

Approved

COUNTY OF KAUAI
Minutes of Meeting
OPEN SESSION

Approved as amended 11/20/2020.

Board/Commission:	BOARD OF ETHICS	Meeting Date	October 16, 2020
Location	Teleconference	Start of Meeting: 1:01 p.m.	End of Meeting: 3:54 p.m.
Present	Chair Mia Shiraishi, Vice Chair Susan Burriss, Secretary Mary Tudela. Members: Kelly Gentry, John Latkiewicz, Dean Toyofuku. Also: Deputy County Attorney Charles Foster. Boards & Commissions Office Staff: Administrator Ellen Ching and Administrative Specialist Anela Segreti. Testifiers: Adam Roversi, Russell Izumo, Mike Tressler		
Excused			
Absent			

SUBJECT	DISCUSSION	ACTION
Call To Order		Chair Shiraishi called the meeting to order at 1:01 p.m. Roll call: Member Gentry: present Member Latkiewicz: present Member Toyofuku: present Secretary Tudela: present Vice Chair Burriss: present Chair Shiraishi: present Six members present, which constituted a quorum.
Approval of Minutes	<u>Open Session Minutes of September 18, 2020</u> Vice Chair Burriss corrected page 2 where it says “all though” should be “although”, and on page 7 “Burriss” should be “Burriss”. Secretary Tudela corrected page 3 “persay” to “perceive”.	Vice Chair Burriss moved to approve the minutes of September 18, 2020 as amended. Member Toyofuku seconded. Voice vote: 6 ayes, 0 nays Motion carried 6:0

SUBJECT	DISCUSSION	ACTION
Public Testimony	<u>None</u>	No action
Communication	<p><u>BOE 2020-30 Memorandum from Councilmember Felicia Cowden dated October 7, 2020 relating to her recusal from Resolution No. 2020-44 (Mayoral Reappointment of Dean A. Toyofuku to the Board of Ethics).</u></p> <p>Chair Shiraishi entertained a motion to receive.</p>	<p>Secretary Tudela moved to receive BOE 2020-30. Member Latkiewicz seconded.</p> <p>Voice Vote: 6 ayes, 0 nays Motion carried 6:0</p>
Request for an Advisory Opinion	<p><u>RAO 2020-03 Request for an Advisory Opinion from Adam Roversi dated September 23, 2020 relating to no Code of Ethics issue arising from working in a limited part-time position with the Fifth Circuit Court.</u></p> <p>Chair Shiraishi asked Deputy County Attorney Foster if Mr. Roversi would be allowed to be Grand Jury Council as he works for the County of Kauai.</p> <p>Mr. Foster replied that it is his opinion that he is, he can work at other jobs.</p> <p>Chair Shiraishi stated that HRS Section 612-52, which states that it cannot be a public employee, based on her research. She found that it refers to any person holding a position in the service of a jurisdiction irrespective of the type of appointment and jurisdiction includes the County of Kauai. She does not want to proceed if it is precluded by statute.</p> <p>Adam Roversi, County Director of Housing, stated that he was not aware of the statute and it may moot his question and make it irrelevant. When he contacted the 5th circuit court they did not raise any issues on their end, but asked him to address possible conflict of interest and that prompted him to come before the Board in an abundance of caution. The position has not been offered, it was a thought of applying. He stated he could withdraw his request or alternatively state that if the court determines that he is not precluded by the statute he would ask that the Board would find that there's not an ethics code violation.</p> <p>Chair Shiraishi asked if it was time sensitive and if the Board could have an extension of time to consider this.</p>	

