



COUNTY OF KAUAI
Minutes of Meeting
OPEN SESSION

Approved as amended 12/11/20.

Board/Commission:		BOARD OF ETHICS	Meeting Date	November 20, 2020
Location	Teleconference		Start of Meeting: 1:04 p.m.	End of Meeting: 4:46 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. Requesters: Russell Izumo, Donald Fujimoto			
Excused				
Absent				
SUBJECT	DISCUSSION			ACTION
Call To Order				Chair Shiraishi called the meeting to order at 1:04 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.
Executive Session	<u>ES-034: 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 possibly make decisions regarding the resolution of Complaint No. 20-001 and other related matters.</u>			Member Latkiewicz moved to go into executive session at 1:08pm. Vice Chair Burriss seconded. Voice vote: 6 ayes, 0 nays Motion carried 6:0

SUBJECT	DISCUSSION	ACTION
Return to Open Session	<u>Ratify on Board actions taken in Executive Session.</u>	<p>The Board resumed in Open Session at 2:28pm</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>Member Latkiewicz moved to ratify decisions made in Executive Session. Vice Chair Burriss seconded.</p> <p>Voice vote 6 ayes, 0 nays. Motion carried 6:0</p>
Approval of Minutes	<p><u>Open Session Minutes of October 16, 2020</u></p> <p>Secretary Tudela corrected page 5, first paragraph, last sentence “threw” to “through”.</p>	<p>Vice Chair Burriss moved to approve the minutes of October 16, 2020 as amended. Member Toyofuku seconded.</p> <p>Voice vote: 6 ayes, 0 nays Motion carried 6:0</p>
Public Testimony	<u>None</u>	No action.
Communication	<u>None</u>	No action.

SUBJECT	DISCUSSION	ACTION
<p>Request for an Advisory Opinion</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 (Deferred 10/16/20).</u></p> <p>Chair Shiraishi asked if Mr. Izumo had anything to add since last meeting. She explained that deferral was requested to do more research and consult with attorney. She suggested that Board go back into executive session to consult with attorney.</p>	<p>Member Latkiewicz moved to go into executive session at 2:31pm. Member Gentry seconded.</p> <p>Voice vote: 6 ayes, 0 nays Motion carried 6:0</p>
	<p>Chair Shiraishi recapped the request from Mr. Izumo and entertained a motion for discussion.</p> <p>Vice Chair Burriss asked Mr. Izumo how many employees would be doing warranty work.</p> <p>Mr. Izumo replied two, him and another person.</p> <p>Vice Chair Burriss confirmed with Mr. Izumo that he will not be engaging in warranty work during his County work hours and that he felt comfortable with other employee working under his supervision after County hours. Mr. Izumo confirmed.</p> <p>Secretary Tudela asked Mr. Izumo to quantify the degree of harm the County has experienced over the past twelve months because of the current procedure for procurement that does not use warranty replacement supplies from Nex Gen.</p> <p>Mr. Izumo clarified that the negative side is that there is a backlog of vehicles in need of repair, including rubbish and refuse transfer trucks, and this is more of what his business does. If there is warranty, work it's sent to another company that he hears takes longer to do things to engine work. His work is primarily engine work and the harm to the County is equipment down time, which is approximately 15-18 trucks. He expressed that the benefits to the County is that he can do warranty things as the authorized dealer and has more access to information than the other business used. He is also going to train some</p>	<p>The Board resumed in Open Session at 3:00pm</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 find no conflict subject to restrictions. Secretary Tudela seconded.</p> <p>Voice vote 6 ayes, 0 nays. Motion carried 6:0</p>

