

COUNTY OF KAUAI
Minutes of Meeting
OPEN SESSION

Approved as circulated 5/17/19

Board/Commission:	BOARD OF ETHICS	Meeting Date	April 12, 2019
Location	Mo'ikeha Building, Liquor Conference Room 3	Start of Meeting: 1:00 p.m.	End of Meeting: 2:47 p.m.
Present	Chair Dean Toyofuku, Vice Chair Mia Shiraishi, Secretary Susan Burriss. Member: Mary Tudela, Ryan de la Pena, Maureen Tabura Also: Deputy County Attorney Maryann Sasaki. Boards & Commissions Office Staff: Administrator Ellen Ching and Administrative Specialist Anela Segreti.		
Excused			
Absent			
SUBJECT	DISCUSSION	ACTION	
Call To Order		Chair Toyofuku called the meeting to order at 1:00p.m. with six members present which constituted a quorum.	
Approval of Minutes	<u>Open Session Minutes of March 15, 2019</u> Ms. Burriss corrected spelling of her name in three places, Burriss has two r and two s, and time for end of meeting on page 1 to 2:40pm. Chari Toyofuku corrected on page 1 BOE 2019-04, Chair Toyofuku read Charter section should be 20.05, D4.	Ms. Tudela moved to accept the minutes of March 15, 2019 as corrected, seconded by Mr. de la Pena. Motion passed 4:0, 2 abstentions. Motion carried.	
Communication	<u>BOE 2019-09 Possible conflict of interest and recusal dated March 14, 2019, from Ross Kagawa relating to Resolution No. 2019-25, Mayoral appointment of Lori K. Koga to the Charter Review Commission.</u> Chair entertained motion to receive communication BOE-2019-09	Ms. Burriss moved to receive BOE 2019-09. Ms. Tabura seconded the motion. Motion carried 6:0	

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	<p><u>BOE 2019-10 Possible conflict of interest dated March 21, 2019, from KipuKai Kualii relating to Bill No. 2738, the Mayor’s proposed operating budget for fiscal year 2019-2020 – appropriations for YWCA.</u></p> <p>Chair entertained motion to approve to receive communications BOE-2019-10</p>	<p>Ms. Burriss moved to receive communication BOE 2019-10. Mr. de la Pena seconded the motion. Motion carried 6:0.</p>
	<p><u>BOE 2019-11 Possible conflict of interest dated March 21, 2019, from Arryl Kaneshiro relating to Bill No. 2738, the Mayor’s proposed operating budget for fiscal year 2019-2020 – appropriations for Grove Farm Co., Inc.</u></p>	<p>Ms. Shiraishi moved to receive communication BOE 2019-11. Ms. Burriss seconded the motion. Motion carried 6:0.</p>
	<p><u>BOE 2019-12 Possible conflict of interest dated March 21, 2019, from Arryl Kaneshiro relating to Bill No. 2738, the Mayor’s proposed operating budget for fiscal year 2019-2020 – appropriations for Kaua’i Soil Conservation.</u></p>	<p>Mr. de la Pena moved to receive communication BOE 2019-12. Ms. Tabura seconded the motion. Motion carried 6:0</p>
	<p><u>BOE 2019-13 Possible conflict of interest dated April 3, 2019, from KipuKai Kualii related to the YWCA of Kaua’i Disaster Preparedness Improvement Project.</u></p>	<p>Ms. Tudela moved to receive communication BOE 2019-13. Ms. Shiraishi seconded the motion. Motion carried 6:0.</p>

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<p>Request for an Advisory Opinion</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 County Clerk, Ms. Tanigawa, had any particular item that she wanted to speak on. She replied no.</p> <p>Ms. Tudela requested clarification regarding RAO 2019-01. It was clarified that they have discussed this, but it had been deferred.</p> <p>Ms. Ching stated the deferral was to review the two prior opinions that were rendered regarding Lyle Tabata’s outside employment.</p> <p>Ms. Tabura questioned why Mr. Tabata was requesting opinion and not Mr. Fujimoto. Discussion of the form requesting the opinion and the option to refer to the Board of Ethics. It is a policy that stands. Mr. Fujimoto did appear before the Board, but Mr. Tabata did not.</p> <p>Discussion of discussing 2019-01 with 2019-08. Ms. Shiraishi pointed out that there is a distinguishable difference between the two, Mr. Tabata had a specific firm and Mr. Fujimoto was broad, saying random firms and individuals.</p> <p>Ms. Ching asked for the record that Member Tabura state reason for abstention.</p> <p>.</p> <p>Ms. Ching asked for the record that each member state reason for denying 2019-01.</p>	<p>Ms. Shiraishi moved to disapprove the outside employment request as referred by Lyle Tabata. Ms. Tabura seconded then withdrew. Mr. de la Pena seconded. 5:0, 1 abstention. Motion carried</p> <p>Ms. Tabura stated that she was not present and did not feel she had all the information from the previous meetings.</p> <p>Ms. Burriss stated that the definition of RME involves applications in front of various County Boards and Officers,</p>

