

**Approved**

COUNTY OF KAUAI  
Minutes of Meeting  
OPEN SESSION

Approved with amendments see minutes of 2/21/20 meeting.

Board/Commission:	<b>BOARD OF ETHICS</b>	Meeting Date	<b>January 17, 2020</b>
Location	Mo'ikeha Building, Liquor Conference Room 3	Start of Meeting: 1:00 p.m.	End of Meeting: 2:59 p.m.
Present	Chair Mia Shiraishi, Vice Chair Susan Burriss, Secretary Mary Tudela. Members: Ryan de la Pena, Maureen Tabura, Dean Toyofuku. Also: Deputy County Attorney Todd Jenson. Boards & Commissions Office Staff: Administrator Ellen Ching and Administrative Specialist Anela Segreti. Testifier: Ken Taylor		
Excused			
Absent			

SUBJECT	DISCUSSION	ACTION
<b>Call To Order</b>		Chair Shiraishi called the meeting to order at 1:00 p.m. with six members present which constituted a quorum.
<b>Approval of Minutes</b>	<u>Open Session Minutes of December 20, 2019</u> Ms. Tudela had a correction to page 3, second sentence, They amendment should be The amendment.	Mr. de la Pena moved to approve the minutes as of December 20, 2019 as amended. Ms. Tabura seconded. Motion carried 6:0.
<b>Communication</b>	<u>BOE 2020-01 Email from Ken Taylor dated 12/15/19 regarding Bill 2745 and a potential conflict of interest for Mayor Kawakami.</u>  Ken Taylor stated he sent the email documenting a complaint not a communication. He was surprised to see it as a communication and reminded the board that when the Mayor was on the Council he excused self from voting on these issues, which indicated to him that the Mayor had a potential conflict of interest and should be addressed at this level. He was not sure whether the bill had been signed but feels that if it has or has been allowed to become law without his signature that it is wrong and should be revoked and dealt with properly. Feels the Board has an obligation to review the situation and make	Ms. Tudela moved to receive BOE 2020-01. Mr. de la Pena seconded. Motion carried 6:0

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	<p>a determination. He believes that there will be other similar situations. He restated that he strongly believed that the Board has an obligation to address the issue raised in his email and not just accept it as a communication.</p> <p>Chair Shiraishi requested that the Board go into executive session to consult with their attorney.</p> <p>Pursuant to Hawai'i Revised Statutes, ("H.R.S.") §92-7 (a), the Board deemed necessary, to hold an Executive Session on a communication dated 12/15/19 from Ken Taylor without the written public notice if the Executive Session was not anticipated in advance. Any such Executive Session shall be held pursuant to H.R.S. §92-4 and shall be limited to those items described in H.R.S. §92-5(a). Discussions held in Executive Session are closed to the public.</p> <p style="text-align: center;"><i>Board moved into executive session at 1:05pm.</i></p> <p style="text-align: center;"><i>Board resumed in open session at 1:26pm.</i></p> <p>Todd Jenson, Deputy County Attorney, addressed Mr. Taylor thanking him for taking time to come in. He explained that Mr. Taylor's email was received in December and that the agenda had already been posted and therefore it was too late to put the email on that agenda and was therefore placed on this agenda.</p> <p>Mr. Taylor stated that he understood.</p> <p>Mr. Jenson recognized the value of his concerns and the importance of being a community watch dog. He further stated that the concern in the email is now in front of the Board of Ethics and explained that they look at complaints, and allegation that a County official or employee has done something wrong, a violation of the code of ethics</p>	

