

ALAN M. ARAKAWA  
Mayor



PATRICK K. WONG  
Corporation Counsel

DEPARTMENT OF THE CORPORATION COUNSEL  
COUNTY OF MAUI  
200 SOUTH HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
TELEPHONE: (808) 270-7740 FAX 270-7152

August 8, 2011

MEMO TO: Agnes M. Hayashi, Executive Assistant II  
David J. Ching, First Assistant  
Department of Management

F R O M: Adrienne N. Heely, Deputy Corporation Counsel *Adrienne N. Heely*

SUBJECT: Non-County Employees Driving County Vehicles or Personal  
Vehicles in Performing work for County of Maui

This memorandum is in response to your July 11, 2011 request for legal services requesting advice on the above referenced subject.

I. Issues:

1. Whether County volunteers can be allowed to use County vehicles and/or personal vehicles to conduct volunteer work authorized by the County;
2. What authority exists that authorizes or disallows volunteers to operate County vehicles or personal vehicles in conducting work for the County on a non-compensable basis;
3. If both allowed, please advise as to which would be the preferred option for the volunteer (use of County vehicle or personal vehicle) in regards to County liability and responsibility.

II. Brief Answer:

1. Volunteers may be authorized to use County vehicles in the performance only of official County business.

Agnes Hayashi, Executive Assistant to the Mayor  
David J. Ching, First Assistant to the Managing Director  
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2. State law, Hawaii Revised Statutes ("H.R.S."), Chapters 90: State Policy Concerning the Utilization of Volunteer Services; and Chapter 105: Government Motor Vehicles, and Maui County Code, Chapter 2.52: Use of Private Vehicles For County Business.<sup>1</sup>
3. If both allowed, clear guidance and instruction should be given to volunteer, as well as receiving volunteer's signatures and knowing waiver of liability and possible hold harmless agreement relating to the use of volunteer's personal vehicle and/or the County vehicle in providing services for the County.

### III. Discussion:

In researching your questions posed, I reviewed existing state law, Hawaii Revised Statutes and past corporation counsel advisory opinions relating to volunteers and potential county liability.

#### A. Hawaii Revised Statutes and Maui County Code:

- (1) H.R.S., Chapter 90: State Policy Concerning the Utilization of Volunteer Services.

Although H.R.S., Chapter 90, is entitled "State Policy Concerning the Utilization of Volunteer Services," it clearly applies to the County.<sup>2</sup> H.R.S. §90-1 states in relevant part:

**"Definitions.** As used in this chapter, unless the context requires otherwise: The term "agency" means any state agency within the executive, legislative, and judicial branches, the office of

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<sup>1</sup> A copy of all statutes discussed herein (H.R.S. §§90-1 through 90-5; 105-1; 105-2 and Maui County Code, Chapter 2.52) are attached as Exhibit "1" for your convenience.

<sup>2</sup> H.R.S. §90-1 was amended in 1998 to specifically include counties within the definition of "agency". Prior to that, H.R.S. §90-1 specifically excluded the counties. It read "[t]he term "agency" means any state agency within the executive, legislative, and judicial branches and the office of Hawaiian affairs but excludes the several counties." (Emphasis added).

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Hawaiian affairs, and any agency within the executive and legislative branches of the several counties."

. . . .

The term "volunteer" means any person who of the person's own free will provides goods or services to an agency with no monetary or material gain and includes material donors, occasional service, regular-service, and stipended volunteers."

Emphasis added.

(2) H.R.S., Chapter 105: Government Motor Vehicles

H.R.S. §105-1 makes it clear that "it shall be unlawful for any person to use, operate, or drive any motor vehicle owned or controlled by the State, or by any county thereof, for personal pleasure or personal use (as distinguished from official or governmental service or use) . . . .".

