

COUNTY OF KAUAI  
Minutes of Meeting  
OPEN SESSION

Approved as circulated 3/15/19

Board/Commission:	<b>BOARD OF ETHICS</b>	Meeting Date	<b>February 15, 2019</b>
Location	Mo‘ikeha Building, Liquor Conference Room 3	Start of Meeting: 1:01 p.m.	End of Meeting: 4:08 p.m.
Present	Chair Dean Toyofuku, Vice Chair Mia Shiraishi, Secretary Susan Buriss. Member: Mary Tudela Also: Deputy County Attorney Mark Bradbury. Boards & Commissions Office Staff: Administrator Ellen Ching and Support Clerk Arleen Kuwamura.		
Excused	Maureen Tabura, and Ryan de la Pena		
Absent			
<b>SUBJECT</b>	<b>DISCUSSION</b>	<b>ACTION</b>	
<b>Call To Order</b>		Chair Toyofuku called the meeting to order at 1:01p.m. with four members present which constituted a quorum.	
<b>Approval of Minutes</b>	<u>Open Session Minutes of January 18, 2019</u>  Ms. Tudela pointed out the misspelling of her name on pg.11, typo, and the word council on page 4 should be counsel. Ms. Buriss pointed out that on page 3 the word its should be it’s and on page four top line would be seconded. Hearing no further changes, corrections, or additions, Chair Toyofuku entertained a motion to approve the minutes.	Ms. Tudela moved to accept the Open Session minutes of January 18, 2019, as amended. Ms. Burriss seconded the motion. Motion carried 4:0	
<b>Communication</b>	<u>BOE 2019-02 2018 Lobbyist Registration Year-End Report</u>  Chair Toyofuku requested a motion to accept communication of BOE-2019-02 2018 Lobbyist Registration Year-End Report.  No Discussion.  <u>BOE 2019-03 Possible conflict of interest and recusal dated January 28, 2019, from</u>	Ms. Shiraishi moved to move accept communication BOE 2019-02. Ms. Tudela seconded the motion. Motion carried 4:0.	

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	<p><u>Arryl Kaneshiro relating to Mayoral appointment to the Board of Water Supply</u></p> <p>Chair entertained motion to approve to receive communications BOE-2019-03</p> <p>Chair Toyofuku questioned Deputy County Attorney Courson as to whether to open this to public comment.</p> <p>Deputy County Attorney Courson stated that this Board so rarely has public comment that the rules really don't address it. You could allow 3 minutes of testimony per agenda item per person and if you missed someone, anyone who wanted to give testimony on any of the items before, it could be allowed just to remedy that. When it comes to receiving something, it's not as if the testimony is going to change the action. You want to take testimony before any sort of substantive action when you get to that part.</p> <p>Chair asked if there was anyone in the public wanting to testify on any of the agenda items.</p> <p>Question asked from gallery, what's the number?</p> <p>Chair replied BOE 2019-03. Chair recognized Ken Taylor from the gallery.</p> <p>Ken Taylor speaking on his behalf on BOE 2019-03. Council Member Kaneshiro's note to BOE. He refers to a possible conflict of interest. He doesn't think it's possible, but a reality. Not only because of what is happening here, because Kaneshiro works for Grove Farm and Grove Farm has water dealings with the County. Anything to do with the water district, Council Member Kaneshiro has a conflict of interest. He thinks it's cut and dry that there is a conflict of interest with the Mayor's appointment.</p> <p>Chair thanked Mr. Taylor.</p>	

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	<p>Jade Fountain, County Clerk, clarified Mr. Taylor’s point that Council Member Kaneshiro is aware of the conflict of interest with his father-in-law being appointed to the Board of Water Supply and he will recuse himself whenever necessary.</p> <p>Chair thanked Ms. Fountain.</p>	<p>Ms. Tudela moved to receive communication BOE 2019-03. Ms. Shiraishi seconded the motion. Motion carried 4:0.</p>
<p><b>Request for an Advisory Opinion</b></p>	<p><u>RAO 2019-01 Request for Advisory Opinion dated January 9, 2019, from Lyle Tabata Regarding Donald Fujimoto’s outside employment.</u></p> <p>Chair Toyofuku asked if there was anyone wishing to speak on this matter.</p> <p>Donald Fujimoto identified himself as the applicant and stated that it is his understanding that the previous board found no conflict for a person in a much higher position than himself to be an RME for the private sector. His understanding is that to avoid a conflict the firm cannot have a contract with the County.</p> <p>Ms. Tudela asked Mr. Fujimoto about his application and the job duties he noted. As current job he works projects for the County that does the things he will be doing in the private sector. Ms. Tudela asked, if he had ever worked for this particular company on a County project for this company in the past?</p> <p>Mr. Fujimoto replied he has not. He does not have a particular firm in mind, his request is general and he is asking if he can and if he can, the firm understands that they cannot enter into a County contract.</p> <p>Ms. Tudela feels they need a specific company to determine if there is a conflict or not. And stated she is uncomfortable making a general advisory approval.</p> <p>Mr. Bradbury advised that it would be better if they had a specific company so that they</p>	<p>Ms. Shiraishi moved to find that there is a conflict of interest for discussion purposes only, Ms. Tudela seconded the motion.</p>

