

COUNTY OF KAUAI  
Minutes of Meeting  
OPEN SESSION

Approved as circulated 4/15/16

Board/Committee:	<b>BOARD OF ETHICS</b>	Meeting Date	<b>March 18, 2016</b>
Location	Mo‘ikeha Building, Liquor Conference Room 3	Start of Meeting: 1:00 p.m.	End of Meeting: 1:39 p.m.
Present	Chair Ryan de la Pena; Vice Chair Mary Tudela. Members: Calvin Murashige; Brad Nagano; Warren Perry Staff: Deputy County Attorney Nicholas Courson; Boards & Commissions Office: Support Clerk Barbara Davis; Administrator Jay Furfaro; Deputy Director of Finance Sally Motta		
Excused	Member: Maureen Tabura		
Absent			

SUBJECT	DISCUSSION	ACTION
<b>Call To Order</b>		Chair de la Pena called the meeting to order at 1:00 p.m. with 5 members present.
<b>Approval of Minutes</b>	<u>Regular Open Session Minutes of February 19, 2016</u>	Mr. Perry moved to approve the minutes as circulated. Mr. Murashige seconded the motion. Motion carried 5:0
<b>Request for an Advisory Opinion</b>	<p><u>RAO 16-002 Request from Sally Motta, Deputy Director of Finance, requesting an opinion as to whether there is a conflict to provide a testimonial on behalf of Atlas Insurance Brokers, the contracted insurance broker for the County of Kaua‘i</u></p> <p>Ms. Motta said the County of Kaua‘i has to have insurance for automobiles and different items. In order to get the best service we go through a broker and in this particular case the company is Atlas Insurance Agency. We have been using them for a long time. They used to be under a different name and when Bill Sandkuhler, who is our actual broker that we work with in that company, moved from Gallagher Insurance to Atlas we went with him. We have a contract called a Service Agreement for Insurance Broker Services and we are continuing and just executed this contract in October of last year. We have a long standing relationship with them and as I put in my letter I have been asked to personally execute a document talking about the service we have been getting from them for years. What is in the actual testimonial statement is all very correct and has been approved as to the</p>	

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	<p>content, but the question was raised as to whether or not if we execute this it would be in violation of Section 20.02 and that is the reason for coming here.</p> <p>Mr. Nagano asked how it got to Atlas Insurance because way back the initial contract was awarded to Aeon and then transferred to Gallagher and then transferred to Atlas without any RFQs or RFPs put out. Ms. Motta said they do not have to go out on bid on a RFP when they are working with a service agreement for insurance. That is per HRS (Hawai'i Revised Statutes).</p> <p>Mr. Perry stated that Ms. Motta would be testifying on behalf of Atlas Insurance. Ms. Motta said it was based on a phone conversation she received from an agency that they are working with to prepare it because they are in the process of possibly going to another State agency to use this to show they have worked with us and that we are very happy with the service that they have provided. Mr. Perry asked if the testimony would be given in front of the County Council. Ms. Motta said no, it was a phone conversation. Chair de la Pena asked if it would be attached to the RFP. Ms. Motta said they are calling it a testimonial excerpt. She called me, she wrote it out and sent it to me in an email and asked if we could put it on our letterhead and if I would be able to sign on behalf of the County of Kaua'i. Mr. Perry asked where it would be submitted. Ms. Motta said it would go to the company that is putting together the RFP that they are working on with another agency. Asked if this was another county agency or a state agency outside of Kaua'i County Ms. Motta said Kaua'i already has them so it is for another agency. Mr. Perry said in her capacity of the Deputy Finance Director she has experience with Atlas and Atlas said based on your experience with us would you feel comfortable writing to whomever saying that Atlas is a good guy based on your experience. Mr. Perry asked if the letter was going to be sent to any county board, commission or</p>	

