

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

August 7, 2009

**Committee
Report No.** _____

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 July 16, 2009, makes reference to County Communication No. 09-14, from Michael J. Molina, Chair of your Committee, regarding litigation matters submitted by the Department of the Corporation Counsel.

By correspondence dated July 1, 2009, the Department of the Corporation Counsel requested consideration of a proposed resolution entitled "INDEMNIFYING KALBERT YOUNG IN RICHARD CERTO V. COUNTY OF MAUI, ET AL., CIVIL NO. 09-1-0438(1)". Attached to the request is a copy of the complaint filed on June 12, 2009. The purpose of the proposed resolution is to indemnify Kalbert Young, Director of Finance, in the case.

Your Committee notes that the complaint alleges that the County failed to pay Mr. Certo, and other similarly situated persons, interest or actual earnings realized on the overpayment of real property taxes.

Your Committee further notes that under general legal principles, the County may be responsible for the tortious acts of its employees.

A Deputy Corporation Counsel explained that in 2007, Mr. Certo appealed the Department of Finance's assessment of his property for Fiscal Year 2008. In 2008, the Real Property Tax Review Board (Board) lowered the assessment of Mr. Certo's property and adjusted the tax. In response to the Board's decision, the Department of Finance refunded the excess tax paid by Mr. Certo on the original tax assessment. Mr. Certo claims that the Department of Finance failed to include in the refund any interest or actual earnings realized by the County due to his overpayment of real property taxes.

Based on the recommendation of the Department of the Corporation Counsel, your Committee voted 8-0 to recommend adoption of the proposed resolution. Committee Chair Molina, Vice-Chair Mateo, and members Johnson, Kaho'ohalahala, Medeiros, Nishiki, Pontanilla, and Victorino voted "aye". Committee member Baisa was excused.

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

August 7, 2009
Page 2

Committee
Report No. _____

Your Committee of the Whole RECOMMENDS that Resolution No. _____, attached hereto, entitled "INDEMNIFYING KALBERT YOUNG IN RICHARD CERTO V. COUNTY OF MAUI, ET AL., CIVIL NO. 09-1-0438(1)" be ADOPTED.

This report is submitted in accordance with Rule 7 of the Rules of the Council.



MICHAEL J. MOLINA, Chair

cow:cr:09001(12)aa:kmh

Resolution

No. _____

INDEMNIFYING KALBERT YOUNG IN
RICHARD CERTO V. COUNTY OF MAUI, ET AL.,
CIVIL NO. 09-1-0438(1)

WHEREAS, Kalbert Young has been named as a defendant in his capacity as Director of Finance, in the case of Richard Certo v. County of Maui, et al., Civil No. 09-1-0438(1), filed in the Circuit Court of the Second Circuit on June 12, 2009, and received by Corporation Counsel's office on June 12, 2009; and

WHEREAS, Plaintiff Richard Certo alleges that the County of Maui failed to pay him and others similarly situated interest or actual earnings realized on overpayment of real property taxes; and

WHEREAS, based upon an investigation of this matter, the Department of the Corporation Counsel believes there to be a good faith basis for indemnification and has recommended that the Council indemnify this Defendant for any damages that may be assessed against him in the above-referenced lawsuit. The damages being requested within the Complaint are: general, special, and exemplar; pre-judgment and post-judgment interest; and costs of suit; and

WHEREAS, based upon the recommendation of the Department of the Corporation Counsel, it appears at this time that it would

Resolution No. _____

be in the best interest of the County of Maui to indemnify this Defendant in the above-referenced lawsuit; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That Kalbert Young is indemnified by the County of Maui for any damages that may be assessed against him in the above-referenced lawsuit; and

2. That certified copies of this resolution be transmitted to the Mayor, the Corporation Counsel, and the Director of Finance.

APPROVED AS TO FORM AND LEGALITY:



LAUREEN L. MARTIN
Deputy Corporation Counsel
County of Maui