

1  
2  
3  
4 COUNTY OF MAUI, STATE OF HAWAII  
5  
6  
7  
8  
9 BOARD OF ETHICS  
10 REGULAR MEETING  
11  
12  
13  
14  
15  
16 Held at the Planning Department Conference Room, 250  
17 South High Street, Wailuku, Maui, Hawaii, commencing at  
18 12:00 p.m., on Wednesday, July 9, 2014.  
19  
20  
21  
22 Reported by: Tonya McDade, CSR, CRR  
23 Certified Shorthand Reporters Maui  
24 2145 Wells Street, Suite 302  
25 Wailuku, Hawaii 96793  
(808)244-3376  
reporters@csrmaui.com

Page 1

1 ATTENDANCE  
2 BOARD MEMBERS PRESENT:  
3 Randol Leach, Chair  
4 Norman Franco, Vice-Chair (Out, 1:38 p.m.)  
5 Noreen "Dee Dee" Yabuta, Secretary  
6 Abel Kahooohanohano, Jr., Member  
7 Sydney Kikuchi, Member  
8 Herman Nascimento, Member  
9 Michael Westfall, Member  
10  
11 STAFF PRESENT:  
12 Linden Joesting, Deputy Corporation Counsel  
13 Gary Murai, Deputy Corporation Counsel  
14 Angela Andrade, Executive Secretary  
15 ALSO PRESENT:  
16 Councilmember Michael Victorino  
17 Michael Molina, Executive Assistant to the Mayor  
18 John D. Kim, Prosecuting Attorney  
19 Erin Fleming, Office of Council Services  
20  
21  
22  
23  
24  
25

Page 2

1 (Wednesday, July 9, 2014, 12:00 p.m.)  
2 \* \* \*  
3 CHAIR LEACH: I'd like to call the Maui County  
4 Board of Ethics Wednesday, July 9th, 2014 meeting to order.  
5 Our first agenda item is the review and approval of the May  
6 14th, 2004 [sic] minutes.  
7 MEMBER WESTFALL: Motion to approve.  
8 MEMBER YABUTA: I second it.  
9 CHAIR LEACH: Any discussion? All in favor of  
10 approving the minutes of the May 14th meeting, say "aye."  
11 (Response.)  
12 CHAIR LEACH: Opposed?  
13 (No response.)  
14 CHAIR LEACH: Thank you. Next agenda item is  
15 public testimony. Is there any public testimony?  
16 MS. ANDRADE: No.  
17 CHAIR LEACH: Thank you. Agenda Item A4, Old  
18 Business. Financial Disclosures, Kopelman.  
19 VICE-CHAIR FRANCO: Item 3, he put down -- he  
20 didn't disclose ownership in a beneficiary interest in the  
21 company. Should have just put "none" there like the others,  
22 but he didn't put it any information.  
23 MS. ANDRADE: He attached a letter explaining Item  
24 3.  
25 VICE-CHAIR FRANCO: Oh, tax return to be filed.

Page 3

1 Okay. Sounds good.  
2 CHAIR LEACH: Is there a motion to accept the  
3 financial disclosure of Ori Kopelman?  
4 MEMBER NASCIMENTO: So moved.  
5 MEMBER KIKUCHI: Second.  
6 CHAIR LEACH: Any discussion? All in favor, say  
7 "aye."  
8 (Response.)  
9 CHAIR LEACH: Opposed?  
10 (No response.)  
11 CHAIR LEACH: Thank you.  
12 4b, Communication Items, we have none.  
13 Agenda Item 4c, Review and approve the Advisory  
14 Opinion for Raymond Cabebe. And handed out in front of  
15 everyone are two other options for the advisory opinion.  
16 Linden, could I ask you to just briefly describe the  
17 options?  
18 MS. JOESTING: You may remember Mr. Cabebe was the  
19 person who has been appointed to the Board of Water Supply  
20 and, also, the Department wanted to contract with him to  
21 repair their software. They had not gone out to any kind of  
22 procurement process, they just wanted to issue him a  
23 contract.  
24 There are different provisions in the code of  
25 Ethics under which you could find that there is a problem.

Page 4

1 Version one is Section 10-4.3. Version two is 10-4 -- that  
2 doesn't look like -- well, looks like --  
3 CHAIR LEACH: That's the same.  
4 MS. JOESTING: That does look the same. What you  
5 have labeled as option three is Section 10-41.C.  
6 VICE-CHAIR FRANCO: I see.  
7 MS. JOESTING: And 3, Paragraph 3. So there's  
8 essentially two sections of the Code under which you could  
9 find this is prohibited. And one option is just for one  
10 section and the other option is for two sections.  
11 VICE-CHAIR FRANCO: So what are you recommending?  
12 MS. JOESTING: I recommend that you include both  
13 sections.  
14 VICE-CHAIR FRANCO: We should go with it.  
15 CHAIR LEACH: Everybody?  
16 MEMBER WESTFALL: I will make a motion that we  
17 accept three -- Linden, it was option three, the one you  
18 recommended?  
19 MS. JOESTING: Correct.  
20 MEMBER WESTFALL: We accept that.  
21 MEMBER YABUTA: I second.  
22 CHAIR LEACH: Second. Any more discussion? Okay.  
23 All in favor of accepting option three for the advisory  
24 opinion, say "aye."  
25 (Response.)

Page 5

1 CHAIR LEACH: Opposed?  
2 (No response.)  
3 CHAIR LEACH: Thank you. Angela, do you have  
4 that?  
5 MS. ANDRADE: I have an original we can circulate.  
6 CHAIR LEACH: She'll pass that around for us to  
7 sign. Thank you.  
8 Under New Business, Item 5, Financial Disclosures,  
9 I will read the last names. Arakawa, Blumer-Buell, Bruch,  
10 Couch, two for Couch, Fitzpatrick, Haller, Beau Hawkes,  
11 Hokama, Kahula, Knox, Metcalfe --  
12 MS. ANDRADE: Nikhilananda.  
13 CHAIR LEACH: Thank you. Victorino, Waikiki and  
14 White. And thank you, everyone, for reviewing these before  
15 the meeting, that helps. Any information why Mr. Couch has  
16 two? Is one for being a candidate and one for appointed  
17 official, elected appointed official?  
18 VICE-CHAIR FRANCO: Is it important that they  
19 state exactly what seat they're running for? Like some put  
20 down the district, others just put County Council. So I  
21 don't know if that's required. Can we go to legal counsel  
22 on that?  
23 MS. JOESTING: I would suspect the specific  
24 district is not required, but the position.  
25 VICE-CHAIR FRANCO: Okay.