(3) Maui County Code, Chapter 2.52: Use of Private Vehicles For Private Business

It is also worth noting that Maui County Code, Chapter 2.52 allows the use of private vehicles by an officer or employee of the county in the performance of his or her duties, but requires the prior approval of the mayor, or in the case of the county council and its staff, the council chairman.

Although it is clear that state law and Maui County Code prohibits the use and operation of County vehicles other than for County business, there is one exception in H.R.S. §105-2 worth noting:

"Section 105-1 shall not apply to:

. . . .

(5) Any officer or employee of any county who, upon written recommendation of the budget director, is given written permission by the

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David J. Ching, First Assistant to the Managing Director  
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mayor, to use, operate or drive for personal use (but not for pleasure) any motor vehicle owned or controlled by the county.<sup>3</sup>

Even though there is an exception to use of County vehicles for other than a County purpose, it has been this office's opinion that the County should do as much as it can to limit the liability of the County, i.e., restrict the use of government motor vehicles to volunteers and/or if it is allowed, require them to sign a waiver of liability and have an understanding that they are authorized only to do so for official County business.

#### B. Past opinions

As discussed in our previous opinions, the County may be liable to volunteers for injuries sustained and/or damages caused by the negligent acts of volunteers while performing services for the County. The County may also be liable to the volunteer for damage done to the volunteer's personal property, and the County may also be liable to third parties for damages caused by the negligent acts of volunteers.<sup>4</sup>

#### III. Conclusion.

The County has certain responsibilities to volunteers under Hawaii Revised States, Chapter 90, the State Policy Concerning The Utilization of Volunteer Services. The County may also be held liable, under state tort law, for damages caused by the negligent acts of authorized volunteers who are acting within the scope of their duties.<sup>5</sup>

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<sup>3</sup> See also M.C.C. §2.52.010 requiring approval of Mayor or Council Chair.

<sup>4</sup> See April 9, 2002 Corporation Counsel Advisory Opinion to Budget & Finance Committee Chair G. Riki Hokama attached hereto as Exhibit "2".; See also October 25, 1994 Corporation Counsel Advisory Opinion to Committee of the Whole Chair Goro Hokama.

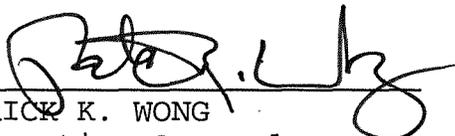
<sup>5</sup> H.R.S. §662D-2 explains: "[i]n any suit against a nonprofit corporation, a hospital, or a governmental entity for civil damages based upon the negligent act or omission of a volunteer, proof of the act or omission shall be sufficient to establish the

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Accordingly, the County should take steps to limit the County's liability, including: requiring volunteers to sign waiver of liability forms and/or requiring the volunteer to execute a hold harmless agreements in which the volunteer would defend, indemnify, and hold harmless the County against any liability from a third party for the negligent acts of the volunteer. Taking these steps would minimize and relieve the County of liability should the volunteer's personal property become damaged and/or the volunteer acts outside the scope of his/her authorized duties while performing services for the County.

Our office will gladly review and provide comment, if any, on any proposed updated policy and/or procedure and/or volunteer waiver of liability forms and/or hold harmless agreements, relating to the use and operation of County vehicles.

APPROVED FOR TRANSMITTAL:

  
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PATRICK K. WONG  
Corporation Counsel

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cc: Alan M. Arakawa, Mayor  
Keith Regan, Managing Director  
Webpage

Attachments: Exhibits "1" and "2"

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responsibility of the entity therefor under the doctrine of respondeat superior, notwithstanding the immunity granted to the volunteer with respect to any act or omission included under subsection (a)."

CHAPTER 90  
STATE POLICY CONCERNING THE UTILIZATION OF  
VOLUNTEER SERVICES

Section

- 90-1 Definitions
- 90-2 Scope of chapter; status of volunteers
- 90-3 Rights, responsibilities, and expectations in volunteer relationships
- 90-4 Volunteer benefits
- 90-5 Agency reports, required information

**Cross References**

Volunteer emergency medical disaster response personnel, see §321-23.

