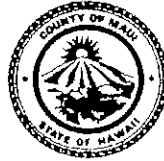


CHARMAINE TAVARES  
Mayor

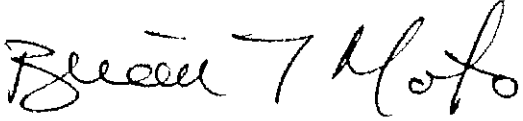


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December 2, 2010

MEMO TO: Danny A. Mateo  
Council Chair

FROM: Brian T. Moto  
Corporation Counsel 

SUBJECT: RESOLUTION ACKNOWLEDGING NATIVE HAWAIIAN RIGHTS  
(PAF 10-210)

Introduction.

The purpose of this memorandum is to respond to your memorandum, dated November 29, 2010, requesting legal advice regarding a proposed resolution entitled, "RECOGNIZING UNITED STATES PUBLIC LAW 103-150; THE UNIVERSAL DECLARATION OF HUMAN RIGHTS OF 1948; THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS OF 1966; AND THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS OF 1966".

Your memorandum states that the proposed resolution will be considered at the Council meeting of December 3, 2010, and that the "content of the resolution was received from Henry Noa."

Discussion and analysis.

The proposed resolution is not a bill for an ordinance and does not constitute a "legislative act", as such term is used in the Revised Charter of the County of Maui (1983), as amended ("Charter").<sup>1</sup> The proposed resolution does not purport to change or amend any existing law. If adopted, the proposed resolution will not have the force and effect of law.

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<sup>1</sup> Charter § 4-1 states:

Every legislative act of the council shall be by ordinance, unless otherwise provided for herein. Other acts of the council may be by resolution.

MEMO TO: Danny A. Mateo, Council Chair  
December 2, 2010  
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Like other Council resolutions adopted in past, the proposed resolution expresses and communicates a point of view, or general statement of policy, or set of aspirations for designated recipients of the resolution to consider. If adopted, the proposed resolution would not give rise to legal obligations in a strict sense.<sup>2</sup>

No state laws, Charter provisions, or County ordinances require Corporation Counsel "approval" of resolutions, or bills for ordinances, as to form and legality. Therefore, no Corporation Counsel approval is required or necessary for Council action on the proposed resolution.

For purposes of this memorandum, we have not undertaken, and we do not set forth herein, a comprehensive discussion or analysis of the laws, treaties, and human rights declarations referenced in the proposed resolution (U.S. Public Law 103-150, (the "Apology Resolution of 1993"); the Universal Declaration of Human Rights of 1948; the International Covenant on Civil and Political Rights of 1966; the International Covenant on Economic, Social and Cultural Rights of 1966; and Act 359 (1993)). However, inasmuch as the proposed resolution does not appear to do more than "recognize" or "acknowledge" certain principles or aspirations set forth in those laws, treaties, and declarations, we do not believe that adoption of the proposed resolution would have any legal "implications".

BTM:lak

cc: Webpage

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<sup>2</sup> See McQuillin Mun. Corp. § 15:2 (3d ed.) ("An ordinance is distinctively a legislative act; a resolution, generally speaking, is simply an expression of opinion or mind or policy concerning some particular item of business coming within the legislative body's official cognizance....").