Page 6

1 CHAIR LEACH: Under Alexander Haller, he didn't  
2 put on his form the date of filing of his nomination papers.  
3 If we could assume it was June 3rd, that was stamped from  
4 the Office of the Clerk.  
5 VICE-CHAIR FRANCO: This other one, Courtney  
6 Bruch, she left several of the boxes --  
7 MS. JOESTING: Unchecked.  
8 VICE-CHAIR FRANCO: Unchecked, yeah. And it's  
9 Item 4, Item 5, Item 6, Item 7. So I think she should be a  
10 little bit more comprehensive in her report. We should send  
11 it back.  
12 MS. ANDRADE: Okay, I will send it back.  
13 CHAIR LEACH: Angela, just one procedural  
14 question. Some of the financial disclosures on the top have  
15 a stamp "Received, Board of Ethics," and some of them have a  
16 stamp "Received, Clerk's Office."  
17 MS. ANDRADE: Sometimes they're filed with the  
18 Clerk's Office and then the Clerk will forward a copy to me.  
19 And sometimes they're just filed directly with the Board of  
20 Ethics, and it doesn't go through the Clerk's Office.  
21 Sometimes they're filing one with us and one with the clerk,  
22 that's why.  
23 CHAIR LEACH: Okay. Thank you.  
24 MEMBER KIKUCHI: Arakawa, Number 8, he just didn't  
25 check the box or fill it out.

Page 7

1 MS. JOESTING: Correct.  
2 MEMBER KIKUCHI: Mr. Haller, I think you  
3 mentioned, Number 3, he didn't put down his value of his  
4 business or interest. Beau Hawkes, Item Number 3, the same  
5 thing.  
6 CHAIR LEACH: Any others?  
7 MEMBER KIKUCHI: Henry Kahula, Item Number 4 and  
8 8 -- 4, 8, 9 and 10.  
9 CHAIR LEACH: Thank you.  
10 MEMBER KIKUCHI: Robin Knox, Number 2. You got  
11 that? Okay. Councilman Victorino -- sorry -- Number 3, 4  
12 and 9. And that's all I have.  
13 CHAIR LEACH: Okay. It goes back to the form,  
14 also.  
15 COUNCILMEMBER VICTORINO: Very confusing.  
16 CHAIR LEACH: Sometimes it's difficult and  
17 confusing with the box of none to check when there's no  
18 information.  
19 MS. ANDRADE: Since he's here, can I give him a  
20 copy and he can clarify right now?  
21 CHAIR LEACH: Yes.  
22 COUNCILMEMBER VICTORINO: I didn't come for that  
23 purpose, by the way.  
24 VICE-CHAIR FRANCO: It's probably a mistake, you  
25 know, oversight.

Page 8

1 CHAIR LEACH: Yeah.  
2 MEMBER WESTFALL: Mr. Chairman, I will just add an  
3 aside to this, and I mentioned it, if maybe, for a later  
4 meeting sometime, since we're going to get beyond the season  
5 of these, if we could put on the agenda discussing the issue  
6 of gifts and whatnot. As I look at these, there seems to be  
7 sort of inconsistencies in application. I am making that as  
8 an assumption, but several elected candidates have nothing,  
9 others have pages, some departments have pages, others have  
10 nothing. So there's -- clearly, it would appear that  
11 there's some issue as to what a gift is and when they need  
12 to report it. And maybe we could have a discussion when our  
13 agenda gets a little clearer or less -- or less full, as it  
14 is currently.  
15 CHAIR LEACH: We will do that. Thank you,  
16 Michael.  
17 Okay. Let me summarize.  
18 MS. ANDRADE: Chair, just for the record,  
19 Councilmember Victorino, those two boxes that he left blank  
20 should have been "none."  
21 CHAIR LEACH: Okay. Thank you.  
22 MS. JOESTING: There were three boxes, actually.  
23 It was 3, 4 and 9.  
24 MS. ANDRADE: And 9. And 9.  
25 COUNCILMEMBER VICTORINO: None.

Page 9

1 MS. ANDRADE: Is it none?  
2 COUNCILMEMBER VICTORINO: None. Okay. Thank you.  
3 VICE-CHAIR FRANCO: Mike White, too, yeah, he  
4 attached a list of his gifts.  
5 CHAIR LEACH: Okay. I will try to summarize, so  
6 help me if I am not complete. Okay. We're going to send  
7 back Arakawa, for Item Number 8, for clarification, Courtney  
8 Bruch for clarification on Item 4, 5, 6, 7, 10.  
9 MS. JOESTING: That was the value.  
10 CHAIR LEACH: Haller is the value in Item 3.  
11 Hawkes.  
12 MS. ANDRADE: Same thing again.  
13 CHAIR LEACH: Value, Number -- Item 3. Kahula --  
14 MS. ANDRADE: It's incomplete.  
15 CHAIR LEACH: Incomplete, Items 4, 8, 9, 10. And  
16 then Knox, Item 2. Item 2. Everyone okay with that?  
17 VICE-CHAIR FRANCO: Mike White didn't answer  
18 Number 10. I thought he had a list of gifts, but it's the  
19 companies that he owns in shares. So he just left Item 10  
20 completely blank.  
21 CHAIR LEACH: And then under White, Item 10. Can  
22 I entertain a motion?  
23 VICE-CHAIR FRANCO: I move those people further  
24 fill out their forms and get them back to us.  
25 CHAIR LEACH: Is there a second?