Volunteer service (immunity), see chapter 662D.

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EXHIBIT " J "

**§90-1 Definitions.** As used in this chapter, unless the context requires otherwise:

The term "agency" means any state agency within the executive, legislative, and judicial branches, the office of Hawaiian affairs, and any agency within the executive and legislative branches of the several counties.

"Material donor" means any person who of the person's own free will provides funds or materials to an agency.

"Occasional-service volunteer" means any person who offers to provide a one-time, on call or single task service to an agency without receipt of any compensation, except as provided in this chapter.

The term "person" means any individual or organization.

"Regular-service volunteer" means any person engaged in specific voluntary service activities on an on-going or continuous basis to an agency without receipt of any compensation, except as provided in this chapter.

"Stipended volunteer" means any person who by receiving a support allowance is then able to provide voluntary service to an agency. The allowance may be for food, lodging, or other personal living expenses and does not reflect compensation for work performed.

The term "volunteer" means any person who of the person's own free will provides goods or services to an agency with no monetary or material gain and includes material donors, occasional-service, regular-service, and stipended volunteers. Without limiting the generality of the foregoing, the term "volunteer" specifically includes any health care provider accepted in writing by the department of health as a "volunteer" who provides free medical or dental treatment, diagnosis, or advice to indigent and medically underserved patients, whether acting individually or in cooperation with a nonprofit organization. [L 1978, c 10, pt of §2; am L 1982, c 137, §2; gen ch 1985; am L 1994, c 250, §1; am L 1998, c 295, §1]

#### Revision Note

Numeric designations deleted and definitions rearranged.

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**§90-2 Scope of chapter; status of volunteers.** (a) An agency may recruit, train, and accept the services of volunteers.

(b) No person shall on the basis of sex, age, race, color, ancestry, religion, national origin, marital status, physical or mental handicap, or political grounds, be excluded from participation in, or be denied the benefits of, any volunteer program or volunteer activity.

(c) Volunteers recruited, trained, or accepted by an agency shall be excluded from any provision of law relating to state or county employment, from any collective bargaining agreement between the State and counties, with any employees' association or union, from any law relating to hours of work, rates of compensation, leaves, and employee benefits, and from any other provision of title 7, except those consistent with this chapter.

(d) An agency may reimburse volunteers for expenses, consistent with the provisions of section 90-4, as deemed necessary to assist volunteers in performing their services.

(e) An agency may designate a person or establish a position to coordinate and administer the volunteer activities of that agency. [L 1978, c 10, pt of §2; am L 1998, c 295, §2]

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**§90-3 Rights, responsibilities, and expectations in volunteer relationships.** (a) Every person regardless of his present economic condition, race, color, ancestry, political affiliation, religious affiliation, sex, age, physical or mental handicap, or marital status has the right to volunteer his services to an agency. An agency has the right to decline any voluntary offer of services, or if accepted, to release subsequently the volunteer who is no longer needed or who is found to be unacceptable.

(b) A volunteer providing services to an agency may expect:

- (1) That he will be assigned a job that is worthwhile and challenging, and which permits him the freedom to use existing skills or develop new ones.
- (2) That he will be trusted with information that will help him carry out the assignment.
- (3) That he will be kept informed about what is going on in the specific volunteer areas.
- (4) That he will be provided orientation, training, and supervision for the job he accepts so he will know why he is being asked to do a particular task.
- (5) That his time will not be wasted by lack of planning, coordination, and cooperation within the organization.
- (6) That he will receive feedback as to whether his work is effective and how it can be improved.
- (7) That he will be reimbursed for out-of-pocket costs if it is the only way he can volunteer.
- (8) That he will receive letters of recommendation and reference from his supervisor upon request.
- (9) That he will be given appropriate recognition for his volunteer services.
- (10) That he will be provided a designated supervisor.

