a litigant.

Would it be appropriate for a Council Member to get legal advice from Corporation Counsel when it is Corporation Counsel that could possibly be the source of the problem?

From 1974 to 2001, Corporation Counsel wrote 3 lot or less infrastructure improvement deferral agreements with developers which, unknown to anyone, were not being tracked for later collection. Even after it became known in 2001 that perhaps 1000's of these agreements were floating out there with no procedure whatsoever in place to assess and collect on them, Corporation Counsel continued to write new agreements for another 6 years until the Council shut the program down in 2007.

In 2012, IEM Committee Chair Cochran's requested that a collection process for the still uncollected agreements be established and Corporation Counsel responded saying that they were "investigating certain agreements as to their collectability" and that she "should rest assured they would get back to her soon." Today, 7 years later, Corporation Counsel has yet to get back to anyone.

How do you intend to resolve the collection or writing-off of these agreements that Corporation Counsel itself wrote?

Has Corporation Counsel been defending itself in a citizen lawsuit brought against them specifically, resulting from their alleged inaction and obstruction of resolving these deferral agreements?

Do you think it is appropriate for Corporation Counsel to be directly defending itself in litigation over these deferral agreements when Corporation Counsel's writing and concealment of these agreements for decades was so radically inappropriate?

Contrary to the stated intentions and the council members' understanding in voting to approve the 2015 Upcountry Water Bill, the language that Corporation Counsel wrote and inserted into Title 18 allows roadway improvement exemptions to be given to any 2 lot commercial subdivision island-wide.

Now that it is understood and public knowledge that the language change that Corporation Council facilitated was not what the Council intended, as evidenced by two proposed ordinances from past Council Members Guzman and Cochran to strike the language from Title 18, why hasn't Corporation Counsel stepped forward to rectify the error?

Can you please explain how a language change in Title 18 that is inconsistent with the stated intention of the Upcountry Water Bill got written in the first place?

Do you think that it is appropriate for Corporation Counsel to be defending themselves in a legal action that yet another citizen has brought against the County for not fixing the mistake immediately upon its discovery, when Corporation Counsel itself was the direct source of the faulty language inserted into Title 18?

As always, its an honor to participate in the democratic process and I thank you for your time and service towards creating greater accountability and transparency to Maui County's government.

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