Page 10

1 MEMBER YABUTA: I second.  
2 CHAIR LEACH: Any more discussion? All in favor,  
3 say "aye."  
4 (Response.)  
5 CHAIR LEACH: Item Agenda 5b, Communication Items,  
6 none. Lobbyist Registration, we have one for a Brooke  
7 Wilson. We don't approve lobby registrations; we just  
8 accept them as filed with the Board of Ethics. Motion?  
9 MEMBER KAHOOHANOHANO: So move.  
10 MEMBER WESTFALL: I move that we acknowledge  
11 receipt of the lobbyist registration for -- is it Brooke  
12 Wilson?  
13 CHAIR LEACH: Thank you. Is there a second?  
14 MEMBER NASCIMENTO: Second.  
15 CHAIR LEACH: Any more discussion? All in favor,  
16 say "aye."  
17 (Response.)  
18 CHAIR LEACH: 5d, item agenda, discussion of the  
19 selection process for County Board and Commission members.  
20 And we would like to welcome Mike Molina from the Mayor's  
21 Office to give us some information on that. Thank you,  
22 Mr. Molina.  
23 MR. MOLINA: Thank you, Chairman Leach, also,  
24 Members of the Ethics Board. Before I begin, I'd like to  
25 pass out a document from the Mayor's Office outlining the

Page 11

1 process for new boards and commission selection process.  
2 Mr. Chairman, if you prefer, we could go down  
3 through each category and then you could stop to ask  
4 questions. If you prefer, we could do it that way.  
5 CHAIR LEACH: That's good.  
6 MR. MOLINA: Let me first start off by saying that  
7 the process that we -- we go through, this current  
8 administration, a lot of it is similar to the process of  
9 prior administrations. So there are some things that I've  
10 noticed that have been different that was done differently  
11 from other administrations. So I just wanted to share that  
12 with you.  
13 First of all, as you look at your document, number  
14 one, individuals applying for boards and commissions are  
15 required to submit two documents. An application form and a  
16 contact information form. Once an individual is nominated  
17 by the Mayor, the application form becomes a public document  
18 and the contact information form remains confidential. And  
19 while reviewing applications, the Mayor's Office takes into  
20 consideration any potential conflicts or personal issues  
21 applicants may have. And, number three, when a nomination  
22 by the Mayor is made, applicants are contacted to confirm  
23 their interest and availability to attend meetings of the  
24 board or commission that they have applied for. Applicants  
25 are also given the opportunity to disclose any potential

Page 12

1 conflicts or personal issues to the Mayor's Office before  
2 their name is submitted to the Maui County Council for the  
3 review and confirmation process. And number four, nominees  
4 are advised that they may be called to appear before the  
5 Council to answer questions about their interest in serving  
6 as a board or commission member. And, finally, number five,  
7 once a nomination is submitted to the Council, the Council  
8 has up to 60 days to take action. Should the Council not  
9 act, the nomination is deemed approved. Should the mayor's  
10 nominee be rejected by the Council, the Mayor has 10 days to  
11 submit another nominee for consideration, otherwise, if a  
12 name is not submitted within those 10 days, the authority to  
13 nominate is then given to the Council. That is according to  
14 Charter.

15 So I guess that, in a nutshell, is a brief summary  
16 of how it's done in the Mayor's Office. And I am prepared  
17 to take any questions.

18 CHAIR LEACH: Thank you. Let's get started over  
19 here. Herman.

20 MEMBER NASCIMENTO: This next -- the form that you  
21 mentioned, second form, will it be made available when you  
22 pick up your application?

23 MR. MOLINA: Yes. Typically, it's attached.  
24 There are two blank forms. Once you submit the application  
25 to the Mayor's Office, typically we keep those forms on file

Page 13

1 for two years. Now, if you're nominated by the Mayor for a  
2 board or commission, we will only send down the -- the top  
3 form, which is a public document. The contact information  
4 form, that has personal information like addresses and phone  
5 numbers, that is kept confidential in the Mayor's Office.  
6 And should -- we've had occasions where people will call,  
7 they want to get in contact with a board or commission  
8 member, and our standard answer is, we will take your number  
9 and then we will let the board or commission know to give  
10 them a call back. But we will not release any personal  
11 information to the public.

12 CHAIR LEACH: Norman.

13 VICE-CHAIR FRANCO: Well, I know the State  
14 commissions, according to the news, having a hard time  
15 getting people to serve on some of the State boards,  
16 commissions because of the increase -- public disclosure of  
17 your business interests. And I don't know if you're going  
18 that far in the process like the State. Are you looking  
19 for -- of course, you need people to serve, but you're going  
20 to put too many restrictions on them.

21 MR. MOLINA: This meeting is quite timely with  
22 that occurrence on the State level, but I believe it is a  
23 requirement for all board and commission members, they have  
24 to supply a financial disclosure form for the board. So  
25 we're sort of ahead of the game already, but I guess it does

Page 14

1 present its challenges for some people who may really value  
2 their privacy and may not want to serve because of the  
3 requirement to provide a financial disclosure form.

4 VICE-CHAIR FRANCO: And another question, on Item  
5 5, if the Council rejects and the Mayor doesn't re-submit,  
6 is it only then the Council can nominate?

7 MR. MOLINA: Yes. The authority to nominate then  
8 goes to the Council. And I believe they have up to 60 days  
9 to find a nominee. I know of one occurrence where -- I  
10 can't recall what board or commission it was, and it was  
11 hard finding an individual, so it bounced back and forth.  
12 The Mayor's Office had a hard time finding a nominee, so  
13 then it went to the Council. Then, for whatever reasons,  
14 they couldn't come up with a nominee, then it came back to  
15 us and, finally, we found someone.

16 VICE-CHAIR FRANCO: The whole process starts in  
17 the Mayor's Office, right?

18 MR. MOLINA: That's correct. And the Council --  
19 it's Council's charge to do additional research or vetting  
20 of issues with the nominee, but they have the authority to  
21 confirm or deny.

22 VICE-CHAIR FRANCO: Okay.

23 CHAIR LEACH: Mr. Molina, I have a question. If a  
24 board or commission member doesn't attend the meetings  
25 regularly, does the Mayor police that? And is there a

Page 15

1 procedure to ask someone to resign? What steps are taken to  
2 take care of that?

