

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

September 7, 2001

Committee
Report No. 01-156

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 June 12, 2001, July 31, 2001, and August 14, 2001, makes reference to County Communication No. 01-91, from the Council Chair, regarding proposed contracts for special counsel.

Your Committee is in receipt of correspondence dated May 23, 2001, from the Department of the Corporation Counsel, requesting consideration of a proposed resolution entitled "INDEMNIFYING DAVELYNN TENGAN, RICHARD BISSEN, LARRY BUTRICK, RICHARD PRIEST, AND ROBERT RIVERA, IN CIVIL NO. 97-01549 SPK, BARTON J. ADAMS V. RICHARD SCHWAB, ET AL." (lawsuit is hereinafter referred to as "Adams case"). The purpose of the proposed resolution is to authorize indemnification of the individual defendants identified in the proposed resolution in the Adams case.

Your Committee notes that this case includes allegations of malicious prosecution.

Your Committee further notes that through Committee Report No. 01-66, the Council previously authorized the employment of Michael N. Tanoue, Esq. as special counsel for the Honorable Joseph E. Cardoza in the Adams case. (Resolution No. 01-57)

By correspondence dated June 7, 2001, the Chair of your Committee requested that the Department of the Corporation Counsel review the Navarro v. Block, 2001 United States Court of Appeals LEXIS 8874, 9th Circuit, May 11, 2001 case and provide a written response providing the steps needed for legislators to exhibit good faith when considering the proposed indemnification of County officers and employees.

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By correspondence dated June 8, 2001, the Department of the Corporation Counsel provided an analysis of Navarro v. Block. The Department of the Corporation Counsel concluded that the type of liability that existed in Navarro v. Block does not exist in the Adams case.

At its meeting of June 12, 2001, your Committee met with the Prosecuting Attorney, the Corporation Counsel and two Deputy Corporation Counsel.

There being no public testimony, Deputy Corporation Counsel Gregory Garneau provided a brief overview of the case.

Your Committee discussed the County's duty to defend employees with regard to work they have done in their official capacities. Once indemnification is granted, the County becomes liable for any punitive damages awarded to the plaintiff. Also, the individually named defendants may choose to waive any potential conflicts of interest and allow the Department of the Corporation Counsel to represent them.

Deputy Corporation Counsel Gregory Garneau requested the opportunity to discuss the matter in an executive meeting.

Your Committee voted to convene an executive meeting for the purpose of consulting with legal counsel on liability issues in the matter, pursuant to Section 92-5(a)(4), Hawaii Revised Statutes.

At its executive meeting of June 12, 2001, your Committee met with the Prosecuting Attorney, the Corporation Counsel and two Deputy Corporation Counsel.

Following the executive meeting, your Committee reconvened in regular session. Based on the information received and the recommendation of the Department of the Corporation Counsel, your Committee agreed to defer the matter pending further discussion.

By correspondence dated July 3, 2001, the Department of the Corporation Counsel requested that the matter be rescheduled by your Committee in an executive meeting.

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At its meeting of July 31, 2001, your Committee met with two Deputy Corporation Counsel.

Deputy Corporation Counsel Victoria Takayesu requested that the matter be deferred.

There being no public testimony and no discussion, your Committee agreed to defer the matter pending further discussion.

By correspondence dated August 6, 2001, the Department of the Corporation Counsel transmitted the following:

1. a proposed resolution entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL FOR RICHARD T. BISSEN, JR., IN BARTON J. ADAMS V. RICHARD SCHWAB, ET AL., CIVIL NO. 97-01549 SPK";
2. a proposed resolution entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL FOR LARRY BUTRICK IN BARTON J. ADAMS V. RICHARD SCHWAB, ET AL., CIVIL NO. 97-01549 SPK";
3. a proposed resolution entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL FOR RICHARD PRIEST IN BARTON J. ADAMS V. RICHARD SCHWAB, ET AL., CIVIL NO. 97-01549 SPK";
4. a proposed resolution entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL FOR ROBERT RIVERA IN BARTON J. ADAMS V. RICHARD SCHWAB, ET AL., CIVIL NO. 97-01549 SPK"; and
5. a proposed resolution entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL FOR DAVELYNN TENGAN IN BARTON J. ADAMS V. RICHARD SCHWAB, ET AL., CIVIL NO. 97-01549 SPK".

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The purpose of the proposed resolutions is to authorize special counsel for the above-mentioned individuals in the Adams case.

At its meeting of August 14, 2001, your Committee met with the Prosecuting Attorney, the Corporation Counsel and a Deputy Corporation Counsel.

There being no public testimony, the Corporation Counsel provided a brief overview and requested the opportunity to discuss the matter in an executive meeting.

Your Committee voted to convene an executive meeting for the purpose of consulting with legal counsel on liability issues in the matter, pursuant to Section 92-5(a)(4), Hawaii Revised Statutes.

At its executive meeting of August 14, 2001, your Committee met with the Prosecuting Attorney, the Corporation Counsel and a Deputy Corporation Counsel.

Following the executive meeting, your Committee reconvened in regular session. Based on the information received and the recommendation of the Department of the Corporation Counsel, your Committee voted to recommend adoption of the proposed resolution authorizing indemnification.

Your Committee of the Whole **RECOMMENDS** that Resolution No. _____, attached hereto, entitled "INDEMNIFYING DAVELYNN TENGAN, RICHARD BISSEN, LARRY BUTRICK, RICHARD PRIEST, AND ROBERT RIVERA, IN CIVIL NO. 97-01549 SPK, BARTON J. ADAMS V. RICHARD SCHWAB, ET AL." be **ADOPTED**.

Adoption of this report is respectfully requested.

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