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	<p>Mr. Roversi answered that it would be fine with him. He would withdraw his request at this point and will confer with Chief Judge Valenciano and clarify the statute and if Chair is correct he will not resubmit his request.</p> <p>Chair Shiraishi explained that she found the information on the Hawaii State Judiciary Website where they are looking for Grand Jury Council.</p>	<p>Mr. Roversi formally withdrew his request.</p>
	<p><u>RAO 2020-04 Request for an Advisory Opinion from Russell Izumo dated October 6, 2020 relating to being offered the position of Automotive Superintendent for the County of Kauai and the owner of Nex Gen Diesel, an authorized provider of warranty services to the County of Kauai Auto Shop.</u></p> <p>Chair Shiraishi stated that Russell Izumo and Mike Tressler were present to answer questions. She asked if Mr. Izumo had anything to add to his written request.</p> <p>Mr. Izumo clarified that in part one of his request that the County will not be billed for any Cummins warranty service from his company. His company deals directly with Cummins for warranty work. Mr. Izumo stated that his company is the only authorized dealer on Kauai. He also wanted to clarify that he is asking if his company can provide Cummins engine's parts quotes to the County as the majority of the heavy trucks and garbage trucks are powered by Cummins engines.</p> <p>Mike Tressler, Acting Deputy County Engineer and Public Works Fiscal Management Officer, added that there are processes in place through the procurement code. Parts that are purchased under \$1500 is done with a pCard and do not require a quote per se, so to ensure that they are ethically transparent, if auto shop is to seek quotes for a Cummins' part, even if under \$1500, they will require, at minimum, one other quote and Mr. Izumo would not sign off, Mr. Tressler would. They do know that in many cases he has the lower price and they can get the parts quicker, and down time is less, which is important to operations. Anything over \$1500 requires three quotes, so the department feels there are sufficient procedures in place to be sure that things remain transparent, they will see the lowest price for the parts.</p> <p>Chair Shiraishi entertained a motion.</p>	

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	<p>Chair Shiraishi summarized that Mr. Izumo is requesting an opinion about whether NexGen Diesel is able to provide warranty service to Cummins Inc. for the County of Kauai equipment warranty issues and if NexGen is able to provide quotes and supply engine parts to the County of Kauai Auto Shop.</p> <p>Secretary Tudela asked for clarification on the relationship between Mr. Izumo and Mr. Tressler, in terms of work.</p> <p>Mr. Tressler explained that Mr. Izumo has been offered the position of the Auto Shop Superintendent, which is the head of the Division and as the Acting Deputy County Engineer and oversees the Department of Public Works daily operations and Auto shop is under him as well as being the fiscal management officer for the department.</p> <p>Secretary Tudela clarified that she had a concern that there is a supervisor in the County which is also a 50% owner of an outside business that does warranty work for the County and would also be involved in providing equipment parts under \$1500.</p> <p>Mr. Tressler stated that Mr. Izumo would be providing quotes for parts, not necessarily just under \$1500.</p> <p>Secretary Tudela clarified that here is a situation of a supervisor of a department authorizing purchases.</p> <p>Mr. Tressler stated that it is his responsibility to authorize purchases, but also in some instances the Superintendents. He wants it to be clear that when they obtain quotes from NexGen he would not be in the chain to authorize those purchases if he is found to be the lowest quote.</p> <p>Secretary Tudela explained that the Board evaluates this against the Code and this one is “fuzzy”.</p> <p>Mr. Tressler stated that they do not obtain quotes of purchases under \$1500 but will obtain at least one other quote to maintain their integrity of the process.</p> <p>Secretary Tudela asked what the impact will be on the department and County if the Board finds a conflict.</p>	<p>For Discussion Vice Chair Burriss moved to find no conflict. Member Gentry seconded.</p>

SUBJECT	DISCUSSION	ACTION
	<p>Mr. Tressler stated that it eliminates an opportunity from obtaining competitive quote from the only authorized dealer on the island. On the warranty side they would not be getting the warranty service from the only authorized dealer, which they pay for and would need to deal with Cummins on that. He has thought it through on the procurement side, they obtain quotes and they go with the lowest.</p> <p>Chair Shiraishi explained that they are to look at compliance or violation of the Code of Ethics and pointed out that the two sections that are relevant are Section 20.02c. as well as Section 20.03.</p> <p>Vice Chair Burriss stated that there is in fact a conflict and we are faced with a dilemma of being on a small island and there being one suitable provider, and how do we treat this.</p> <p>Member Latkiewicz asked if there have been similar cases.</p> <p>Mr. Tressler stated that in the past they have used an alternative provider that does not have any certified Cummins provider. He personally feels that the transaction is between Cummins Corp and the County, it's a warranty issue and does not involve NexGen. The contractual agreement is between NexGen and Cummins. As far as the competitive process of obtaining quote he suggest adding it to purchases under \$1500.</p> <p>Ellen Ching, Administrator, suggested to take a recess to consult with their County Attorney.</p> <p style="text-align: center;"><i>Chair Shiraishi recessed the Open Session at 1:34pm</i> <i>Chair Shiraishi reconvened the Open Session at 1:53pm</i></p> <p>Chair Shiraishi requested additional time, until the November 20 meeting, for legal counsel to research more on this issue.</p> <p>Mr. Tressler and Mr. Izumo agreed.</p> <p>Chair Shiraishi asked that they attend the November meeting.</p>	<p>Roll call: Member Gentry: present Member Latkiewicz: present Member Toyofuku: present Secretary Tudela: present Vice Chair Burriss: present Chair Shiraishi: present</p> <p>Vice Chair Burris withdrew her motion. Member Gentry withdrew her second.</p>