3 MR. MOLINA: Mr. Franco brought up two very timely  
4 issues. The County Council, just yesterday, dealt with the  
5 removal of a board member for lack of attendance. There  
6 is -- well, there's no policy as I would say that's etched  
7 in stone, but, typically, we go with a three strikes and  
8 you're out type of rule. In this case, we had a board  
9 member that had missed nine meetings; several of those  
10 meetings were excused, some weren't. So we tried to give  
11 that individual the benefit of the doubt, to see if they  
12 would like to attend. Finally, the individual said that,  
13 you know, they would submit a resignation form. And that's  
14 part of the requirement. Before you remove anyone or if  
15 anyone wants to resign, they must submit a resignation  
16 letter. And in this particular case, we could not get a  
17 resignation letter. So our last resort, which is by  
18 Charter, the Mayor has to submit a letter to the County  
19 Council asking for the Council to remove the individual from  
20 the board or commission and then state the various reasons.  
21 And which is what occurred yesterday. The Council approved  
22 the removal of the person from the board or commission.

23 So, in short, yes, there is a process for the  
24 removal of an individual. And the Mayor can request -- make  
25 that request as long as there is sufficient cause for it.

Page 16

1 CHAIR LEACH: And who started that process? Was  
 2 it the commission that person was on or the Mayor's Office?  
 3 Just curious.  
 4 MR. MOLINA: It was first brought to our attention  
 5 by the staff person of the commission. They informed us,  
 6 then we made our own little inquiry, then we sort of took  
 7 over the process of trying to get hold of the individual.  
 8 So it starts first, typically, with the board or commission  
 9 staffers. If there's a concern, sometimes I've seen happen  
 10 where the board chairperson can also bring it to the  
 11 attention of the Mayor's Office as well. Then, eventually,  
 12 it goes to us and then, if it reaches that point, then it  
 13 goes to the Council for the final decision as to whether to  
 14 keep that person on board or not.  
 15 CHAIR LEACH: And then, after that process, then  
 16 the Mayor's Office will try to fill that position to help  
 17 quorum for the boards and commissions?  
 18 MR. MOLINA: That is correct.  
 19 CHAIR LEACH: Thank you.  
 20 VICE-CHAIR FRANCO: I have another question. What  
 21 if you find out that a board member has a conflict of  
 22 interest not disclosed initially, that maybe he didn't have  
 23 initially when he applied for the board? Later on down the  
 24 road, is there kind of a process?  
 25 MR. MOLINA: Typically, in terms of a process, we

Page 17

1 would expect the nominees to first disclose to us if they  
 2 foresee any potential conflicts. Sometimes we may see  
 3 something that the individual may not see. So try to get it  
 4 hashed out. If we miss it, then it's sort of like the --  
 5 the Council then will have the next pass at it. Sometimes  
 6 conflicts of interest are brought to the attention by the  
 7 public, to the County Council or to the Mayor's Office. So  
 8 if there is, we will -- we would certainly try to encourage  
 9 the person to either withdraw their request to be nominated,  
 10 or, if they want to put themselves through the whole process  
 11 and go before the Council, you know, we leave it up to them.  
 12 VICE-CHAIR FRANCO: Thank you.  
 13 CHAIR LEACH: Abel?  
 14 MEMBER KAHOOHANOHANO: No questions.  
 15 CHAIR LEACH: Sydney?  
 16 MEMBER KIKUCHI: No.  
 17 CHAIR LEACH: Mike?  
 18 MEMBER WESTFALL: Well, the agenda item speaks to  
 19 selection process. And I think my questions were really  
 20 towards the ongoing maintenance. Probably better for me to  
 21 make my comments in Executive Session when the situation  
 22 comes up, so no questions at this point.  
 23 CHAIR LEACH: Anything else? Thank you,  
 24 Mr. Molina.  
 25 MR. MOLINA: Thank you very much for your time.

Page 18

1 Thank you.  
 2 CHAIR LEACH: Agenda Item 5e, Request for Advisory  
 3 Opinion from the Department of the Prosecuting Attorney  
 4 regarding an honorarium of \$250.  
 5 MR. KIM: Good morning. I am John Kim from the  
 6 Department of Prosecuting Attorney.  
 7 CHAIR LEACH: Welcome.  
 8 MR. KIM: I requested this advisory opinion. I  
 9 note on your agenda it says it's a gift. Honorariums are  
 10 not gifts.  
 11 CHAIR LEACH: Okay.  
 12 VICE-CHAIR FRANCO: Can you define the difference?  
 13 MR. KIM: Usually, it's a fee paid, but not  
 14 negotiated by someone, to a professional who is rendering a  
 15 service. That's the definition in the dictionary.  
 16 VICE-CHAIR FRANCO: Okay. For services rendered.  
 17 All right. It's not like a gift where -- where you don't  
 18 just give it.  
 19 MR. KIM: It's not like you show up and, "Oh, here  
 20 you go, bruddah." It's nothing that --  
 21 VICE-CHAIR FRANCO: But if you perform a service.  
 22 MR. KIM: That's right. In this case Tracy Jones,  
 23 the Deputy Prosecuting Attorney, appeared in Hana to do a  
 24 elder abuse training session for those people. We also  
 25 sent, unbeknownst to me, Gizelle Kuailani who, I believe,

Page 19

1 also received a honorarium. She -- because she's a HGEA  
 2 represented employee, I think she got paid overtime for  
 3 that. So she also received an honorarium from the same  
 4 group.  
 5 VICE-CHAIR FRANCO: She was providing a function  
 6 of her job description?  
 7 MR. KIM: Yes.  
 8 VICE-CHAIR FRANCO: It was nothing unusual, just  
 9 paid overtime?  
 10 MR. KIM: No. If she's working over 40 hours  
 11 under contract, I have to pay it.  
 12 VICE-CHAIR FRANCO: Okay.  
 13 MR. KIM: Or the County has to pay.  
 14 VICE-CHAIR FRANCO: Well, so -- so the honorarium  
 15 that she receives seems like a non-earned bonus of some  
 16 kind, right?  
 17 MR. KIM: Well, that's between her and her tax --  
 18 VICE-CHAIR FRANCO: Yeah.  
 19 MR. KIM: Yeah.  
 20 VICE-CHAIR FRANCO: So you're asking us if that is  
 21 ethical to receive?  
 22 MR. KIM: She asked me to ask.  
 23 VICE-CHAIR FRANCO: Oh, she asked you to ask.  
 24 CHAIR LEACH: She asked you first, "What's your  
 25 opinion?"