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	<p>or something illegal and that they can come in the form of an official complaint, signed and notarized; they may be asked to provide an advisory opinion. When Mr. Taylor's email was received, it was determined that it was a communication, an expression of his concern about something happening in the County government, and placed on the agenda as such. He explained that the Bill that Mr. Taylor referenced was already far through the process of being adopted as an ordinance and was adopted. He gave a copy of the ordinance (on file) to Mr. Taylor. Mr. Jenson further explained that given the timing of his email and where the ordinance was at the County Council as to why he may feel like it wasn't addressed timely in December.</p> <p>Mr. Taylor acknowledged that he understood the timing of the email being on the agenda. He didn't anticipate that it would be on the agenda until this month. In his email he asked for an opinion and seeing it as a communication surprised him, because he knows that decisions are not made on communications. He expressed that he felt that it was imperative that it be brought back and investigated, because if the Mayor does own property in the area it is a potential self-serving financial situation to up zone that land, and needs to be dealt with in a proper ethical process.</p> <p>Ms. Tudela asked Mr. Taylor if he had spoken with anyone else in the County about his concern.</p> <p>Mr. Taylor responded that he had not spoken to anyone else.</p> <p>Ms. Burriss explained that when the Board gets a request for an advisory opinion it typically comes from the person with the potential conflict and with some background that enables the Board to make a ruling on the request. That is why it was not addressed as he may have seen in the past. She also explained that the Bill had been passed before the December Board meeting.</p>	

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	<p>Mr. Taylor asked if it was adopted by the Council and Mr. Jenson confirmed that it had.</p> <p>Chair Shiraishi clarified that Request for Advisory Opinions can only come from an employee or an officer of the County. The reason that the email was not classified as a complaint was because it did not follow the formal requirements for a complaint, it was not notarized. She explained that he is free to file a complaint following the requirements that it be signed and notarized. She also stated that his communication could be forwarded to the Mayor if the Board decides to do that.</p> <p>Ms. Burriss asked Mr. Jenson that given that it is now an ordinance does the Board have any teeth in the matter.</p> <p>Mr. Jenson replied, yes, ordinances get stricken down.</p> <p>Several amendments were made to the motion before the vote, the final motion was agreed upon by Ms. Tudela and Ms. Burriss.</p> <p>Mr. Toyofuku requested to go into executive session to consult with Counsel.</p>	<p>Ms. Tudela moved to forward to the Mayor's office the email from Mr. Ken Taylor dated 12/15/19 regarding Bill 2745 and a potential conflict of interest and request a response to the Board of Ethics. Ms. Burriss seconded.</p> <p>Mr. Toyofuku moved to go into executive session. Ms. Tudela seconded. Motion carried 6:0</p>

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	<p>Pursuant to Hawai'i Revised Statutes, ("H.R.S.") §92-7 (a), the Commission deemed necessary, to hold an Executive Session on a communication dated 12/15/19 from Ken Taylor without the written public notice if the Executive Session was not anticipated in advance. Any such Executive Session shall be held pursuant to H.R.S. §92-4 and shall be limited to those items described in H.R.S. §92-5(a). Discussions held in Executive Session are closed to the public.</p> <p style="text-align: center;"><i>Board moved into Executive Session at 1:44pm.</i></p> <p style="text-align: center;"><i>Board returned to Open Session at 1:55pm.</i></p> <p>The Board voted on the motion made before the Executive Session.</p> <p>Mr. Taylor made a final comment that he is looking forward to the results.</p> <p>The Board thanked him for coming in.</p>	<p>Ms. Tudela moved to forward to the Mayor's office the email from Mr. Ken Taylor dated 12/15/19 regarding Bill 2745 and a potential conflict of interest and request a response to the Board of Ethics. Ms. Burriss seconded. Motion carried 6:0</p>