SUBJECT	DISCUSSION	ACTION
	<p>of the County workers with dealership level trouble shooting.</p> <p>Secretary Tudela stated that when doing training as an employee of the County a concern is that it should be done off County time, so not being paid by two different entities.</p> <p>Mr. Izumo stated that he would be teaching for free on the job.</p> <p>Member Toyofuku stated that he liked that warranty work would be done after County hours, and clarified that the vehicles getting warranty work would be taken to the Nex Gen location. Mr. Izumu confirmed.</p> <p>Ms. Ching asked Mr. Izumu if he had accepted the position as Automotive Superintendent. He confirmed two days ago.</p> <p>Ms. Ching asked if Robert Yamamoto was his supervisor. Mr. Izumo confirmed that he is Mr. Yamamoto's supervisor.</p> <p>Ms. Ching asked for clarification for quicker, better service regarding engines and down time for the trucks. She asked what is the problem with them being down. He confirmed that if the machines are down, trash cannot be picked up. He stated that he is not soliciting any work to be done, it's mainly warranty and is not directed to the County, it's for the County through Cummings Engine warranty because he can file the warranty direct. Repair side of warranty work the County will not be responsible for, it all goes to his business and certain things the present company cannot do, because it's restricted to dealers. The trucks out of warranty they will try to do in house training and bring them up to date on modern electronics. Number one priority is refuse pickup because it leads to overtime as they have overtime due to doubling up on trucks.</p> <p>Ms. Ching asked to clarify Cummings and Nex Gen and if the warranty contract is with Cummings or Nex Gen. Mr. Izumu stated that he represents Cummings in doing the warranty and files it through Cummings and Cummings reimburses Nex Gen.</p> <p>Chair Shiraishi stated that the Board is looking at this as he being the owner of Nex Gen and his work at the County that looks like a conflict of interest in sense that no employee shall take any official action directly affecting the business or any other undertaking in which he has a substantial financial interest, but she understands that the service he</p>	<p>Vice Chair Burriss amended her motion to find a conflict of interest subject to the following restrictions: 1. Mr. Izumo will proceed in</p>

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	<p>would be providing would be a benefit to the County and this could be a situation in which they could set restrictions to allow him to do both and in terms of providing quotes and providing parts to the County it was mentioned that anything over \$1500 requires competitive bidding and under that amount there would be an additional bid if Nex Gen is a bidder. She would note that the Charter Section 23.03A instead of \$1500 threshold, it would have anything over \$1000 in this case would have to be competitively bid and would also add on that things under \$1000 would require an additional bid if Nex Gen is a bidder. Chair Shiraishi also likes that Mr. Izumo would recuse himself from all responsibility regarding the bidding process and someone else, Mike Tressler, would be signing, not Mr. Izumo.</p> <p>Board discussed the amended motion and clarified as noted in numbers 4-6.</p> <p>Vice Chair Burriss clarified for Mr. Izumo that the work is not being solely by his other employee it's just that Mr. Izumo's participation in the warranty work is going to take place after County hours. Mr. Izumo confirmed.</p> <p>Mr. Izumo dropped off the meeting before the final vote. Ms. Ching will call to notify.</p> <p>Mr. Izumo rejoined the meeting and was notified of the vote.</p> <p>Vice Chair Burriss thanked Mr. Izumo for information provided and wished him luck.</p> <p>Mr. Izumo thanked the Board for their time.</p>	<p>accordance with his request dated October 6, 2020.</p> <ol style="list-style-type: none"> 2. With regard to any warranty repairs they will be done off site and outside of normal County business hours for Mr. Izumo and in part done by his employee subject to his supervision. 3. With regard to parts, any bids over \$1000 will require competitive bidding. And anything under \$1000 that involves Nex Gen will also require at least one additional bid in addition to Nex Gen's, purchases and procurement of parts. <p>Secretary Tudela seconded the amended motion.</p> <ol style="list-style-type: none"> 4. Amendment to #3, purchases equal to or under \$1000 that involves Nex Gen will also require at least one additional bid. 5. Amendment adding to #3 that in regards to parts anything over \$1000 would go through the normal procurement process. 6. Mr. Izumo will recuse himself from authorizing responsibilities handled by the Fiscal Management Officer and Acting Deputy County Engineer. <p>Secretary Tudela seconded the additional amendments to the</p>

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		<p>amended motion.</p> <p>Roll call vote: Member Toyofuku: Aye, although on the initial perception with Nex Gen and Mr. Izumo's position there is a perceived conflict of interest, but due to special circumstances: 1. Nex Gen is the only certified warranty dealer on the island and there is obvious benefits to the County to allow Mr. Izumo in his position and allow Nex Gen to possibly bid on parts and provide warranty service to the County. Besides the special circumstances he is pleased with the conditions put forth to ensure a fair bidding and purchasing process.</p> <p>Secretary Tudela: Aye, a conflict is found, in this case there is a special circumstance that harms and benefits the County and with these restrictions we solve most issues for the County and clarify the restrictions on Mr. Izumo's responsibility and when they should occur</p>

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		<p>in both jobs.</p> <p>Vice Chair Burriss: Aye, there is indeed a conflict, and is satisfied that with the restrictions imposed that it is in the best interest of the County where as it will save money, it will save time and may lead to better trained employees on the County level in addition to getting the service work done outside of the County employment.</p> <p>Member Latkiewicz: Aye, whether there is a potential conflict of interest, it has been thoroughly documented the processes for insuring that doing the best can for the County.</p> <p>Member Gentry: Aye, understand that there is a conflict of interest and is satisfied that the outlines that have been amended and made the obvious changes to the commitment and is in the best interest of the County.</p> <p>Chair Shiraishi: Aye, while there is a perception of a conflict of interest, there are mitigating factors, special</p>