Page 20

1 MR. KIM: It's like a fee for service, but it's  
2 not a negotiated fee, it's whatever they decided to give  
3 her. If they gave her \$25, it would be \$25. Even though I  
4 did not allow her to take a County vehicle out there.  
5 She -- she rented a car. Cost her -- I think I put that  
6 down, it cost her \$80. She didn't want to take her own car  
7 because she didn't -- because the road to Hana may not be  
8 the safest for her to negotiate.  
9 CHAIR LEACH: But it was part of her County  
10 employment?  
11 MR. KIM: She wasn't assigned. She asked if she  
12 could go to do this. We were asked -- evidently, someone  
13 heard her also speak at another conference which was put on  
14 by Housing and Human Concerns, out of, I believe, the Kaunoa  
15 Center. And so we sent three attorneys to do a presentation  
16 on elder abuse and prosecution. This time, she went alone.  
17 MEMBER WESTFALL: I got a question. So, in your  
18 opinion, an honorarium is not a gift or a reward?  
19 MR. KIM: Well, no. It could be considered a  
20 reward, but it's not a gift.  
21 MEMBER WESTFALL: So it is a reward, then?  
22 MR. KIM: Yeah.  
23 MEMBER WESTFALL: I guess what I am trying to get  
24 at here, Mr. Chairman, Mr. Kim, is looking at the  
25 prohibition, the first one is a prohibition against gifts

Page 21

1 and rewards. And the only other one that could be  
2 applicable is 1.c, that it's a business transaction that's  
3 not compatible with her position in the County. Those would  
4 be the only two that I can see are applicable.  
5 MR. KIM: Yes. We tell our deputies, somebody  
6 asks you a legal question, you are not allowed to give  
7 anyone legal advice. The only people she can consult with  
8 is the police department or other law enforcement agencies.  
9 So over the phone or anything else like that, they know  
10 that, ethically, they're not allowed to give any legal  
11 advice.  
12 MEMBER WESTFALL: So what you're saying is 1.c is  
13 not applicable, either, in your opinion?  
14 MR. KIM: As a gift. But you can decide whether  
15 or not -- whether this is considered a reward because of the  
16 various -- various amounts that was paid out by this  
17 organization to one salaried employee and one employee who  
18 is an hourly wage earner. I believe the Victim Witness  
19 Counselor got \$100 honorarium and Ms. Jones got \$250. And I  
20 don't know what Judge Bissen got, but he was also there, and  
21 he, also, had to sign for his honorarium. And that is State  
22 Ethics. So the State Ethics Code does not apply to County  
23 employees.  
24 VICE-CHAIR FRANCO: Question: Do these people  
25 know if they going to receive an honorarium?

Page 22

1 MR. KIM: No.  
2 VICE-CHAIR FRANCO: This is purely voluntary on  
3 the part of OHA?  
4 MR. KIM: I believe so.  
5 CHAIR LEACH: Do you know of any precedent,  
6 Mr. Kim, on honorariums to --  
7 MR. KIM: No. I looked at -- I looked at prior  
8 opinions, advisory opinions from this Board, and I could not  
9 find any. I know that there are other opinions rendered by  
10 this Board regarding gifts, solicitation of gifts and  
11 whatnot.  
12 This is not like she showed up at a convention or  
13 a conference where everyone else got the same thing. So  
14 it's a little different.  
15 MEMBER KIKUCHI: John, as far as you're concerned,  
16 was she a representative of your office?  
17 MR. KIM: Yes. She represented the office because  
18 she explained to the community what the process would be,  
19 criminal process, and procedure and how we get our cases and  
20 how we treat them. We have three members assigned to elder  
21 abuse, we have an elder abuse prosecution unit, loosely  
22 formed, and they've reviewed those cases.  
23 MEMBER KIKUCHI: As a salaried employee, did she  
24 adjust her schedule at all, or did she have the opportunity  
25 to adjust her schedule?

Page 23

1 MR. KIM: No. We don't get paid overtime. And  
2 they're expected to go. For example, all my deputies know  
3 that if they have to consult with any of the police officers  
4 from Shopo, they have to do it on the officer's time, unless  
5 the officer is working. We will not allow our prosecutors  
6 to create overtime opportunities for the police department.  
7 And that's been made clear from day one, that if the officer  
8 is working first watch, that is they start at 10:00, 10:30,  
9 they either go down there at 10:00 and get them before the  
10 watch or after roll call, to consult and do their  
11 preparation, or they get 'em at the end of the watch, at  
12 6:30. And that's -- or they wait until they're on duty.  
13 MEMBER KIKUCHI: As far as the rental vehicle,  
14 that was her decision to rent a vehicle?  
15 MR. KIM: That's correct.  
16 MEMBER KIKUCHI: Would you have paid her the  
17 mileage if she used her own vehicle?  
18 MR. KIM: Yes.  
19 MEMBER KIKUCHI: That's all I have.  
20 CHAIR LEACH: Herman.  
21 MEMBER NASCIMENTO: In your letter, you stated  
22 that she rented a vehicle?  
23 MR. KIM: Right. She told me she rented a  
24 vehicle.  
25 MEMBER NASCIMENTO: But in this letter here, it

Page 24

1 says she drove her own truck with coolers on it.  
 2 MR. KIM: No. That's Ms. Kuailani. And she  
 3 stayed the weekend, that's why she took the truck, and they  
 4 asked her to bring ice. So Ms. Kuailani did that. And her  
 5 husband took her out.  
 6 MEMBER YABUTA: I had the same question as  
 7 Mr. Kikuchi, so --  
 8 MR. KIM: Okay. Any further questions?  
 9 VICE-CHAIR FRANCO: If I -- if there is any  
 10 conflict of interest, I see, you know, none at this point,  
 11 it's just as a matter of what is common practice in your  
 12 department, if you're a prosecuting attorney, to receive  
 13 honorariums on a regular basis. If not, then --  
 14 MR. KIM: This is a first. We've never had to  
 15 decide whether or not to accept it or not accept it. They  
 16 were there, they were leaving and they said, "Hey, wait,  
 17 wait, wait, before you go, you have to sign for this." And  
 18 so she signed for it and then thought better of it and  
 19 reported it to me. And I've never encountered this issue  
 20 with respect to our Department and receiving an honorarium.  
 21 VICE-CHAIR FRANCO: They're doing County business,  
 22 right?  
 23 MR. KIM: She was doing what she normally -- yeah.  
 24 VICE-CHAIR FRANCO: Yeah, she was representing the  
 25 County in this forum?