SUBJECT	DISCUSSION	ACTION
	<p>Chair Shiraishi entertained a motion to defer.</p>	<p>Vice Chair Burriss moved to defer RAO 2020-04 to the November 20, 2020 meeting. Member Gentry seconded.</p> <p>Voice Vote: 6 ayes, 0 nays Motion carried 6:0</p>
<p>BUSINESS</p>	<p><u>BOE 2020-31 Discussion and possible action regarding revisions made to the disclosure statement.</u></p> <p>Board reviewed revised disclosure statement presented.</p>	<p>No action</p>
<p>Disclosures</p>	<p><u>Employees:</u></p> <ol style="list-style-type: none"> 1. <u>Aaron Larrimore, Office of the County Attorney</u> 2. <u>Lee Evslin, Councilmember</u> <p><u>Candidates:</u></p> <ol style="list-style-type: none"> 3. <u>Felicia Cowden, Candidate for County Council</u> 4. <u>Mason Chock, Candidate for County Council</u> 5. <u>Kipukai Kualii, Candidate for County Council</u> <p>Secretary Tudela stated that though incumbent candidates Evslin, Kualii and Chock did not check that they are both councilmembers and candidates and suggested that the record reflect that the Board is aware that they are both. She is not suggesting that they be returned for clarification. She also pointed out that Councilmember Evslin did not list his Island School salary.</p> <p>Board discussed whether they needed clarification on the differences between councilmember salaries.</p>	<p>Secretary Tudela moved to approve Larrimore disclosure. Member Latkiewicz seconded.</p> <p>Voice vote: 6 ayes, 0 nays Motion carried 6:0</p> <p>Secretary Tudela moved to approve Cowden, Kualii and Chock's disclosures. Vice Chair Burriss seconded.</p> <p>Voice vote: 6 ayes, 0 nays Motion carried 6: 0</p> <p>Secretary Tudela moved to return Councilmember Evslin's disclosure for clarification on Island School salary. Vice Chair Burriss seconded.</p> <p>Voice vote: 6 ayes, 0 nays Motion carried 6:0</p>

SUBJECT	DISCUSSION	ACTION
<p>Executive Session</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><u>ES-030: BOE 2020-32 Anonymous letter dated September 22, 2020 requesting the Board of Ethics initiate an investigation into an allegation relating to an employee(s) or officer(s) of the County.</u></p> <p><u>ES-031 Executive Session Minutes of September 18, 2020</u></p> <p><u>ES-032: BOE 2020-33 Pursuant to Hawai'i Revised Statutes §92-4 and §92-5 (a) and (2) and (4), the purpose of this Executive Session is for the Board to discuss and make decisions regarding the formal hearing for Complaint No. 20-001 referred to an independent hearings officer on September 25, 2020.</u></p> <p style="text-align: center;"><i>The Board moved into Executive Session at 2:20 pm</i></p>	<p>Vice Chair Burriss moved to go into executive session at 2:20pm. Secretary Tudela seconded.</p> <p>Voice vote: 6 ayes, 0 nays Motion carried 6:0</p>

SUBJECT	DISCUSSION	ACTION
Return to Open Session	Ratify on Board actions taken in Executive Session.	<p>The Board resumed in Open Session at 3:52 p.m.</p> <p>Roll call: Member Gentry: present Member Latkiewicz: present Member Toyofuku: present Secretary Tudela: present Vice Chair Burriss: present Chair Shiraishi: present</p> <p>Vice Chair Burriss moved to ratify decisions made in Executive Session. Secretary Tudela seconded.</p> <p>Voice vote 6 ayes, 0 nays. Motion carried 6:0</p>
Announcements	Next Meeting: Friday, November 20, 2020 – 1:00 p.m., Teleconference	
Adjournment		Without objection, the meeting adjourned at 3:54 p.m.

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

- () Approved as circulated.
- (X) Approved with amendments. See minutes of 11/20/2020