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	<p>could determine how it intertwines with the County or State.</p> <p>Mr. Fujimoto requests to work outside of the County as a private RME. He stated that he is looking at options to be an RME and starting his own company that he could sub with other companies or that he could work for another company with a clear understanding that they he would not be able to work on any projects with a County Contract.</p> <p>A long discussion ensued with Mr. Fujimoto explaining his role as an RME and that he is looking at options, including starting his own business and contracting with private firms, as well as sub-contracting people to work on jobs that he is the RME for. Board Members stated that the request is pre-mature and that he should return when he has a company that he wants to work with. Mr. Fujimoto responded with opinions that were given on two separate occasions to a County employee with a higher position than his.</p> <p>Chair Toyofuku disclosed that Mr. Fujimoto is a client of his insurance agency, nothing to do with this current matter.</p> <p>Mr. Fujimoto cited that the Board minutes of September 20, 2013 had previously given approval for what he is asking for.</p> <p>A discussion ensued on whether he was asking for the same thing as requested, referencing the September 20, 2013 minutes and an issue that came up last year. They were differing opinions as to whether the requests are the same and if the decision of last year rescinded the decision of 2013.</p> <p>Chair Toyofuku asked if there was any more questions, comments, direction from Counsel.</p> <p>Ms. Burriss and Ms. Tudela stated that right now there is no conflict.</p>	

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	<p>Mr. Fujimoto continued to state that he wants the Boards approval and gave examples of someone else receiving approval to do that same work.</p> <p>Ms. Shiraishi stated that she appreciated him coming to them out of an abundance of caution, but she feels that it is speculative at this point and that is where she runs into problems. The difference between the other person and him is that the other person came with a specific company.</p> <p>A discussion on Mr. Fujimoto's request and whether the Board had the authority to render a decision on whether he could engage in outside employment, with Ms. Tudela quoting from the Kauai Board of Ethics Rules and Regs, Rule #5, section A, Request for Advisory Applicability.</p> <p>Mr. Courson directed the board to the bottom of the request and noted that the Board needed to render a decision within 45 days. He explained that they could take more time with the agreement of Mr. Fujimoto.</p> <p>Chair Toyofuku asked for more discussion.</p> <p>Mr. Bradbury stated that there is no ethical problem with him working for himself on weekends or nights, but needs permission from his supervisor. There is no conflict if he works for himself. The conflict arises when he works for someone else that has something to do with the County.</p> <p>Mr. Fujimoto stated that in the future if he decides to work for a firm he will be back to ask for permission to be the RME for that firm.</p> <p>Ms. Burriss stated that he does need to come back every time he is going to do this. Explained when he needs to come back.</p>	

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	<p>Mr. Fujimoto stated that he is the subordinate and that his employer does not feel comfortable giving his approval without the Boards approval.</p> <p>Chair Toyofuku asked Deputy County Attorney Courson if what was presented to them from Lyle Tabata, the outside employment request form, and the information provided, and specific information presented by Mr. Fujimoto, does the Board have enough information and can they make assumptions to make a decision and the authority to render an opinion. For example, can Donald Fujimoto, County Employee, go and secure an outside job?</p> <p>Mr. Courson replied that the Board has the authority as to say whether or not, with the facts presented, it would be a conflict of interest for Donald Fujimoto to secure an outside job. Whether he can secure an outside job is still up to his supervisor. But the supervisor will be able to make that determination whether the Board says that that mere act is a conflict. Supervisor will not make that determination right now. Past Boards have applied the codes of ethics to the situation at hand.</p> <p>Discussion on how to word the motion. Mr. Fujimoto requested that it included working as a RME for his own registered company.</p> <p>Ms. Burriss suggested including what Mr. Fujimoto requested and being subject to all County rules and regulations applicable to County employment.</p> <p>Ken Taylor, speaking on RAO 2019-01. Stated that he was in contracting for 30 years and feels that any person in upper management working for a municipality to have an outside business in contracting. How would you police it? There's a problem on the job and they need to call the owner. They get on the phone and call, how do you police that? What if there's an accident, he's the boss he's working for the County, victims attorney are going for deep pockets. How are you going to police that? Are you going</p>	<p>Ms.. Shiraishi requested to withdraw her motion, Ms. Tudela seconded. Request to withdraw motion 4:0</p> <p>Ms. Shiraishi moved that there is no conflict if Mr. Fujimoto forms his own business while employed with the County for discussion purposes. Ms. Tudela seconded.</p>