Page 25

1 MR. KIM: That's correct. That's correct.  
 2 VICE-CHAIR FRANCO: So is Ms. Gizelle --  
 3 MR. KIM: Gizelle Kauilani.  
 4 VICE-CHAIR FRANCO: One is a HGEA member and one  
 5 is not?  
 6 MR. KIM: That's correct.  
 7 CHAIR LEACH: For everyone's information, Mr. Kim  
 8 used to sit Ms. Joesting's seat as our Corporation Counsel  
 9 on the Board of Ethics. Welcome back.  
 10 VICE-CHAIR FRANCO: Got you in the hot seat now.  
 11 MR. KIM: Yeah. So I didn't know the answer.  
 12 MEMBER YABUTA: Okay. So, I'm sorry, this is a  
 13 Saturday that she -- she --  
 14 MR. KIM: Yeah. Ms. Jones is a salaried employee,  
 15 she does not earn any overtime. They do not earn any  
 16 overtime. They get what they get. And they work until the  
 17 job is done. For example, if they're preparing for a trial  
 18 and they have to work Friday, Saturday, Sunday nights, they  
 19 do what they have to do to represent the County and to do  
 20 their criminal trials. The same thing like every other  
 21 County attorney, Corporation Counsel, they -- they don't get  
 22 OT, either. That's expected. That's the professional  
 23 responsibility for that.  
 24 VICE-CHAIR FRANCO: Just -- just before we make a  
 25 decision, since this is kind of a new situation, you never

Page 26

1 encountered this before?  
 2 MR. KIM: Not for our department.  
 3 VICE-CHAIR FRANCO: Maybe we should inquire with  
 4 OHA as to their policy as to honorariums and -- you know,  
 5 I -- I cannot find any kind of special treatment, special  
 6 favors. It seems like it just came out of the goodness of  
 7 their heart, "Here's 250, here's 100, spend it the way you  
 8 want." And I cannot see any real special favor given to  
 9 OHA, because this is a public program, sponsored partly by  
 10 OHA.  
 11 MR. KIM: Yeah. I believe all the speakers that  
 12 went to this, who participated, were given honorariums. So  
 13 maybe because it was in Hana. I don't know.  
 14 VICE-CHAIR FRANCO: Yeah.  
 15 MR. KIM: But they -- they signed for it and  
 16 they -- they had to sign for it, I believe. They were asked  
 17 to sign for it. So that's the facts of the case. And if  
 18 you -- if you vote -- if you decide no, it looks like a  
 19 reward for services rendered, then the answer is no, then I  
 20 will let them know.  
 21 MEMBER YABUTA: I have a question. Okay. So  
 22 there's several police -- people from the Police Department,  
 23 which is County, right, they were given honorariums?  
 24 MR. KIM: Well, that, I don't know specifically.  
 25 They may not have signed for it. They may have left.

Page 27

1 MEMBER YABUTA: Oh, okay. And Kristi Keliikoa,  
 2 Maui County on Aging, I mean --  
 3 MR. KIM: She may have adjusted her schedule. She  
 4 may not have gotten an honorarium. That, I don't know.  
 5 Well, I know the speakers did. That's what I was told.  
 6 MEMBER YABUTA: Okay.  
 7 MR. KIM: But I am -- you know, I am just here for  
 8 my staff.  
 9 MEMBER KAHOOHANO HANO: One quick question.  
 10 CHAIR LEACH: Yes.  
 11 MEMBER KAHOOHANO HANO: John, so you guys got no  
 12 policy on this, then?  
 13 MR. KIM: No, regarding the honorariums.  
 14 MEMBER KAHOOHANO HANO: Because -- the reason why I  
 15 asked that is because, like as a business agent myself, I  
 16 cannot accept the kind of money, even if it's an honorarium  
 17 or whatever it is, because that's clear in our policy. But  
 18 I guess you guys have nothing. Maybe you guys got to make  
 19 one policy.  
 20 MR. KIM: Okay. I will take my direction from the  
 21 Board.  
 22 MEMBER KAHOOHANO HANO: I am thinking like she went  
 23 down there, part of her job. I mean, she shouldn't get  
 24 compensated for that, in my personal opinion, you know.  
 25 Because, I mean, yeah, you're not -- \$250, I'd find it hard

Page 28

1 to turn down myself, you know, but, I mean, you're there to  
 2 do a job and you do the job. And, yet, they give you the  
 3 money, you know, on top of that, you know, it's like -- I  
 4 don't know.

5 VICE-CHAIR FRANCO: It could set a dangerous  
 6 precedent.

7 MR. KIM: I understand. It does sound --

8 VICE-CHAIR FRANCO: Favoritism played to certain  
 9 people to get this reward.

10 MEMBER WESTFALL: My only concern would be it  
 11 doesn't seem like there's anything that -- that this is  
 12 okay. But what if another department, some guy went out and  
 13 did something and somebody gave him, it becomes  
 14 honorarium --

15 VICE-CHAIR FRANCO: Uncontrollable.

16 MEMBER WESTFALL: Maybe Linden can see if the  
 17 County somewhere else has a policy on accepting honorarium  
 18 or reward or whatever?

19 MS. JOESTING: Okay. I can do that.

20 MEMBER YABUTA: But if she had -- okay. Let's  
 21 just say she didn't even have her own car, right, she  
 22 doesn't own a vehicle, so she would have had to rent a  
 23 vehicle, anyway. I mean, in order for her to fulfill this  
 24 duty, she has to get to Hana somehow.

25 MR. KIM: That's true, but I did not know about

Page 29

1 this. She wasn't assigned. She went as part of the unit.  
 2 I guess she was asked after one of the presentations that  
 3 they did. Then they brought this up to me, "Hey, I got  
 4 this." And then with Gizelle, that came through her  
 5 director. And, basically, just overtime to participate in  
 6 that. So, you know, I told Gizelle, "How come you didn't  
 7 take a County vehicle?" And she said, "Oh, because we were  
 8 going to stay over the weekend and I wanted my husband to  
 9 drive. I didn't want to drive that. Plus, we were asked to  
 10 bring out ice." I said, "Okay, fine." So that, I can  
 11 understand.

