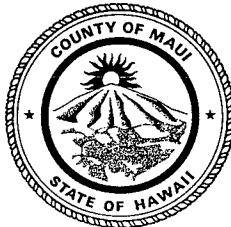


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April 15, 2013

MEMO TO: MIKE WHITE, CHAIR
BUDGET AND FINANCE COMMITTEE

FROM: PATRICK K. WONG
CORPORATION COUNSEL

SUBJECT: Amending FY 2013 Budget: Kalana O Maui Campus Expansion (BF-29)

OFFICE OF THE
COUNTY COUNSEL

2013 APR 15 PM 2:37

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This memorandum is in response to Budget and Finance Committee Chair, Mike White's request dated March 25, 2013, wherein the following questions were asked:

1. Did the *County* violate Ordinance 3840 (2011), Draft 1; or Ordinance 3837 (2011) by entering into a contract to demolish the Old Wailuku Post Office? Please explain.
2. Did the *County* violate Ordinance 3840 (2011), Draft 1; or Ordinance 3837 (2011) by entering into a contract to begin the Kalana O Maui master plan? Please explain.
3. If it is determined that Ordinance 3840 (2011), Draft 1; or Ordinance 3837 (2011) was violated:
 - a. What is the status of the contracts to demolish the Old Wailuku Post Office and begin the Kalana O Maui Master Plan?
 - b. What recourse does the Council have to address these violations?

Initially the aforementioned questions were assigned to a deputy corporation counsel with a response deadline of April 5, 2013. However, after closer review of the questions presented, we are compelled to provide context and guidance on questions propounded to the Office of the Corporation Counsel as those questions relate to the County of Maui (“County”). Continued patience and consideration in this delayed response is greatly appreciated.

Pursuant to Section 8-2.3 of the Charter of the County of Maui (“Charter”), the Corporation Counsel shall “be the chief legal advisor and legal representative of the *County of Maui*; of the council, the mayor, all departments, and all boards and commissions; and of all officers and employees in matters relating to their official duties.” By operation of the Charter, an attorney client relationship exists between the Corporation Counsel and the County. Therefore, in responding to your questions, we must first look to the Hawaii Rules of Professional Conduct (“HRCP”) in evaluating and responding to questions directed toward action or inaction of a client.

HRCP Rule 1.13(f) provides in pertinent part, as follows:

If a government lawyer knows that an officer, employee or other person associated with the government is engaged in action, intends to act or refuses to act in a matter related to the lawyer’s representation that is a violation of a legal obligation to the government or the public, or a violation of law which reasonably might be imputed to the government, the lawyer shall proceed as is reasonably necessary in the best interest of the government or the public. In determining how to proceed, the lawyer shall give due consideration to the seriousness of the violation and its consequences, the scope and nature of the lawyer’s representation, governmental policies concerning such matters, governmental chain of command, and any other relevant consideration. Any measures taken shall be designed to minimize disruption of the

governmental functions. Such measures may include among other things:

- (1) asking for reconsideration of the matter;
- (2) referring the matter to a higher authority in the government, including if warranted by the seriousness of the matter, referral to the highest government official that can act in behalf of the government on the particular matter as determined by applicable law even if the highest authority is not within the agency or department the lawyer represents; and
- (3) advising that a separate legal opinion on the matter be sought and considered; and
- (4) divulging of information to persons outside the government pursuant to the limitations provided in Rule 1.6.

Therefore, based on Rule 1.13(f), HRCP, we shall proceed as is reasonably necessary and in the best interest of the County while minimizing the disruption of the government functions. Additionally, the relevant comments to Rule 1.13 states that “when the client is a governmental organization, a different balance may be appropriate between maintaining confidentiality and assuring that the wrongful official act is prevented or rectified, for public business is involved.”

Based on the questions presented, the applicable Rules of Professional Conduct, the best interests of the County, and giving due consideration to the events in its entirety, we suggest one or more of the following:

1. Reconsider the matter by amending the FY2012 budget ordinance to clearly rectify the use of FY2012 funds relating to the demolition of the Old Wailuku Post Office and the initial master planning of the Kalana O Maui Campus Expansion Project; and/or
2. Refer the matter to a higher authority in the government; and/or
3. Seek and consider a separate legal opinion on the matter from Special Counsel retained pursuant to Section 3-6(6) of the Charter; and/or

Mike White, Chair
Budget and Finance Committee
April 15, 2013
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4. Subject to the limitations of HRCF Rule 1.6 relating to confidentiality of client communication, divulge the information to persons outside the County.

Please understand the context within which this response is provided and please recognize the unusual nature of the matter. Should you need additional information or need further clarification, please do not hesitate to contact me.

Respectfully submitted,



PATRICK K. WONG
CORPORATION COUNSEL