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<b>Request for an Advisory Opinion</b>	None	
<b>Business</b>	<p><u>BOE 2018-17 Discussion and possible action by the Board of Ethics to provide explicit recommendation(s) on how to improve the existing countywide disclosure requirement and to discuss and propose a fine schedule for non-compliance. Review and discuss HRS section 46-1.5(24), County of Honolulu Chapter 6 Ethics Board Sec. 3-8.5, Chapter 14 Ethics Board of Appeals.</u></p> <p>Ellen Ching, Administrator reported that more information will be provided to them at the next meeting and requested this item be deferred.</p>	<p>Ms. Tudela moved to defer BOE 2018-17. Mr. de la Pena seconded. Motion carried 6:0</p>
	<p><u>BOE 2019-22 Discussion and possible action by the Board to provide notice to County employees regarding ethics requirements for former employees.</u></p> <p>Ms. Ching reported that the best way to do this would be to talk with HR and develop a form as part of employee departures and will work with HR on this. She requested a deferral of this item.</p>	<p>Ms. Tudela moved to defer BOE 2019-22. Ms. Tabura seconded. Motion carried 6:0</p>
	<p><u>BOE 2019-33 Discussion and possible action by the Board of Ethics to provide ethics training for County employees.</u></p> <p>Ms. Ching reported that she is looking to have this scheduled for about April. She further explained that the past training was okay, but she would like to step it up. She will go through the basic information and then look at creating an improved training.</p>	

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	<p>Board discussed trainings that they attended. She suggested that short videos on possible situations would be a good way to conduct trainings. She requested to defer this item.</p>	<p>Ms. Tabura moved to defer BOE 2019-33 to the second quarter of 2020. Ms. Tudela seconded.          Motion carried 6:0</p>
	<p><u>BOE 2019-31 Discussion, review and possible action by the Board of Ethics on draft of proposed language to amend Charter 20.05.D.2 and delete “an opinion within 45 days is deemed a finding of no breach of the Code of Ethics.”</u></p> <p>Chair Shiraishi reminded Board that this item was deferred for more research which is in their packets. The Board reviewed the documents and discussed how other Counties’ Charters address advisory opinions.</p> <p>Board looked at proposed language as previously discussed and worked on language to propose to amend the Charter.</p> <p>Ms. Tudela questioned the language in the motion, feeling it was redundant.</p> <p>Ms. Ching pointed out that “person” was added to list of county employee or an officer.</p> <p>They discussed the language in the motion and worked on revising the language.</p> <p>Mr. Jenson suggested that the language about “or deemed rendered” is not needed, because that section is being eliminated.</p>	<p>Mr. Toyofuku moved to amend the proposal to amend the Charter to read, All requests for advisory opinions shall be rendered pursuant to a written request of any elected or appointed officer or employee concern and may be rendered pursuant to the request of any person.</p>

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	<p>Board discussed and came up with this language: To render All requests for advisory opinions shall be rendered pursuant to a written request of any elected or appointed officer or employee. Opinions rendered shall be binding on the board in any subsequent charges concerning the officer or employee of the county until said opinion is amended or revoked by the board.</p> <p>Ms. Burriss asked for the definition of charges.</p> <p>Mr. Jenson doesn't believe that there is a definition of charges in the Charter and would default to the dictionary and common use of the definition.</p> <p>Ms. Burriss stated charges as opposed to the word matters.</p> <p>Board discussed charges versus matters versus complaints.</p> <p>Ms. Ching discussed with Board about changing the word "charges" and suggested staying with the main issue for the change in the Charter.</p> <p>Ms. Tabura left the meeting at 2:29pm before vote and returned at 2:30pm after vote.</p>	<p>Mr. Toyofuku moved to amend his motion to amend the Charter to read, "To render advisory opinion or interpretations with respect to application of the code on request. All requests for advisory opinions shall be rendered pursuant to a written request of any elected or appointed officer or employee. Opinions rendered shall be binding on the board in any subsequent charges concerning the officer or employee of the county until said opinion is amended or revoked by the board." Mr. de la Pena seconded. Motion carried 5:0, 1 absent.</p> <p>Ms. Tudela moved to submit the proposed Charter amendment of 20.05.D2 to the Charter Review Commission. Mr. de la Pena seconded. Motion carried 6:0</p>