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	<p>to be able to require him having a certain amount of insurance to protect as an over rider the County. All questions that need to be answered before saying to go ahead. Unfair for other contractors because the employee working for the County can take a job for less money because he's already being taken care of.</p> <p>Chair asked for any other discussion.</p> <p>Discussions continued on how to word the motion, as well as additional questions raised on parts of the job that requires going to the County for projects, and whether the Board should be rendering an opinion.</p> <p>Ms. Ching asked Mr. Courson to outline options regarding the timeline.</p> <p>Mr. Courson responded that the timeline is 45 days, but Mr. Fujimoto said he's willing to give extra time. Mr. Courson quoted the Charter, Section 24.05 D2, regarding looking at opinions rendered in the past. It is an option to amend or revoke a previous opinion. An advisory opinion is protected while it's active, not a promise forever.</p> <p>Mr. Courson suggested that the Board may want to take Mr. Fujimoto's offer to take more time and to look at that old opinion as Ms. Shiraishi would like and see if what was requested in the past is reconcilable with what is being asked now.</p> <p>Chair called recess at 2:32pm.</p> <p>Chair called meeting back to order at 2:34pm.</p>	<p>Ms. Shiraishi moved to withdraw her motion, no objections. Motion withdrawn.</p> <p>Ms. Shiraishi moved to defer RAO 2019-01 to the next meeting, March 15, 2019, seconded Ms. Burriss Motion carried 4:0</p>







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<p><b>Executive Session</b></p>	<p>3. Alfredo Garces Jr. – Fire Commission            4. Roberta Melton – Office of Economic Development            5. Ludvina K. Takahashi – Executive Director of Office of Aging            6. Ernest Barreira – Assistant Chief Procurement Officer            7. Jodi Sayegusa – Deputy Director of Planning            8. Derek Kawakami – Mayor –County of Kauai            9. Mason Chock - Councilmember</p> <p>Ms. Ching stated for the record that Lyle Tabata and Adam Roversi did submit disclosures that will be on next meeting agenda.</p> <p>Members reviewed Disclosures.</p> <p>Ms. Tudela asked the chair for the numbers of the one’s that they left behind.</p> <p>Chair Toyofuku responded #4 and #6</p> <p>Discussion of #4 Roberta Melton and the number of employers listed in Section II, request clarification, listed 5 employers other than the County. Return for clarification</p> <p>Discussion of #6, Ernest Barreira, source of income was not listed in Section III. Return for clarification.</p> <p>Chair Toyofuku entertained a motion to enter into Executive Session pursuant to HRS 92-4 and 92-5(a)(2) and (4) to consult with Counsel.</p>	<p>Ms. Tudela moved to approve 1,2,3,5,7,8,9 as complete and received. Ms. Shiraishi seconded the motion. Motion carried 4:0.</p> <p>Ms. Tudela moved to return #4 for clarification on Section II. Ms. Burriss seconded the motion. Motion carried 4:0.</p> <p>Ms. Tudela moved to return #6 for clarification on Section III. Ms. Burriss seconded the motion. Motion carried 4:0</p>

SUBJECT	DISCUSSION	ACTION
<b>Return to Open Session</b>		<p>The Board resumed in Open Session at 4:00 p.m.</p> <p>Ms. Tudela moved to ratify decisions made in Executive Session. Ms. Burriss seconded. Motion carried 4:0</p>
<b>Announcements</b>	<p><u>Next Meeting: Friday, March 15, 2019 – 1:00 p.m., Mo‘ikeha Building, Liquor Conference Room 3</u></p> <p>Ms. Shiraishi noted that she will not be attending the March 15, 2019 meeting.</p>	
<b>Adjournment</b>		<p>Ms. Tudela moved to adjourn the meeting, Ms. Shiraishi seconded. With no objections, Chair Toyofuku adjourned the meeting at 2:40 p.m.</p>

Submitted by: \_\_\_\_\_  
 Anela Segreti, Administrative Specialist

Reviewed and Approved by: \_\_\_\_\_  
 Dean Toyofuku, Chair

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