12 MEMBER YABUTA: What about Tracy Jones?

13 MR. KIM: Ms. Jones didn't tell me. I didn't know  
 14 until after the fact. So if she had told me earlier, I  
 15 would have told her, "Take our vehicle," because we -- we do  
 16 have four-wheel drives.

17 MEMBER YABUTA: Okay. And there would have been a  
 18 vehicle for her to --

19 MR. KIM: Oh, yeah. No problem.

20 CHAIR LEACH: When the honorarium was given, was  
 21 that for being a speaker or for her expenses to get to the  
 22 conference?

23 MR. KIM: I believe it was just a fee given to her  
 24 as a speaker. I think most of the speakers got an  
 25 honorarium.

Page 30

1 CHAIR LEACH: Okay. If it's okay with the Board,  
 2 we can do a vote now or we can wait until the next meeting,  
 3 get some more information on -- I'd like to also know, the  
 4 honorarium through OHA, have they given those to people on  
 5 Oahu and how the Ethics Commission, State Ethics Commission,  
 6 or Oahu, how they look at that, if there's precedent there.  
 7 I think we need just to get a little more information before  
 8 we set a precedent saying it's okay or not. Sydney.

9 MEMBER KIKUCHI: Can I just make a comment? In  
 10 the past, at the PD, we've had a similar situation. And if  
 11 they're working, they're already being compensated. In this  
 12 particular case, that was her personal decision to rent the  
 13 vehicle. She didn't have to. She probably should have gone  
 14 through John or the staff to get approval. And this  
 15 probably wouldn't be even an issue.

16 But number two, the honorarium, like I said, you  
 17 are setting an extremely dangerous precedent if you say it's  
 18 okay because there's other non -- I mean, salaried employees  
 19 within the whole County system that go out and speak on a  
 20 regular basis.

21 And the other part is that when we had someone  
 22 insist that they wanted to give something, we made them  
 23 write it out to the department, write the check out to the  
 24 department. And the department can accept it.

25 MR. KIM: For example, we had -- a family member

Page 31

1 of a murder victim every year sent the office, to the  
 2 prosecutor, but then it was actually spread out to the  
 3 office, as a gift to the department. And that would be  
 4 fine. In this case, it's not a gift, but I guess it was  
 5 just labeled that. But if you believe that it appears to be  
 6 and it smells like it and it sounds like a reward, then  
 7 we're done. If you believe the honorarium for services  
 8 rendered is a reward to the person doing it, then if you  
 9 render that opinion, that's -- that's pretty clear-cut to me  
 10 that, no, we're not going to accept it. And then I don't  
 11 have to make a policy. I just say that, "Look, the Board  
 12 feels that honorariums in this case when you're compensated  
 13 employee is a reward for your services." Then we're done,  
 14 if that helps.

15 VICE-CHAIR FRANCO: Mr. Chair, I recommend that we  
 16 get more information from various departments in the County  
 17 how they handle this situation. Like Mike said, check with  
 18 OHA.

19 MEMBER WESTFALL: Just within the County. I am  
 20 sure -- you know, Sydney said it, everyone said it. Other  
 21 departments, other people are going out and speaking on  
 22 different topics and --

23 VICE-CHAIR FRANCO: I can understand honorariums  
 24 for like, you know, retired people and when like President  
 25 Clinton, when he goes on speaking tours, that's an

Page 32



1 honorarium, you know. I never heard of an honorarium for an  
2 employee, but --  
3 MS. JOESTING: Mr. Chair, could we talk about this  
4 in Executive Session?  
5 CHAIR LEACH: Yes.  
6 MS. JOESTING: Great.  
7 CHAIR LEACH: Thank you, Mr. Kim.  
8 MR. KIM: Okay. Thank you.  
9 CHAIR LEACH: We're going to defer to our next  
10 meeting and have some more information and we'll talk.  
11 MS. JOESTING: Can we talk about it in Executive  
12 Session today?  
13 CHAIR LEACH: Yes.  
14 MS. JOESTING: Okay.  
15 CHAIR LEACH: We'll do that. Okay. Thank you.  
16 Next Agenda Item, 5f. We have three requests from three  
17 Councilmembers about an educational workshop from the Coral  
18 Reef Initiative. And Councilmember Victorino has to leave  
19 at 1:00, so I think we'll be okay on time for that. I will  
20 give everyone just a brief second to review. Okay.  
21 Mr. Victorino, if you can come up to the podium and if you'd  
22 like to comment.  
23 COUNCILMEMBER VICTORINO: Yes. Thank you very  
24 much. And good afternoon -- or I should say good morning.  
25 We're still not in the afternoon. I am pushing the day

Page 33

1 along. And let me say it's strange to be on this side of  
2 the podium, let me be honest. I am used to sitting there  
3 listening to someone else. And, also, I will say thank you  
4 for your judicious and wonderful service you provide to the  
5 County. You know, it helps us an awful lot, where we're at.  
6 And, hopefully, others understand, by what you do, we keep  
7 everything "above board." And that's very, very important.  
8 For us, this request for an advisory opinion came  
9 from the three Councilmembers who participated in an outing  
10 with the Reef Initiative. We were asked to come out. It  
11 was based upon an educational tour. And what happened was,  
12 upon arrival, just to -- you know, the letter tells you most  
13 of the specifics, but I just going to give you the general  
14 occurrence of the day. We arrived at Lahaina Harbor. We  
15 were met. We got up on the boat and were given an overview  
16 on what we -- the day was going to be like. Upon that being  
17 completed, we then set sail from Lahaina Harbor to Olowalu.  
18 And during that period of sailing, we had a number of  
19 experts in various areas speak -- from NOAA and others, to  
20 speak to us on various initiatives and various situations  
21 that were occurring within our ocean area and as far as our  
22 reefs are concerned.  
23 Upon arriving at Olowalu, some of us ventured into  
24 the water, myself included. I think I drank more water than  
25 I -- than I should have, but that's okay. I hadn't gone