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		<p>conflict is ever present.</p> <p>Ms. Tudela supported Ms. Burris statement and suggested they reference 2016 Charter 20.02 E special benefits that could potentially create a conflict, 20.02 A, reciprocal decisions that could reasonably tend to create conflict.</p> <p>Mr. de la Pena supported motion because Mr. Fujimoto could be self-employed and could represent multiple firms and individuals that aren't named, and because he's self-employed he would be submitting permits himself rather than someone else from the company.</p> <p>Ms. Shiraishi stated the definition of an RME and all the responsibilities it entails implies a conflict, as well as the fact that he would be applying for permits with the County and he works for the County, and because his request is vague and he cannot say who he'll be working for. Also since he works full time for the County the</p>

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		<p>only time he would be able to go and apply for permits and all the things for this potential outside job would be during County employment time, do not see how he could do both.</p> <p>Chair Toyofuku stated that understanding the definition of an RME and considering the department he works in and that permits and plans and everything else will be going to divisions and departments in that overall department to begin with, and request was very broad.</p>
<p>Business</p>	<p><u>BOE 2019-04 Substantive Disclosures Information</u></p> <p>Discussion of responsibility of reviewing of disclosure statements and amending disclosure statements. Charter section 20.05, D4, responsibilities. Applications have been received incomplete, looking at clarifying that all sections needs to be completed, if not applicable and NA or none rather than blank. Also questions regarding companies that are unknown to Board, do we need somewhere for an explanation or just kick back and ask for more clarification. Discuss amending form to get more details and getting a draft from staff.</p> <p>Clarified three things needing change: 1. Employer and what kind of business it is. 2. NA, all fields must be completed. 3. List Boards and non-profits they may be sitting on and brief description on what they do.</p>	<p>Mr. de la Pena moved that Boards and Commissions staff draft a disclosure statement with clarification of employer and type of business, clarifying that all questions must be completed; description of board, committees in</p>

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	<p>Ms. Tudela stated that she thought a role description of what a Member does when he or she reviews the disclosure, which is not on disclosure form, but worth that it be documented.</p> <p>Ms. Ching suggested to discuss with attorney where the role would be defined.</p> <p>Ms. Sasaki suggested the administrative rules be revised, indicating clarification in respect to the Charter.</p> <p>Mr. de la Pena and Chair Toyofuku sited sections in the Charter and in the Rules that clarify role of Board. No change needed, want to ensure consistency going further.</p>	<p>detail. Ms. Burriss seconded. Motion carried 6:0</p>
	<p><u>BOE 2018-17 Explicit recommendation on the steps to be taken at the Charter level and the administrative level to improve the existing countywide disclosure requirement coupled with a fine schedule.</u></p> <p>Ms. Sasaki will email a full report to members. She verbally reported that what is needed is to draft an Ordinance and get a pass. She's looked at the codes from the other Counties, there is a penalty for a late filing and if they continue to be late there's another penalty and so on. Some Counties have for no filing at all serious penalties and she did not like that and did not think the members would as well. The other option would be to draft a rule, but she does not like that option, in case it gets challenged. Draft says \$100 for first late filing, \$200 for the second late filing, thereafter for each additional late filing \$200 and that the person would have an opportunity to have a hearing with the Board as to the reason they have a late filing if they chose to, with Board having adjudication authority. Ms. Sasaki would draft ordinance, Boards and Commissions would get it through the process.</p> <p>Ms. Tanigawa, County Clerk, stated that the Ordinance process once submitted to the</p>	