SUBJECT	DISCUSSION	ACTION
	<p><u>BOE 2020-02 Permitted Interaction Group recommendations on an ordinance to require annual gift disclosures.</u></p> <p>Mr. Toyofuku gave an initial update on the first meeting of the Permitted Interaction Group (PIG) meeting. Group met and reviewed the language from the other counties and have narrowed it down to a direction of what they are looking at.</p>	<p>Mr. Toyofuku moved to defer BOE 2020-02. Ms. Tudela seconded. Motion carried 6:0</p>
<p><b>Disclosures</b></p>	<p style="text-align: center;"><u>Employees:</u></p> <ol style="list-style-type: none"> <li>1. Charles Foster, Deputy County Attorney</li> <li>2. Gerald Rapozo, Liquor Control Director</li> <li>3. Todd Raybuck, Police Chief</li> <li>4. Nicholas Courson, First Deputy County Attorney</li> <li>5. Robert Westerman, TA Fire Chief</li> </ol> <p style="text-align: center;"><u>Volunteers:</u></p> <ol style="list-style-type: none"> <li>1. Mia Shiraishi, Board of Ethics</li> <li>2. Maureen Tabura, Board of Ethics</li> <li>3. Victoria Wichman, Kaua'i Historic Preservation Commission</li> <li>4. Craig DeCosta, Board of Review</li> <li>5. Stella Fujita, Board of Review</li> <li>6. Karen Ono, Open Space Preservation Commission</li> <li>7. Julie Simonton, Board of Water Supply</li> <li>8. Sean Mahoney, Planning Commission</li> </ol>	<p>Ms. Burriss moved to accept disclosures of Employees 1-5. Mr. Toyofuku seconded. Motion carried 6:0.</p> <p>Ms. Burriss moved to accept disclosure of Volunteer 1. Ms. Tabura seconded. Chair Shiraishi recused herself. Motion carried 5:0</p> <p>Ms. Burriss moved to accept disclosure of Volunteer 2. Ms. Tudela seconded. Ms. Tabura recused herself. Motion carried 5:0</p> <p>Ms. Burriss moved to accept disclosures of Volunteers 3-8. Ms. Tabura seconded. Motion carried 6:0</p>

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<b>Executive Session</b>	<p>Chair Shiraishi entertained a motion.</p> <p>Pursuant to Hawai'i Revised Statutes §92-4, §92-5 (a) (2) and (4), §92-6 (a) (b), the purpose of this Executive Session is to consult with the Board's legal counsel on issues pertaining to Resolution 2019-1 to consider the evaluation, dismissal or discipline of an employee or officer of the County in which charges have been alleged against an employee or officer where consideration of matters affecting privacy will be involved; provided that if the individual concerned requests an open meeting, an open meeting shall be held; the Board's and the County's powers, duties, privileges, immunities, and /or liabilities as they may relate to this item, deliberate and take such action as appropriate.</p> <p style="text-align: center;">The Board moved into Executive Session at 2:55pm.</p>	<p>Mr. Toyofuku moved to go into executive session. Ms. Tudela seconded. Motion carried 6:0.</p>
<b>Return to Open Session</b>	<p>Ratify Board actions taken in Executive Session.</p>	<p>The board resumed in Open Session at 2:59pm</p> <p>Ms. Tudela moved to ratify decisions made in Executive Session. Ms. Tabura seconded. Motion carried 6:0</p>
<b>Announcements</b>	<p>Next Meeting: Friday, February 21, 2020 – 1:00 p.m., Mo'ikeha Building, Liquor Conference Room 3.</p>	
<b>Adjournment</b>		<p>Mr. Toyofuku moved to adjourn the meeting, Mr. de la Pena seconded. Chair Shiraishi adjourned the meeting at 2:59pm</p>

Submitted by: \_\_\_\_\_ Reviewed and Approved by: \_\_\_\_\_  
 Anela Segreti, Administrative Specialist Mia Shiraishi, Chair

- ( ) Approved as circulated.
- ( X ) Approved with amendments. See minutes of 2/21/20 meeting.