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	<p>agency. Ms. Motta said the letter would be given to (the requester) to include with the RFP.</p> <p>Ms. Tudela asked if she had ever done anything like this before in her capacity. Ms. Motta said she has not been asked to so the answer is no. Ms. Tudela asked if she was aware that the County has done this in any way to which Ms. Motta said she could not answer that as she did not know.</p> <p>There were no further questions for Ms. Motta so she exited the meeting.</p> <p>Mr. Nagano asked if Section 20.02 D would apply here. Attorney Courson said you could not say with absolute certainty because Ms. Motta did not disclose who, but he would highly doubt it because Atlas covers the County so any board, commission or agency is already represented by Atlas. Mr. Perry said he asked if it was going to be submitted to any County board, commission or agency and Ms. Motta had said no. Mr. Murashige said it bothers him with why should the County get involved with a private company especially in a letter. Nothing prevents this other agency from picking up the phone and calling Kaua'i and asking questions. When we say they can send a letter endorsing the work this company has done it bothers him even if it is a different State agency. Reading 20.02 does not fall as a prohibition but it does bother him. Mr. Nagano added that this letter can be used for any purpose not just for another State agency. Mr. Perry said that would be his response to Mr. Murashige – what Section. At first he thought it was going to be appear in behalf of a private interest and asked if Atlas was a private interest. Submitting something is an appearance on behalf of but Mr. Perry could not see a violation of the Code. Ms. Tudela agreed with everything she has heard and it is not uncommon for this to happen, but the question is does the County want to have – essentially it is an endorsement – so does the County want to endorse an outside insurance company, so there is potential with 20.01 E in the future,</p>	

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	<p>but we can't be predictive. If she gives this lovely letter and there is a possibility she will get some kind of benefit, but we don't know that is the case but it sets us up for potential issues later. It really is a decision on whether the County wants to endorse; it would set a precedence. Ms. Tudela did not think there was anything in the Code that says Ms. Motta should not do it. There is potential to accrue a benefit but that is speculative. Mr. Nagano thought Ms. Motta saw this as a one-time thing but the letter is all inclusive and they can use this for any purpose. Chair de la Pena said it can even be used when there is a re-compete for their contract with the County. Ms. Tudela said if she were Ms. Motta's boss she would say no way and added she did not think it was in the best interest of the County to be endorsing an insurance company regardless of how wonderful they are to us. It is not in the best interest for us to endorse anyone; we should be neutral on all these matters. Ms. Tudela said she did not see anything in the Code from which she could make a motion.</p> <p>Attorney Courson said 20.05 D (2) says if the Board does not render an Advisory Opinion within 45 days there will be a finding of no breach of the code and suggested that if the Board does nothing that is what will result. Mr. Perry reminded the Board when they were sworn in their job on the Board of Ethics was to receive questions, receive Advisory Opinions and act on it. Ms. Tudela asked whose responsibility is it in County governance to decide whether or not we endorse something. She said she is about to motion that the Board is not going to look at it but defer it somewhere else.</p> <p>Mr. Furfaro said the Mayor is the Chief Executive Officer of the corporation called the County of Kaua'i and what programs are done usually come from the Administration. If no action is taken it passes and what Mr. Perry said is probably the right approach. This is an agency we do business with that is asking for the endorsement so the question is a little bit backwards. Ms. Tudela said she understands but her own executive</p>	

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	<p>experience says if she is the CEO she does not want her brand in an endorsement for another brand that she cannot control what they are going to do. It could embarrass us and personally she does not think this is a good thing to do. But the question she was asked was does it violate the Code and she does not think it violates the Code. Mr. Furfaro wanted to make sure Ms. Tudela understood his response as the Administrator of Boards and Commissions he is not trying to influence any outcome but to follow procedure. In the future there should be a motion and a second to have the discussion from which they could have taken a vote.</p> <p>Attorney Courson said they were not necessarily out of order but that it is a best practice that Council does and it does result in having something to vote on. If the Board prefers to do it this way he cannot point at a rule that says they can't do it this way. Mr. Furfaro asked to clarify what he said for the Attorney and his time on the process here. The best practices are to have discussion knowing there is a motion on the floor. It was noted that is Robert's Rules. Attorney Courson said he has recommended that before too but sometimes the Board, not knowing which way they want the motion, has wanted to discuss it and we have deferred to that. So while he would agree with Jay that it is the best practice because they can always vote the motion down he thought it was within the Board's purview to decide how to do that.</p>	<p>Ms. Tudela moved that the Board find that there is no conflict with the Code and further suggest this be communicated to another body, perhaps even the Mayor, where a decision needs to be made about whether or not the County wants to endorse and perhaps even start with Ms. Motta's supervisor who should probably be the Director of the Department of Finance. Mr. Perry seconded the motion relative to there being no conflict.</p>