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	<p>County Council takes about two months, if it falls into schedule and there's not a lot of discussion.</p> <p>Ms. Sasaki proposed that the Ordinance should go into the County Code right before the end of the penalty section, in Chapter 3-3.11, violation and penalties, after C and D would become E.</p> <p>Discussed where monies would go. Ms. Tanigawa explained that it depends what would like money to be used for. If it goes into the general fund it goes to support other County projects. Can designate it to a special fund which need to establish by ordinance if don't have it.</p> <p>Ms. Sasaki will send draft Ordinances, one establishing a fund, one establishing a fine schedule.</p>	<p>Mr. de la Pena moved to defer BOE 2018-17 for further information and review. Ms. Tabura seconded. Motion carried 6:0</p>
	<p><u>BOE 2019-08 Review Advisory Opinions RAO 13-006 and RAO 18-004.</u></p> <p>Ms. Tudela clarified that Board is looking to amend or revoke and that is why it is coming to review.</p> <p>Ms. Sasaki stated she needs to check on the process to have an opinion to revoke the opinions. She wants to make sure there would be a process that she needs to look into the procedure to have decision in public files.</p> <p>Ms. Tudela asked for legal definition of revocation.</p> <p>Ms. Sasaki explained that she would like to see how agencies handle it.</p>	<p>Ms. Burriss moved to consider whether a method of notifying the general public is necessary or desirable with respect to decisions that appear to revoke prior decisions of the Board. Ms. Tudela seconded. Motion carried 6:0</p> <p>Ms. Shiraishi moved to revoke RAO 13-006 and RAO 18-004. Ms. Tudela seconded. 4:2. Motion carried.</p>

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	<p>Ms. Tudela looked up definition and is satisfied that it is from this point in time no longer valid.</p> <p>Lengthy discussion regarding what lead to review of RAO 13-006 and RAO 18-004 and why Board is considering revocation and should they move forward.</p> <p>Mr. de la Pena stated he felt that Mr. Tabata should be given opportunity to defend before revoking the past Advisory Opinions.</p>	<p>Mr. de la Pena – nay – feel that this a different request than Mr. Fujimoto, not only because of the RME but also because Mr. Fujimoto would be self-employed and wearing multiple hats.</p> <p>Ms. Tudela – aye – because leaving it out there would be confusing for other employees and with more specifics of what the role entails is concerned about potential conflicts that could occur.</p> <p>Ms. Burriss – nay – believe it is unnecessary, what did today speaks for itself and what was done in 2013 and 2018 is history, can't rewrite it.</p> <p>Ms. Tabura – aye – based on additional information, to eliminate confusion.</p> <p>Ms. Shiraishi – aye – need to clear the record, situation is different from Mr. Fujimoto and be dealt separately so that all other County employees are clear as to the opinion, based heavily on the</p>

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		<p>definition of RME and they are required to conduct direct management of the contracting entity and supervise construction projects and review all contracts. This is a big role and creates a conflict with his County employment.</p> <p>Chair Toyofuku – aye – all reasons stated, interpretation of RME definition, it is the Responsible Managing Employee of the entire company entity and any contractor could potentially have plans, permits, documentation that may have to come before certain County departments and as Deputy County Engineer, he sits over a lot of these departments.</p>
<p>Disclosures</p>	<p><u>Employees</u></p> <ol style="list-style-type: none"> 1. Kilipaki Vaughan – Deputy Fire Chief 2. Ernest Barriera – Assistant Chief Procurement Office 3. Lyle Tabata – Deputy County Engineer <p><u>Volunteers</u></p> <ol style="list-style-type: none"> 4. Lori Koga – Charter Review Commission 5. Kurt Akamine – Board of Water Supply 6. Jen Chahanovich – Fire Commission 7. Elesther Calipjo – Board of Water 	<p>Mr. de la Pena moved to approve #1-8. Ms. Tudela seconded.</p>

SUBJECT	DISCUSSION	ACTION
	8. Leland Kahawai – Salary Commission	Motion carried 6:0
Executive Session	There was no Executive Session	
Announcements	<u>Next Meeting: Friday, May 17, 2019 – 1:00 p.m., Mo‘ikeha Building, Liquor Conference Room 3</u>	
Adjournment		Ms. Shiraishi moved to adjourn the meeting, Chair Toyofuku adjourned the meeting at 2:47 p.m.

Submitted by: _____
 Anela Segreti, Administrative Specialist

Reviewed and Approved by: _____
 Dean Toyofuku, Chair

(X) Approved as circulated.

() Approved with amendments. See minutes of _____ meeting.