(c) A volunteer providing services to an agency has the responsibility to:

- (1) Accept assignments given to him.
- (2) Fulfill his commitment or notify the designated person of his change of plans.
- (3) Follow guidelines and policies established by the agency.
- (4) Respect the values and beliefs of others.
- (5) Use time wisely and not interfere with the job performance of others.
- (6) Provide feedback, suggestions, and recommendations to his supervisor regarding the program.
- (7) Be considerate, respect competencies, and work as a member of a team with staff and other volunteers.
- (d) The agency utilizing the services of volunteers may expect:
  - (1) That the volunteer will fulfill his assignment as agreed upon or will notify staff sufficiently in advance if he cannot complete it.
  - (2) That the volunteer will not go beyond his competencies and authority.
  - (3) That the volunteer will submit feedback, suggestions, and

recommendations about the program to his supervisor.

(4) That the volunteer will maintain confidentiality and will respect and treat the recipients of volunteer services with dignity.

(e) The agency utilizing the services of volunteers has the responsibility to:

- (1) Use volunteers to extend services without displacing paid employees.
- (2) Provide each volunteer with a designated supervisor.
- (3) Provide staff orientation and training in the use and supervision of volunteers.
- (4) Define volunteer jobs that are meaningful to the volunteer and commensurate with his abilities.
- (5) Be alert to assignments for handicapped or disabled volunteers.
- (6) Make it possible for a volunteer to serve on a trial or probationary basis for a specified period.
- (7) Provide orientation and training to improve the volunteer's skills.
- (8) Provide volunteers with clear instructions and an adequate work space.
- (9) Accept the volunteer as part of the team, including him in training and staff meetings that pertain to his work.
- (10) Establish and communicate clearly defined lines of supervision so that the volunteer knows to whom he is responsible.
- (11) Provide appropriate recognition and appreciation to the volunteer.
- (12) Provide written guidelines governing the recruitment, screening, utilization, and supervision of volunteers.
- (13) Recognize an applicant's prior volunteer service in evaluating fulfillment of training and experience requirements for state employment pursuant to rules adopted by the department of human resources development, the judiciary, and the board of regents of the University of Hawaii.
- (14) Provide funds for volunteer benefits as specified in section 90-4.
- (15) Provide recognition of paid staff for support and supervision of volunteers. [L 1978, c 10, pt of §2; am L 1994, c 56, §21]

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**§90-4 Volunteer benefits.** Volunteer benefits shall be provided within the limits of an agency's budget as follows:

- (1) Meals may be furnished without charge or the cost thereof may be reimbursed to volunteers serving the agency.
- (2) Lodging may be furnished temporarily without charge or the cost thereof may be reimbursed to volunteers.
- (3) Transportation reimbursement including parking fees, bus and taxi fares may be furnished to volunteers. Mileage reimbursement when provided for shall be furnished at a rate comparable to that of permanent employees performing similar duties. Volunteers may be authorized to use state vehicles in the performance of official state duties.
- (4) Solely for the purposes of chapter 662, volunteers are hereby deemed "employees of the State," when acting for an agency in their capacity as volunteers.
- (5) Out-service training and conference reimbursement may be furnished for volunteers.
- (6) Personal liability insurance coverage may be furnished for volunteers.
- (7) Reasonable expenses incurred by volunteers in connection with their assignments may be reimbursed.
- (8) Recognition of volunteer service may include a recognition ceremony, certificates, and awards to be determined by the agency. [L 1978, c 10, pt of §2]

#### **Attorney General Opinions**

Budgetary limitation does not appear to apply to paragraph (4) in same manner as other listed paragraphs. Att. Gen. Op. 85-8.

