

CARE Committee

From: Maui_County Council_mailbox
Sent: Saturday, June 19, 2021 1:12 PM
To: CARE Committee
Subject: FW: BOE | Regarding CARE-50 CC 21-32, Correspondence to BOE
Attachments: 2011-04-15 Complaint No 11-2 and 11-2_Ltr and AO to MikeWhite_Redacted.pdf

Importance: High

From: Cory-Lynn Vicens <Cory-Lynn.Vicens@co.maui.hi.us>
Sent: Friday, June 18, 2021 2:33 PM
To: Maui_County Council_mailbox <county.council@mauicounty.us>
Cc: Kristina Toshikiyo <Kristina.C.Toshikiyo@co.maui.hi.us>; Kelly King <Kelly.King@mauicounty.us>
Subject: BOE | Regarding CARE-50 CC 21-32, Correspondence to BOE
Importance: High

Aloha Councilmember King.

We apologize for the late response to correspondence submitted to the Board of Ethics on June 7, 2021 regarding, Care-50 Moratorium on Visitor Accommodations Development. The Board was not in receipt of this letter via interoffice or Corp Counsel email and only discovered it in Granicus today during County Council discussion on Agenda item No. CR-21-39

Per your request please find attached the Opinion for Complaint No.'s 11-1 and 11-2 filed against a Councilmember and reviewed in closed session.

Should you require additional information please let us know.

Mahalo,
Cory Vicens

Cory Vicens
Executive Secretary to Corporation Counsel Moana M. Lutey
Executive Secretary to Maui County Board of Ethics
Staff Secretary Maui Charter Commisison

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ALAN M. ARAKAWA
Mayor



PATRICK K. WONG
Corporation Counsel

**MAUI COUNTY BOARD OF ETHICS
C/O DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF MAUI
200 SOUTH HIGH STREET
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TELEPHONE: (808) 270-7740
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April 15, 2011

[REDACTED]
Council Member
County of Maui
200 S. High Street
Wailuku, HI 96793

Re: Dismissal of Complaints; Order Nos. 11-1 and 11-2

Dear Councilmember [REDACTED]:

The members of the Board of Ethics approved and signed the above-referenced Dismissal of Complaints and Order. Enclosed is a copy of the Dismissal for your files.

Please feel free to contact the Board's staff secretary, Angela Andrade, if you have any questions.

Very truly yours,

/s/ Michael Westfall

MICHAEL WESTFALL

Chair

Maui County Board of Ethics

MW:aa

Enclosure

S:\CLERICAL\ANA\BOE\Complaints\11-01\4.15.11 Ltr to [REDACTED]

BOARD OF ETHICS

COUNTY OF MAUI

In the Matter of the
Complaints by [REDACTED] and
[REDACTED] Against Council
Member [REDACTED]

Complaint Nos. 11-1 and 11-2
(Consolidated)

DISMISSAL OF COMPLAINTS; ORDER

OPINION

The Maui County Board of Ethics (the "Board") held an informal hearing on Complaint Nos. 11-1 and 11-2 on March 9, 2011. Based on the following facts and law, the Board hereby dismisses the Complaints pursuant to §04-101-53(c) of the Rules of the Board.

Background

Complaint No. 11-1 was filed with the Board on January 27, 2011 by [REDACTED]. Complaint No. 11-2 was filed with the Board on January 27, 2011 by [REDACTED]. Both complaints were filed against Council Member [REDACTED] (hereinafter "the Council Member"). Pursuant to §§04-101-11 and 04-101-52(c) of the Boards Rules, the complaints were consolidated on February 9, 2011.

The complaints alleged the following:

(1) Violations of §§10-4.1.a, 10-4.1.b, 10-4.1.c, 10-4.1.e, 10-4.2.a, 10-4.3., and 10-4.4, of the Charter of the County of Maui ("Charter") as more fully described below.

(2) That by authoring and introducing a proposed resolution entitled, "URGING THE MAYOR TO TRANSMIT A BILL FOR AN ORDINANCE AMENDING THE FISCAL YEAR 2011 BUDGET TO AUTHORIZE SUPPLEMENTAL FUNDING FOR [REDACTED] [REDACTED] [REDACTED] [REDACTED] (hereinafter referred to as the "proposed resolution"), that the Council Member violated the Maui County Code of Ethics.

Applicable Law

Section 10-4. Prohibitions.

1. No officer or employee of the county shall:

a. Solicit, accept or receive any gift; directly or indirectly, whether in the form of money, service, loan, travel, entertainment, hospitality, 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 the officer's or employee's official duties or is intended as a reward for any official action on the officer's or employee's part.

