

COUNCIL OF THE COUNTY OF MAUI
POLICY AND INTERGOVERNMENTAL
AFFAIRS COMMITTEE

March 15, 2013

Committee
Report No. _____

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

Chair and Members:

Your Policy and Intergovernmental Affairs Committee, having met on February 11, 2013, and February 25, 2013, makes reference to County Communication 13-41, from Council Chair Gladys C. Baisa, regarding litigation matters.

By correspondence dated February 1, 2013, the Department of the Corporation Counsel requested consideration of a proposed resolution entitled "INDEMNIFYING FRANKLYN L. SILVA, JAMES D. LLOY, BILL D. PACHECO AND HARRY MATSUURA, SR. IN JUSTIN DOBBS V. COUNTY OF MAUI, ET AL., CIVIL NO. 12-1-0812(2).", and transmitted a copy of the complaint. The purpose of the proposed resolution is to indemnify Franklyn L. Silva, Bill D. Pacheco, James D. Lloy, and Harry Matsuura, Sr., current and former employees of the Department of Liquor Control, in the case.

Your Committee notes the complaint alleges, among other things, retaliation against Mr. Dobbs, a County employee, for reporting allegedly illegal behavior by employees of the Department of Liquor Control, constitutional violations, wrongful termination of employment, and damages.

A Deputy Corporation Counsel provided a brief overview of the case and requested the opportunity to discuss the matter in an executive meeting, closed to the public.

Your Committee voted to convene an executive meeting, closed to the public, to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of matters affecting privacy will be involved, pursuant to Section 92-5(a)(2), Hawaii Revised Statutes ("HRS"); and to consult with legal counsel on questions and issues pertaining to the powers, duties, privileges, immunities, and liabilities of the County, the Council, and the Committee, pursuant to Section 92-5(a)(4), HRS.

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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 9-0 to recommend adoption of the proposed resolution. Committee Chair Hokama, Vice-Chair Couch, and members Baisa, Carroll, Cochran, Crivello, Guzman, Victorino, and White voted "aye".

Your Committee is in receipt of a revised proposed resolution, approved as to form and legality by the Department of the Corporation Counsel, incorporating a nonsubstantive revision.

Your Policy and Intergovernmental Affairs Committee RECOMMENDS that Resolution _____, attached hereto, entitled "INDEMNIFYING FRANKLYN L. SILVA, JAMES D. LLOY, BILL D. PACHECO AND HARRY MATSUURA, SR. IN JUSTIN DOBBS V. COUNTY OF MAUI, ET AL., CIVIL NO. 12-1-0812(2)", be ADOPTED.

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This report is submitted in accordance with Rule 8 of the Rules of the Council.



G. RIKI HOKAMA, Chair

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Resolution

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INDEMNIFYING FRANKLYN L. SILVA, JAMES D. LLOY,
BILL D. PACHECO AND HARRY MATSUURA, SR. IN JUSTIN DOBBS V.
COUNTY OF MAUI, ET AL., CIVIL NO. 12-1-0812(2)

WHEREAS, Plaintiff Justin Dobbs filed a complaint entitled Justin Dobbs v. County of Maui, et al., Civil No. 12-1-0812(2), against the County of Maui, current County employees Franklyn L. Silva and Bill D. Pacheco, and former County employees James D. Lloy and Harry Matsuura, Sr., in the Circuit Court of the Second Circuit, State of Hawaii, on October 12, 2012; and

WHEREAS, Plaintiff alleges he was retaliated against for reporting allegedly illegal behavior by employees of the Department of Liquor Control, while he was employed by said Department; and

WHEREAS, Plaintiff also alleges that his right to free speech under the Hawaii Constitution was violated, that he suffered intentional infliction of emotional distress, and that his termination for County employment was a violation of public policy; and

WHEREAS, Plaintiff alleges that Director of the Department of Liquor Control Franklyn Silva, current Department of Liquor Control employee Bill D. Pacheco and former Department of Liquor

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Control employees James D. Lloy and Harry Matsuura, Sr. are liable for the claims alleged in his complaint; 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 of Franklyn L. Silva, Bill D. Pacheco, James D. Lloy, and Harry Matsuura, Sr., and has recommended that the Council indemnify these Defendants for any damages that may be assessed against them in the above-referenced lawsuit. The damages being requested within the Complaint are: general, special, punitive, attorneys' fees and costs, and any other damages authorized by law; and

WHEREAS, based upon the recommendation of the Department of the Corporation Counsel, it appears at this time that it would be in the best interest of the County of Maui to indemnify these Defendants in the above-referenced lawsuit; now, therefore,

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

1. That Franklyn L. Silva, Bill D. Pacheco, James D. Lloy and Harry Matsuura, Sr., are indemnified by the County of Maui for any damages that may be assessed against them in the above-referenced lawsuit; and

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

APPROVED AS TO FORM AND LEGALITY:



RICHARD B. ROST
Deputy Corporation Counsel
County of Maui

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