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**§90-5 Agency reports, required information.** A state agency as part of its annual report to the governor, the legislature, or the chief justice shall include estimates of:

- (1) The total number of volunteers and the total number of hours of service broken down into categories of regular-service volunteers, occasional volunteers, stipended volunteers, and material donors.
- (2) A list of volunteer job titles used by the agency. [L 1978, c 10, pt of §2; am L 1998, c 295, §3]

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**§105-1 Government motor vehicles; certain uses prohibited.**

Except as provided in section 105-2, it shall be unlawful for any person to use, operate, or drive any motor vehicle owned or controlled by the State, or by any county thereof, for personal pleasure or personal use (as distinguished from official or governmental service or use) including, without limitation to the generality of the foregoing, travel by or conveyance of any officer or employee of the State, or of any county thereof, directly or indirectly, from his place of service or from his work to or near his place of abode, or, directly or indirectly, from such place of abode to his place of service or to his work. [L 1919, c 227, pt of §1; RL 1945, pt of §462; am L 1949, c 389, pt of §1(a); RL 1955, §7-10; HRS §105-1]

**Attorney General Opinions**

State may hold employee responsible for negligent damage to vehicle under the employee's control. Att. Gen. Op. 63-31.

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**§105-2 Exceptions.** Section 105-1 shall not apply to:

- (1) The governor;
- (2) The mayor of any county;
- (3) Any member of a police department or a fire department or of the staff of a hospital, or any officer or employee of the board of water supply of the city and county of Honolulu, when using a motor vehicle for a personal purpose incidental to the person's service or work (but not for pleasure);
- (4) Any officer or employee of the State who, upon written recommendation of the comptroller, is given written permission by the governor to use, operate, or drive for personal use (but not for pleasure) any motor vehicle owned or controlled by the State;
- (5) Any officer or employee of any county who, upon written recommendation of the budget director, is given written permission by the mayor, to use, operate or drive for personal use (but not for pleasure) any motor vehicle owned or controlled by the county;
- (6) Any officer or employee of the State, or of any county, who, in case of emergency, because of the person's illness, or the person's incapacity caused by accident while at work, or because of the illness of a member of the person's immediate family including a reciprocal beneficiary while the person is at work, is conveyed in a motor vehicle to the person's place of abode, or to a hospital or other place, but every such use of such a motor vehicle shall be certified to by the officer or by the head of the department, commission, board, bureau, agency, or instrumentality controlling or possessing the motor vehicle immediately thereafter, and the certificate shall be forthwith filed with the comptroller, in the case of the State, or with the budget director, in the case of a county; and
- (7) The assigned driver of a Van Go Hawaii vehicle or any other state ridesharing program vehicle. [L 1919, c 227, pt of §1; RL 1945, pt of §462; am L 1949, c 389, pt of §1(a); RL 1955, §7-11; am L 1965, c 11, §1; HRS §105-2; am L 1981, c 49, §1; gen ch 1993; am L 1997, c 383, §34]

**Attorney General Opinions**

Narcotics enforcement division investigators have authority for personal use of state vehicles incident to law enforcement purposes where prior written permission has been obtained from governor upon written recommendation of comptroller. Att. Gen. Op. 91-03.

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Maui County, Hawaii, Code of Ordinances >> Title 2 - ADMINISTRATION AND PERSONNEL >>  
Chapter 2.52 - USE OF PRIVATE VEHICLES FOR COUNTY BUSINESS >>

**Chapter 2.52 - USE OF PRIVATE VEHICLES FOR COUNTY BUSINESS**

**Sections:**

2.52.010 - Approval of mayor or council chairman required.

2.52.020 - Insurance.

2.52.030 - Reimbursement claims.

2.52.040 - Review of claims.

**2.52.010 - Approval of mayor or council chairman required.**

Any use of a privately owned vehicle by an officer or employee of the county in the performance of his or her duties shall be subject to the prior approval of the mayor or, in the case of the county council and its staff, the council chairman.

*(Ord. 1832 § 1 (part), 1989: prior code § 5-3.1)*

**2.52.020 - Insurance.**

Prior to the granting of such approval, such car shall be covered by the county's fleet insurance policy as cars not owned by the county used for county business (insurance for non-owned cars).

