

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

April 6, 2001

**Committee
Report No.**

01-66

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Committee of the Whole, having met on March 13, 2001, makes reference to County Communication No. 99-17 from the Council Chair, relating to the matter of proposed contracts for special counsel.

Your Committee notes that County Communication No. 99-17 was referred to the prior Council's Committee of the Whole at the Council meeting of January 11, 1999.

Your Committee further notes that the Committee received the following documents:

1. A memorandum dated August 18, 1997, from the Council Chair, requesting that the Corporation Counsel provide a written statement regarding the administration of contracts for special counsel in light of the Hawaii Supreme Court's opinion in Maui County Council v. Thompson, 84 Haw. 105, 929 P.2d 1355, 1356 (1996), recon. denied, 84 Haw. 496, 936 P.2d 191 (1997).
2. A memorandum dated August 19, 1997, from the Chair of the Council's Committee of the Whole for the 1997-1999 Council term, requesting that the Corporation Counsel's future requests for special counsel be accompanied by information relating to the factual and legal bases for special counsel.
3. A memorandum dated June 15, 1998, from the Chair of the Council's Committee of the Whole for the 1997-1999 Council term, requesting information regarding the County's "excess insurance" policy with Insurance Company of the West.

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

April 6, 2001
Page 2

Committee
Report No. 01-66

4. A memorandum dated July 28, 1998, from Deputy Corporation Counsel Gregory D. Ball, providing information on the County's excess insurance.
5. A memorandum dated February 24, 1999, from the Committee Chair, requesting that future requests for special counsel be accompanied by a copy of the complaint and an explanation as to why special counsel is being sought.

By memorandum dated June 28, 1999, the Committee Chair provided the Corporation Counsel with a copy of City & County of Honolulu's advertisement to recruit special counsel and recommended that a similar advertisement for Maui County be placed in the Hawaii Bar Journal.

By memorandum dated July 2, 1999, Deputy Corporation Counsel Brian T. Moto informed the Committee of Maui County's procedures for recruiting potential special counsel.

By memorandum dated August 11, 1999, the Committee Chair asked the Corporation Counsel if the County has ever rejected its insurer's recommendation that a particular defense attorney be retained for a case.

By memorandum dated September 2, 1999, the First Deputy Corporation Counsel indicated that the County had never rejected its insurer's recommendation that a particular defense attorney be retained for a case.

By memorandum dated August 4, 2000, the Committee Chair asked the Corporation Counsel for an explanation of the legal requirements for procurement that apply to the Council when it authorizes the employment of special counsel.

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

April 6, 2001
Page 3

Committee
Report No. 01-66

By memorandum dated August 31, 2000, the Committee Chair asked the Corporation Counsel, when requesting consideration of proposed contracts for special counsel, to include the following: a copy of the complaint or other public documents from the applicable case, an explanation as to the reason special counsel is being sought, a proposed resolution approved as to form and legality approving the request for special counsel, a statement regarding the County's compliance with any applicable procurement rules, and billing records and invoices specifying any disputes with the charges.

At its meeting of November 14, 2000, the Committee recommended that County Communication No. 99-17 be referred to the Council Chair for the term beginning January 2, 2001, for a recommendation as to referral or other disposition.

At its meeting of January 12, 2001, the Council referred County Communication No. 99-17 to your Committee of the Whole (County Communication No. 01-15).

Your Committee is in receipt of a letter dated February 27, 2001, from Deputy Corporation Counsel Victoria J. Takayesu, requesting consideration of the authorization of special counsel and indemnification of certain County employees. Attached to this letter were the following documents:

1. A proposed resolution entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL IN BARTON J. ADAMS V. RICHARD SCHWAB, ET AL., CIVIL NO. 97-01549 SPK".

The purpose of the proposed resolution is to authorize the employment of special counsel for the Honorable Joseph E. Cardoza, Judge, Second Circuit Court, State of Hawaii.

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

April 6, 2001
Page 4

Committee
Report No. 01-66

2. A proposed resolution entitled "INDEMNIFYING EMPLOYEES DAVELYNN TENGAN, RICHARD BISSEN, LARRY BUTRICK, RICHARD PRIEST, ROBERT RIVERA, AND JOSEPH CARDOZA, IN CIVIL NO. 97-01549 SPK, BARTON J. ADAMS V. RICHARD SCHWAB, ET AL."

The purpose of the proposed resolution is to indemnify certain County employees.

3. The Complaint in the aforementioned case.

Your Committee notes that the complaint alleges malicious prosecution.

At its meeting, your Committee met with the Corporation Counsel and proposed special counsel Michael N. Tanoue, Esq. of the Pacific Law Group.

There being no public testimony, your Committee discussed the matter in regular session.

Your Committee noted concerns related to indemnifying employees. The proposed resolution entitled "INDEMNIFYING EMPLOYEES DAVELYNN TENGAN, RICHARD BISSEN, LARRY BUTRICK, RICHARD PRIEST, ROBERT RIVERA, AND JOSEPH CARDOZA, IN CIVIL NO. 97-01549 SPK, BARTON J. ADAMS V. RICHARD SCHWAB, ET AL." would specifically indemnify the County employees from punitive damages, which are unlimited. The Corporation Counsel noted receipt of an opinion from the State Office of Disciplinary Counsel that indicates that unless County employees are indemnified, the County must provide separate, independent counsel for each employee.

Your Committee agreed to revise the proposed resolution entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL IN BARTON J. ADAMS V. RICHARD SCHWAB, ET AL., CIVIL NO. 97-01549 SPK" to include the name of Michael N. Tanoue, Esq. as special counsel for Judge Cardoza. Your Committee voted to recommend that the revised proposed resolution be adopted and that the communication be filed.

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

April 6, 2001
Page 5

Committee
Report No. 01-66

Your Committee deferred action on the proposed resolution entitled "INDEMNIFYING EMPLOYEES DAVELYNN TENGAN, RICHARD BISSEN, LARRY BUTRICK, RICHARD PRIEST, ROBERT RIVERA, AND JOSEPH CARDOZA, IN CIVIL NO. 97-01549 SPK, BARTON J. ADAMS V. RICHARD SCHWAB, ET AL."

Your Committee is in receipt of a revised proposed resolution entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL IN BARTON J. ADAMS V. RICHARD SCHWAB, ET AL., CIVIL NO. 97-01549 SPK", approved as to form and legality, incorporating your Committee's suggested revisions.

Your Committee of the Whole RECOMMENDS the following:

1. That Resolution No. _____, as revised herein and attached hereto, entitled, "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL IN BARTON J. ADAMS V. RICHARD SCHWAB, ET AL., CIVIL NO. 97-01549 SPK", be ADOPTED; and
2. That County Communication No. 99-17 be FILED.

Adoption of this report is respectfully requested.

Cow:cr0146(8)ab:rkk

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

April 6, 2001
Page 6

Committee
Report No. 01-66

DAIN P. KANE **Chair**

PATRICK S. KAWANO **Member**

G. RIKI HOKAMA **Vice-Chair**

MICHAEL J. MOLINA **Member**

ALAN M. ARAKAWA **Member**

WAYNE K. NISHIKI **Member**

ROBERT CARROLL **Member**

CHARMAINE TAVARES **Member**

JO ANNE JOHNSON **Member**