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		<p>circumstances in which Mr. Izumo’s employment at the County and his ownership of Nex Gen will be beneficial to the County and he’s made it clear that he’s going to do all his warranty work on his own time using his own resources, not County resources, and the Safeguards that is detailed in his letter and in the motion is enough to mitigate the ethics concern.</p> <p>6 ayes:0 nays Motion carried</p>
	<p><u>RAO 2020-05 Request for an Advisory Opinion from Donald Fujimoto received October 15, 2020 relating to an Outside Employment Request to work as the Responsible Managing Employee (RME) for DMK & Associates, Inc.</u></p> <p>Mr. Fujimoto joined the meeting by telephone.</p> <p>Chair Shiraishi asked Mr. Fujimoto if he had anything to add other than what he submitted. He answered that he was available to answer any questions,</p> <p>Chair Shiraishi asked how the request got routed to the Board of Ethics.</p> <p>Mr. Fujimoto stated that there is a form requesting outside work, but because he went through this before he submitted a request to Ellen Ching to forward to the Board of Ethics.</p> <p>Chair Shiraishi clarified if the request should have been seen by his department first or could they go ahead with it since the check box at the bottom to forward it to the Board</p>	

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	<p>was not checked.</p> <p>Mr. Fujimoto stated that Troy (Tanigawa) is new to this as the Acting County Engineer and his understanding since going through this previously was that Lyle (Tabata) had forwarded to the Board for clarification, but it is his understanding that no action was going to be taken by the department until the Board of Ethics ruled. He's not sure that Mr. Tanigawa was aware that he was supposed to forward the form.</p> <p>Charles Foster, Deputy County Attorney, stated that he saw nothing in the rules that would prevent the Board from taking action at this time, Rule 5 of the Board of Ethics Rules and Regulations.</p> <p>Chair Shiraishi moved forward with discussion and called for a motion.</p> <p>Secretary Tudela is questioning what is being asked and the form of which it came to the Board. There was no cover letter to explain.</p> <p>Chair Shiraishi asked Mr. Fujimoto to explain what he is asking of the Board today.</p> <p>Mr. Foster stated that the rule states that a request for an advisory opinion is considered filed when the Board has received in writing all the information deemed necessary by it to make a proper determination. He further explained that it's up to the body to determine if they have the information now, can gather the information by speaking with the applicant, or want to wait and ask him to provide further information.</p> <p>Mr. Fujimoto stated that the reason he applied is because he's interested in providing his RME services, license to DMK & Associates. He did submit a formal request to his supervisor who could have ruled yes or no, but because of potential for conflict he recommended that he apply to the Board of Ethics. Mr. Fujimoto explained that in his position he regulates permits, road and grading, however his understanding from DMK is that the projects they would bid would not conflict with his position. DMK is looking at bidding for private sector as well as State for off island. If a situation of considering a bidding, he would submit a request to the Board of Ethics regarding a conflict. He understands that he could recuse himself. There are situations where his supervisor has done some permitting requirements when he's not there, so he's not sure why he wouldn't be able to handle projects that he recuse himself from. He prides himself in his professionalism and would hold the firm to a higher standard if there is a situation of his</p>	

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	<p>license is involved in a permit or something to be sure that they are not considered for preferential treatment. Boards approval would be for performing work that would not conflict with his position.</p> <p>Chair Shiraishi clarified that Mr. Fujimoto is asking that while employed at Public Works to also be the RME for DMK and Associates.</p> <p>Chair Shirishi opened it up for discussion and questions for Mr. Fujimoto. Member Toyofuku asked Mr. Fujimoto if DMK has any current County contracts.</p> <p>Mr. Fujimoto believes they do have some contracts but not his jurisdiction, Solid Waste and Roads Division, but those areas are not within his authority. DMK already has a C license, his license would add to their ability to expand their services.</p> <p>Member Toyofuku clarified that Mr. Fujimoto is requesting to be the RME for DMK & Associates. He clarified that under the state definition the RME is the Responsible Managing Employee for that entity in its entirety.</p> <p>Mr. Fujimoto confirmed, but stated that the Statutes states that there could be more than one RME and stated that the person that currently holds the C license would also be considered an RME.</p> <p>Chair Shiraishi questioned that even though there are multiple RMEs, she assumed that each is responsible for every contract and knowing what is going on at the company at all times, and it is not that each are responsible for specific projects.</p> <p>He confirmed that her assumption is correct, and they would be clear who could sign for each contract and would have to recuse himself for conflict should it come up for review in the company.</p> <p>Secretary Tudela remembered that they had a like challenge regarding RME. She questioned why a second RME is needed.</p> <p>Mr. Fujimoto stated that the current RME is for a C license. C is a subcontract license. A subcontractor can only perform their licensed work and he believes up to two other subcontractors that cannot exceed a certain percentage of the work. With an A license</p>	<p>Secretary Tudela moved for discussion purposes to find no conflict. Member Latkiewicz seconded.</p>