*(Ord. 1832 § 1 (part), 1989: prior code § 5-3.2)*

**2.52.030 - Reimbursement claims.**

Any officer or employee who uses a privately owned vehicle for authorized county business shall be reimbursed at the rate equal to the average mileage rate granted under collective bargaining agreements between the county and its officers or employees. All such claims for reimbursement shall be itemized and submitted monthly.

*(Ord. 1832 § 1 (part), 1989: Ord. 904 § 1, 1978: prior code § 5-3.3)*

**2.52.040 - Review of claims.**

The department head or the appointing authority shall review all such claims for reimbursement and must approve the same before the payment thereof.

*(Ord. 1832 § 1 (part), 1989: prior code § 5-3.4)*



**DEPARTMENT OF THE CORPORATION COUNSEL**  
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April 9, 2002

To: G. Riki Hokama, Chair  
Budget and Finance Committee

From: Traci Fujita Villarosa *TJV*  
Deputy Corporation Counsel

Re: Follow-up question from the April 1, 2002 meeting  
(CC-02) (BF-9)

You have asked this office to advise you on an issue which arose during the April 1, 2002 meeting. Your memo dated April 2, 2002 poses the following question:

"Provide an explanation of the liability issues that the County would need to consider if volunteers are used to reduce the construction costs of a capital improvement project."

Short Answer

The County may be liable to the volunteer for injuries sustained while performing services for the County under the state workers' compensation law. The County has a variety of responsibilities to volunteers under Hawaii Revised Statute (HRS) Chapter 90, the State Policy Concerning The Utilization of Volunteer Services. The County may be liable to the volunteer for damage done to the volunteer's personal property. The County may be liable to third parties for damages caused by the negligent acts of volunteers. Finally, the County must not allow volunteers to perform services under a contract for the procurement of services.

Statutory Definition and Status of Volunteer

The term "volunteer" means any person who of the person's own free will provides goods or services to an agency with no monetary or material gain and includes material donors, occasional-service, regular-service, and stipended volunteers. "Material donor" means any person who of the person's own free will provides funds or materials to an agency. "Occasional-service volunteer" means any person who offers to provide a one-time, on-call or single task service to an agency without receipt of any compensation, except as provided in this

chapter. "Regular-service volunteer" means any person engaged in specific voluntary service activities on an on-going or continuous basis to an agency without receipt of any compensation, except as provided in this chapter. "Stipended volunteer" means any person who by receiving a support allowance is then able to provide voluntary service to an agency. The allowance may be for food, lodging, or other personal living expenses and does not reflect compensation for work performed. HRS §90-1.

Volunteers recruited, trained, or accepted by an agency shall be excluded from any provision of law relating to state or county employment, from any collective bargaining agreement between the State and counties, with any employees' association or union, from any law relating to hours of work, rates of compensation, leaves, and employee benefits, and from any other provisions of title 7, except those consistent with this chapter. HRS § 90-2(c).

#### County's responsibility to Volunteer

Any person who is injured in performing service for the State or any county in any voluntary or unpaid capacity under the authorized direction of a public officer or employee, and who has not secured payment of the person's hospital and medical expenses from the State or the county under any other provision of law and has not secured payment thereof from any third person, shall be paid the person's reasonable hospital and medical expenses under this chapter. HRS § 386-171.

Thus under state worker's compensation law, the County may be liable to a volunteer if the volunteer is injured while performing services for the County and the volunteer's hospital and medical expenses are not covered by some other source, such as personal health care insurance.