. . .

c. Engage in any business transaction or activity or have a financial interest, direct or indirect, which is incompatible with the proper discharge of the officer's or employee's official duties or which may tend to impair the officer's or employee's independence of judgment in the performance of the officer's or employee's official duties.

d. Use county property or personnel for other than public activity or purpose.

e. Fail to disclose a financial interest in any matter which may be affected by an action of a county agency or vote on any matter affected by such interest.

2.a. No former mayor or council member shall appear for compensation before any agency of the county within a period of one (1) year after leaving the county elective office.

3. The county shall not enter into any contract of a value in excess of \$500.00 with an officer or employee or with a firm in which an officer or employee has a substantial interest involving services or property unless the contract is made after competitive bidding.

4. Officers and full time employees of the county shall not appear on behalf of or represent private interests before any county agency, provided that no officer or employee shall be denied the right to appear before any agency to petition for redress or grievances caused by any official county action affecting such person's personal rights, privileges or property, including real property, provided that members of boards and commissions may appear on behalf of private interests before county agencies other than the one on which such person serves and other than those agencies that have the power to review the actions of the agency on which such person serves, or

to act on the same subject matter as the agency on which such person serves; provided, further, that without changing the prohibitions and rights stated above, the council by ordinance may prescribe further standards, conditions, and guidelines concerning the representation of private interests before county agencies.

Findings and Conclusions

Based on the foregoing provision of the Code of Ethics and the Charter, prior decisions of the Board, and the testimony of [REDACTED] and the Council Member, the Board finds and concludes as follows:

1. That on February 18, 2011, during the initial hearing of the proposed resolution before the Maui County Council Policy Committee, the Council Member disclosed the following: a) that [REDACTED] is the General Manager of [REDACTED]; b) that [REDACTED] is not a director of the [REDACTED]; and c) that [REDACTED] salary, as the General Manager [REDACTED], does not come from [REDACTED]. The Council Member does not receive any economic benefits directly or indirectly from [REDACTED] and therefore, the Board finds no violation of §10-4.1.c of the Charter.

2. That the Maui County Council Policy Committee took up the proposed resolution on February 18, 2011, and voted to reject the proposed resolution. As such, there is no case or controversy regarding the Council Member's alleged conflict of interest in submitting the proposed resolution and therefore, Complaints 11-1 and 11-2 are deemed moot, with regard to that allegation, as it deals in the abstract of whether the proposed resolution, if passed, would have been a conflict of interest to the Council Member who proposed the resolution.

3. The Board finds that the proposed resolution is not a gift as defined under §10-4.1.a of the Charter, and therefore, no violation of §10-4.1.a has occurred.

4. The Council Member does not have a direct or indirect financial interest which is incompatible with the discharge of [REDACTED] duties or which may tend to impair [REDACTED] independence of judgment arising out of authoring the proposed resolution. Therefore, the Board finds no violation of §10-4.1.c of the Charter.

5. The Council Member did not use county personnel for other than a proper purpose in preparing the proposed resolution. Therefore, the Board finds no violation of §10-4.1.d of the Charter.

6. The Council Member did not fail to disclose a financial interest in the proposed resolution. The Board is of the belief that the Council Member does not have a direct or indirect financial interest which is any greater than any other member of the visitor industry, and, therefore, the Board finds no violation of §10-4.1.e of the Charter.

7. The Board finds that the proposed resolution was not a contract as defined under §10-4.3 of the Charter, and therefore, no violation of §10-4.3 has occurred.


8. The Council Member did not represent any private interest before any county agency by authoring the proposed resolution, and, therefore, the Board finds that there is no violation of §10-4.4 of the Charter.

IT IS HEREBY ORDERED that Complaints 11-1 and 11-2 are dismissed in accordance with §04-101-53(c) of the Rules of the Maui County Board of Ethics, as there is no probable cause to sustain both complaints, nor is there probable cause for belief that a violation of the Code of Ethics has occurred.

Adopted by the Board on April 13, 2011.

RECUSED

NANE W. ALULI, Chairperson


MICHAEL WESTFALL, Vice-Chairperson

APPROVED/SIGNATURE UNAVAILABLE

JOCELYN A. BOUCHARD, Secretary

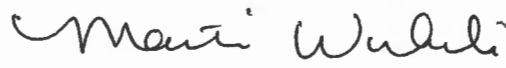
EXCUSED

SHERI-ANN DANIELS, Member

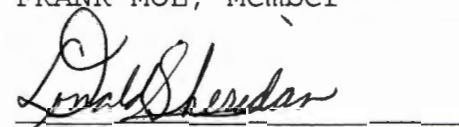

REBECCA WOODS, Member

ABSENT

C. GRETCHEN GUY, Member


MARTI WUKELIC, Member


FRANK MOE, Member


DONALD SHERIDAN, Member