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	<p>they could expand their work, he does have an AEC, area could expand to building and surveying work and give them more flexibility.</p> <p>Vice Chair Burriss asked if he will be compensated for being the RME, and would he be compensated per project that he actively manages.</p> <p>Mr. Fujimoto stated that if he gets the approval he will be compensated by a set salary.</p> <p>Vice Chair Burriss expressed that she feels that he is going to be the principal RME for the company, regardless of there being other RMEs at the C level and asked if that leaves him as the last resort of being in charge of the management.</p> <p>Mr. Fujimoto stated that she is correct and he would have a huge responsibility to make sure that the firm is doing everything per contractors' law.</p> <p>Secretary Tudela asked if the RME position would also be another full time job, and is concerned about when he will do work for other company since County position is full time.</p> <p>Mr. Fujimoto said that the primary purpose is his license, being able to bid and expand services. As an RME he would be responsible, but to the level of everyday tasks. He would be more overview, books are correct based on contracting law. His compensation is based on up to 10 hours per week and any additional time would require additional compensation.</p> <p>Secretary Tudela does not see a compelling reason it should be him. She stated that she sees a conflict with someone who has responsibility for a company that may or may not have project with the County is a conflict.</p> <p>Mr. Fujimoto stated that there will be times when they'll be a conflict, but it shouldn't prevent him from getting this outside work, assuming that there is a condition that the approval is only if the firm does not secure any work that would be in conflict with his current position should handle it, but he also feels it would be unfair to him because there are situations where others with conflict just recuse themselves. In terms of the Engineering Division he's only in charge of section within the Division. The firm has told him that they are willing to use his license only for projects that would not conflict</p>	

SUBJECT	DISCUSSION	ACTION
	<p>with his position.</p> <p>Chair Shiraishi stated that she is having trouble seeing how an employee of the County that manages grading and road permits and as an RME he would be responsible for the entire company regardless of whether they have a project in his purview or not and RME is responsible for the whole company. She questioned how he can work full-time for the County in Public Works Engineering Division and DMK also has contracts with the County whether or not it is in his specific purview at the County.</p> <p>Mr. Fujimoto stated that if the Board feels that there is a conflict that that should maybe be the basis of an approval and that they can no longer have any contracts with the County and then it would be up to them if they still want to use his services. They have current contracts and they may choose to not use him with that condition. He again stated that he did not think it would be fair for the Board to say that they cannot do any contracts with the County because he works for the County. He believes that there are others that work for other firms that have contracts with the County.</p> <p>Vice Chair Burriss stated that she does view this as a conflict and as long as they have County contracts she believes that is the case. She does not feel they are in a position today to say if they do not have County contracts than the Board would approve. She suggested that he come back at a later date when as, and if they have divested themselves out of County contracts and can provide assurance that they will not enter into future ones.</p> <p>Mr. Fujimoto clarified that Vice Chair Burriss is stating that the firm would have to divest themselves from all County contracts before considering allowing him to work for them.</p> <p>Vice Chair Burriss that would be her view, but she is only one person on the Board.</p> <p>Member Toyofuku also sees a conflict in this situation, and shared that the Board has dealt with RMEs before and they recently revoked a previous opinion allowing a County employee to be an RME. He was granted an opinion to be an RME with a condition that the company could not have any contracts with the County of Kauai and it was revoked because the company later secured contracts with the County later. He shared that there is precedent.</p>	