HRS § 90-3(e), the State Policy Concerning The Utilization of Volunteer Services, sets forth additional responsibilities of the County to volunteers:

"The agency utilizing the services of volunteers has the responsibility to:

- 1) Use volunteers to extend services without displacing paid employees.
- 2) Provide each volunteer with a designated supervisor.
- 3) Provide staff orientation and training in the use and supervision of volunteers.
- 4) Define volunteer jobs that are meaningful to the volunteer and commensurate with his abilities.
- 5) Be alert to assignments for handicapped or disable volunteers.
- 6) Make it possible for a volunteer to serve on a trial or probationary basis for a specified period.
- 7) Provide orientation and training to improve the volunteer's skills.
- 8) Provide volunteers with clear instructions and an adequate work space.
- 9) Accept the volunteer as part of the team, including him in training and staff meetings that pertain to his work.
- 10) Establish and communicate clearly defined lines of supervision so that the volunteer knows to whom he is responsible.
- 11) Provide appropriate recognition and appreciation to the volunteer.
- 12) Provide written guidelines governing the recruitment, screening, utilization, and supervision of volunteers.
- 13) Recognize an applicant's prior volunteer service in evaluating fulfillment of training and experience requirements for state employment pursuant to rules adopted by the department of human resources development, the judiciary, and the board of regents of the University of Hawaii.

- 14) Provide funds for volunteer benefits as specified in § 90-4.
- 15) Provide recognition of paid staff for support and supervision of volunteers."

"Volunteer benefits shall be provided within the limits of an agency's budget as follows:

- 1) Meals may be furnished without charge or the cost thereof may be reimbursed to volunteers serving the agency.
- 2) Lodging may be furnished temporarily without charge or the cost thereof may be reimbursed to volunteers.
- 3) Transportation reimbursement including parking fees, bus and taxi fares may be furnished to volunteers. Mileage reimbursement when provided for shall be furnished as a rate comparable to that of permanent employees performing similar duties. Volunteers may be authorized to use state vehicles in the performance of official state duties.
- 4) Solely for the purposes of chapter 662, volunteers are hereby deemed "employees of the State," when acting for an agency in their capacity as volunteers.
- 5) Out-service training and conference reimbursement may be furnished for volunteers.
- 6) Personal liability insurance coverage may be furnished for volunteers.
- 7) Reasonable expenses incurred by volunteers in connection with their assignments may be reimbursed.
- 8) Recognition of volunteer service may include a recognition ceremony, certificates, and awards to be determined by the agency." HRS § 90-4.

While the volunteer benefits listed in HRS § 90-4 are dependent upon the County's budget, the responsibilities listed in HRS § 90-3(e) are not and must be fulfilled.

Finally, the County may be liable to a volunteer for damage done to the volunteer's personal property if such property becomes damaged while the volunteer performs services for the County. However, the County may limit this liability. The County could have volunteers sign waiver of liability forms to relieve the County of liability should the volunteer's personal property become damaged while performing services for the County.

#### Liability of County to Third Parties

The County may be held liable for damages caused by the negligent acts of authorized volunteers who are acting within the scope of their duties.

"In any suit against a nonprofit corporation, a hospital, or a governmental entity for civil damages based upon the negligent act or omission of a volunteer, proof of the act or omission shall be sufficient to establish the responsibility of the entity therefor under the doctrine of respondeat superior, notwithstanding the immunity granted to the volunteer with respect to any act or omission included under subsection (a)." HRS § 662D-2.

Under the doctrine of respondeat superior, an employer is held accountable and liable for negligent acts of its employees. However, recovery under doctrine requires that the employee's act complained of must have been within the scope of employment. The conduct of an employee is said to be within the course and scope of employment, for purposes of doctrine of respondeat superior, if it is of kind he is employed to perform, it occurs substantially within authorized time and space limits, and it is actuated, at least in part, by purpose to serve the

employer. Henderson v. Professional Coatings Corp., 72 Haw. 387 (1991). HRS § 662D-2 has statutorily extended the doctrine of respondeat superior to volunteers.