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	<p>Ms. Tudela stated that she had moved what she was uncomfortable with and wanted to clarify that (the question of endorsement) should go to the Director of Finance and not the Mayor.</p> <p>Attorney Courson said he remembers two times when companies wanted permission to use our “seal” and he looked for who had the authority to decide who can use our “seal” or not. Attorney Courson could not find any rule so he has made the same recommendation and it would behoove us as a County for the Council and the Mayor to get together and decide how we have the authority – because that is a form of endorsement – but as far as he knows that discussion has not happened. Kicking this up to the Director of Finance to make sure everyone is cool with this seems a prudent course.</p> <p>Mr. Murashige asked if that could be included in the letter that the Chair signs – the fact that some of the Board members have reservations about endorsements but as far as 20.02 there is no violation.</p> <p>Attorney Courson said it would say something along the lines of the Board after full discussion does not see a conflict in 20.02 E however as a matter of prudence the Board would recommend clearing this decision with the Director of Finance. Ms. Tudela felt this might be fraught with potential challenges in the future. Asked if they wanted those concerns articulated in the letter, noting they would be in the minutes. Ms. Tudela said she was happy to have it in the letter; it is not this Board’s responsibility to make decisions about what the County endorses or doesn’t. Attorney Courson said the wisdom of the policy is not something the Board wants to get involved in but is limiting its opinion to the fact that it is not a technical violation, but we recommend talking to the Director to make sure he is on board. Mr. Perry said it is not a violation period – not technical.</p>	<p>Based on Mr. Murashige’s explanation, Mr. Perry seconded the entire motion.</p> <p>Motion carried 5:0</p>
<p><b>Business</b></p>	<p><u>BOE 2016-01 Election of Secretary for remainder of calendar year 2016</u></p>	<p>Mr. Nagano moved to nominate Ms. Tabura with</p>

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		<p>Mr. Murashige seconding the nomination.</p> <p>Mr. Perry moved to close the nominations. Ms. Tudela seconded the motion.</p> <p>Motion carried 5:0</p>
<p><b>Disclosures</b></p>	<ol style="list-style-type: none"> <li>1. <u>Deatri Alexis Nakea (Historic Preservation Commission)</u></li> <li>2. <u>Glenda Nogami-Streufert (Planning Commission)</u></li> <li>3. <u>Michael Carlton Curtis (Board of Ethics)</u></li> <li>4. <u>Fely L. Faulkner (Civil Service Commission)</u></li> <li>5. <u>Tyler Rand Radighiero (Cost Control Commission)</u></li> <li>6. <u>Lisa Ruth Arin (Candidate for Prosecuting Attorney)</u></li> <li>7. <u>Laurie LK Yoshida (Cost Control Commission)</u></li> <li>8. <u>Ted K. Blake (Open Space Public Access Commission)</u></li> <li>9. <u>Althea K. Arinaga (Historic Preservation Commission)</u></li> </ol> <p>Mr. Perry said Ms. Yoshida noted that primary residence information is no longer needed and he wants to request the basis for her dictating to the Board what is no longer required.</p>	<p>Mr. Perry moved that disclosures 1 through 6 and 8 through 9 be received and deemed as complete. Mr. Murashige seconded the motion.</p> <p>Motion carried 5:0</p>
	<p><u>ES-003: Regular Executive Session Minutes of February 19, 2016</u></p> <p>With no questions, changes or discussion it was determined there was not a need to convene in Executive Session.</p>	<p>Mr. Nagano moved to approve the minutes as circulated. Mr. Murashige seconded the motion.</p> <p>Motion carried 5:0</p>
<p><b>Announcements</b></p>	<p>Next Meeting: Friday, April 15, 2016 – 1:00 p.m.</p> <p>Mr. Furfaro recognized Warren Perry for his two terms on the Board and thanked him on behalf of the Mayor for his service.</p>	

SUBJECT	DISCUSSION	ACTION
<b>Adjournment</b>		Chair de la Pena adjourned the meeting at 1:39 p.m.

Submitted by: \_\_\_\_\_  
Barbara Davis, Staff Support Clerk

Reviewed and Approved by: \_\_\_\_\_  
Ryan de la Pena, Chair

- ( ) Approved as circulated.
- ( ) Approved with amendments. See minutes of \_\_\_\_\_ meeting.