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	<p>Mr. Fujimoto stated that that person was in a position much higher and broader reach and he was given permission to work as an RME. He has limited authority and they want to place conditions does not seem fair. He stated that he is willing to do what Board wants.</p> <p>Member Toyofuku stated that he does not support granting the RME.</p> <p>Secretary Tudela stated that she would like to remove her motion of no conflict.</p> <p>Ellen Ching, Boards and Commissions Administrator, clarified that there are three options: 1. To approve-vote for the motion, 2. To deny-vote against the motion, 3. Defer and request more information.</p> <p>Chair Shiraishi asked if anyone felt the need to defer.</p> <p>Chair Shiraishi called for the vote of motion on the floor of no conflict.</p> <p>Mr. Fujimoto asked if there was a time where the company did not have any contracts would the Board consider his request.</p> <p>Chair Shiraishi stated that he always may return with another request.</p>	<p>Roll Call Vote:</p> <p>Member Toyofuku: Nay, from the basics he sees a potential conflict as being Responsible Managing Employee for a contracting company that already has current County contracts is his main concern.</p> <p>Secretary Tudela: Nay, she sees inherent conflict here.</p> <p>Vice Chair Burriss: Nay, the RME is the last step for calling the shots in terms of any function that's going on for this company which has existing contracts, it is an inherent conflict.</p> <p>Member Latkiewicz: Nay, see there is a potential conflict of interest, and also nothing has been offered as a remedy or a possible work around.</p> <p>Member Gentry: Nay, sees there are some conflict of interest with the request.</p> <p>Chair Shiraishi: Nay, he is a full time employee with the County and wants to be an RME for a company that</p>

SUBJECT	DISCUSSION	ACTION
	<p>Mr. Fujimoto engaged the board in a discussion on the results of the motion. He requested a copy of the decision regarding his last request. Staff will forward the letter sent to his supervisor with that decision.</p>	<p>already has contracts with the County and she does not believe that appropriate safeguards can be placed to mitigate the ethics concerns in this situation.</p> <p>0 ayes:6 nays Motion failed</p>
BUSINESS	<p><u>BOE 2020-34 Discussion and possible action regarding the adoption of the Charter Amendment on Disclosure Statements and next steps.</u></p> <p>Ms. Ching suggested that the item be deferred as the election results will be certified on Monday the 23rd. There are steps to complete such as an ordinance to define regulatory employees, but any tangible discussion will need to be after certification of election results.</p> <p>Chair Shiraishi entertained a motion to defer.</p>	<p>Secretary Tudela moved to defer BOE 2020-34. Member Toyofuku seconded.</p> <p>Voice vote: 6 ayes, 0 nays Motion carried 6:0</p>
Disclosures	<p><u>Employees:</u></p> <ol style="list-style-type: none"> <u>Lee Evslin, Councilmember</u> <p>Ms. Ching explained that the re-elected Councilmembers will be submitting disclosures again after they take the oath of office, as they resign.</p> <p>Councilmember Evslin’s disclosure was resubmitted to clarify his salary at Island School.</p>	<p>Vice Chair Burriss moved to approve Evslin updated disclosure. Member Gentry seconded.</p> <p>Voice vote: 6 ayes, 0 nays Motion carried 6:0 Motion carried 6: 0</p>
Executive Session	<p><u>ES-033 Pursuant to Hawai’i Revised Statutes §92-4, §92-5(a)(4), §92-9(a)(1-4) and (b), the purpose of this Executive Session is for the Board to approve or amend the Executive Session Minutes of October 16, 2020, and to consult with its attorney on issues pertaining to the Board’s powers, duties, privileges, immunities, and /or liabilities as they may relate to this item.</u></p>	

SUBJECT	DISCUSSION	ACTION
	<p><u>ES-030: BOE 2020-32 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 an 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 (Deferred 10/16/20).</u></p> <p><i>The Board moved into Executive Session at 4:26 pm</i></p>	<p>Secretary Tudela moved to go into executive session at 4:26pm. Member Gentry seconded.</p> <p>Voice vote: 6 ayes, 0 nays Motion carried 6:0</p>
<p>Return to Open Session</p>	<p>Ratify on Board actions taken in Executive Session.</p>	<p>The Board resumed in Open Session at 4:40 pm</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>Secretary Tudela moved to ratify decisions made in Executive Session. Member Latkiewica seconded.</p> <p>Voice vote 6 ayes, 0 nays. Motion carried 6:0</p>

SUBJECT	DISCUSSION	ACTION
Announcements	<p>Next Meeting: TBD</p> <p>Staff explained that the calendar approved at the beginning of the year did not have a December meeting.</p> <p>Board discussed a need for a December meeting and scheduled a meeting for the third Friday, December 18th at 1:00pm.</p> <p>Ms. Ching clarified that if Special Counsel Ando contacts staff in the next week an earlier date will be coordinated and the December 18 meeting cancelled.</p>	
Adjournment		Without objection, the meeting adjourned at 4:46pm.

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

- () Approved as circulated.
- (X) Approved with amendments. See minutes of 12/11/2020.