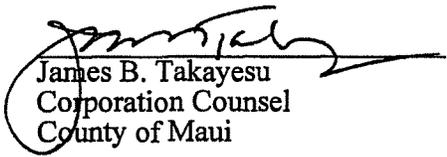
However, the County could limit this liability. The County could require that volunteers execute an indemnity agreement in which the volunteer would defend, indemnify, and hold harmless the County against any liability from a third party for negligent acts of the volunteer. It should be kept in mind, however, that an indemnification agreement is only as good as the party executing it and the agreement may not protect the County in the end. Thus the County should carefully weigh the value of an indemnity agreement against the possibility that such an agreement would be ineffectual or could discourage people from volunteering for the County. Another way to limit exposure would be to provide personal liability insurance for volunteers as set forth in HRS § 90-4(6).

#### Procurement Contracts

Volunteers may not be utilized to perform services within the scope of work of a County construction contract in excess of \$2,000.<sup>1</sup> State procurement law requires that the County pay prevailing wages for laborers and mechanics when procuring such services. Prevailing wages shall not be less than the wages payable under federal law. HRS § 104-2. Thus, a County contract which includes volunteer services would violate procurement law because these workers would not be paid the prevailing wages. Along the same lines, a contractor could not utilize volunteers to perform services within the scope of a County contract because such volunteers would be considered subcontractors and subject to the same prevailing wage requirement.

These are the main issues of liability the County should consider if volunteers are used to reduce the construction costs of a capital improvement project. If you should have any further questions, I can be reached at extension 7740.

Approved For Transmittal:



James B. Takayesu  
Corporation Counsel  
County of Maui

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<sup>1</sup> Procurement law specifically excludes grants from the requirements of procurement law so volunteers may be utilized under a grant agreement. HRS § 103D-102(b)(2)(A).

CDW-449

LINDA CROCKETT LINGLE  
Mayor



GUY A. HAYWOOD  
Corporation Counsel

**DEPARTMENT OF THE CORPORATION COUNSEL**

COUNTY OF MAUI  
200 SOUTH HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
TELEPHONE: (808) 243-7740

October 25, 1994

MEMO TO: Goro Hokama, Chair  
Committee of the Whole

F R O M: Guy A. Haywood, Corporation Counsel

SUBJECT: Indemnification of Volunteers Assisting in Disasters

Vertical stamp: OCT 25 11:11 AM 1994

This is in response to your memorandum dated September 29, 1994, regarding revision of the Maui County Code ("MCC") Section 8.32 to minimize the County's liability for the negligent acts of volunteers assisting in disasters.

You requested our comments on the following:

- (1) Whether the County can minimize its liability regarding the actions of volunteers assisting in disasters.
- (2) Possible methods of limiting the County's liability regarding the actions of volunteers assisting in disasters.

In response to your first inquiry, the County can minimize its liability regarding the actions of volunteers by legislating clear guidelines when volunteers may be used, by legislating the methods for determining such volunteers and by legislating penalties for unauthorized persons assisting in disasters.

The County will be held liable for damages caused by the negligent acts of authorized volunteers who are acting within the scope of their duties. See, Henderson v. Professional Coatings Corp., 72 Haw. 387 (1991), Nakagawa v. Apana, 52 Haw. 379, 392 (1970). The County will also have to compensate volunteers who suffer personal injury "arising out of and in the course of the employment" H.R.S., Section 386-3. Any volunteer who is injured in performing services for the County is entitled reasonable hospital and medical expenses. H.R.S., Section 386-3.

Goro Hokama, Chair  
Committee of the Whole  
October 25, 1994  
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d. A provision prohibiting loitering or remaining idle upon any public or private highway, place sidewalk or beach, on foot or on any vehicle in or close to an impending disaster or disaster area.

e. A provision prohibiting an unauthorized person to refuse or fail to evacuate any area, public or private upon order of any authorized person.

f. A provision establishing the penalty for violating the ordinance.

Please contact our office if you have additional questions regarding this matter.

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