Page 34

1 snorkeling in like seven or eight years, you know, so -- you  
2 know how that goes, right, you remember how to do it, but  
3 just getting there is not easy. But, anyhow, was taken to  
4 certain areas by some of the guides to show us some of the  
5 stressed reefs and some of the recovering reefs within the  
6 Olowalu area.  
7 Upon that being completed, we returned to the --  
8 to the boat, turned around and went from Olowalu to  
9 Kahekili, which, for some of you, that's the old West Maui  
10 airport area right outside of Kaanapali Ocean Resorts.  
11 Again, we entered the water, you know, went around the area.  
12 That one was a little bit longer -- longer trip over and we  
13 spent about 45 minutes, almost an hour in the water,  
14 reviewing, because that area had many more issues. And so  
15 they took us even further and explained what -- what was  
16 happening.  
17 Upon that being completed, we came back and then  
18 they had other presentations. But even when we went over  
19 from Olowalu to Kahekili, we had presentations given to us  
20 by the various entities that were on the ship.  
21 So the day was an educational day for us -- for  
22 myself. And I won't speak for others. It was an  
23 opportunity to really get a hands-on in-the-water view of  
24 what was happening. And that was the whole intent of it.  
25 For most -- for myself, personally, the reason I

Page 35

1 asked for the advisory, when I was told that this could be  
2 considered a gift or we should pay for it -- I have no  
3 problem with that. I really have no problem either way.  
4 However, we wanted to make sure, in the future, for other  
5 Councilmembers, and other -- just like what happened here,  
6 that we have an opinion so that we know if we endeavor in  
7 something like this, that if we have to pay, fine, if it is  
8 considered educational, fine, or any other rational decision  
9 that you might come up with.  
10 So if you have any questions, I am open at this  
11 time.  
12 VICE-CHAIR FRANCO: Councilman Victorino, I was  
13 wondering, in your opinion, was there any value to you as a  
14 member of the Council to attend this? You said that you  
15 went in the water. What was your findings, and you felt  
16 that this was worthwhile doing?  
17 COUNCILMEMBER VICTORINO: Absolutely. I mean, you  
18 can -- even with videos, you can see so much. But once you  
19 enter the water, for me, it's the old cliché, a picture is  
20 worth 1,000 words, you feel it, you touch it, you see it.  
21 And so for myself -- and I won't speak for anybody else --  
22 for myself, it was very, very enlightening. And I hadn't --  
23 like I said, I hadn't gone snorkeling for seven, eight  
24 years. And I hadn't been in the Olowalu area for almost 20  
25 years, I mean diving, you know. So we used to go out there,

Page 36

1 we used to go spearfishing and all that, off the point, but  
2 I hadn't done it for over 20 years. So, again, it was -- it  
3 was really a dramatic educational opportunity. You got to  
4 see it. And, of course, I drank enough water so I tasted  
5 it, but, really, it was really, really, for me, very  
6 enlightening. And so I would encourage any Councilmember to  
7 do it, you know. So I want to make sure that, for future  
8 Councilmembers or for future officials, because we had DLNR,  
9 we had a State senator there with House representatives  
10 there, we had a number of people that participated,  
11 officials from other agencies and other walks of government.  
12 So, you know, I don't know how that would affect them, but I  
13 am here concerned about what -- the Councilmembers, the  
14 three of us, what you folks feel is appropriate.  
15 CHAIR LEACH: Thank you. I have a couple  
16 questions.  
17 COUNCILMEMBER VICTORINO: Sure.  
18 CHAIR LEACH: Within your Council operating  
19 budget, could you expense this item as part of doing your  
20 Council work if you -- do you have that option?  
21 COUNCILMEMBER VICTORINO: We have that option. We  
22 have to have pre-approval from the Council Chair, you know.  
23 She must -- or whoever the Council Chair is must approve any  
24 expenditure for any educational opportunities, any travel  
25 that we may be doing, on behalf of our office, any of our

Page 37

1 committees or for the Council itself. So, yes, I am going  
2 to say at this point that question would be answered yes.  
3 CHAIR LEACH: Then, also, you look at this more as  
4 an educational gathering experience, not really a perk to go  
5 snorkeling?  
6 COUNCILMEMBER VICTORINO: Well, if you heard how  
7 many times I gone snorkeling in the last 20 years, you would  
8 understand yes, absolutely, this was educational. And I --  
9 and I would encourage -- I would encourage anyone in this  
10 room, if you had an opportunity to get out there, because,  
11 again, when you touch it, you feel it, you drink it,  
12 whatever you may do, you really got a true sense of what is  
13 happening.  
14 CHAIR LEACH: And the organization that was part  
15 of this, the coral reef alliance, West Maui Ridge to Reef  
16 Initiative, Maui Division of Aquatic Resources, do they  
17 lobby the -- the Council for their agenda?  
18 COUNCILMEMBER VICTORINO: Well, I've got to say,  
19 yes, to a point.  
20 CHAIR LEACH: Formally? I mean formally.  
21 COUNCILMEMBER VICTORINO: Formally. They've come  
22 to speak to us about different issues, you know, about the  
23 stressing of the reef, the outfall from our sewer treatment  
24 plants, the -- you know, the injection wells. So, yes, they  
25 do come to us. We have very little control other than, you

Page 38

1 know, like you say, for outfall in our injection wells. We  
2 don't have any other control as far as -- you know, the  
3 State, actually, from the vegetation line out is really the  
4 controlling interest. And then the Coast Guard, you know,  
5 two miles out. And, you know, there's different entities.  
6 So I want to be specific on the laws and how they're  
7 governed, but they've got to talk to us, yes. I cannot say  
8 they've never come before us. They never come -- I have not  
9 heard of them coming to lobby for money, but they come to  
10 lobby different issues to help us, you know, with -- again,  
11 I go back to environmental management and the injection  
12 wells and the outfall. That's, basically, where they've  
13 come and seen us through the years.  
14 CHAIR LEACH: Educational. And then my last  
15 question --  
16 COUNCILMEMBER VICTORINO: Sure.  
17 CHAIR LEACH: -- Mr. Victorino. And thank you for  
18 your service to the County, too.  
19 COUNCILMEMBER VICTORINO: Welcome.  
20 CHAIR LEACH: If there were a majority of the  
21 Council people on this boat trip, could you constitute that  
22 as a quorum or part of the sunshine laws?  
23 COUNCILMEMBER VICTORINO: The way the Sunshine Law  
24 is set, if there is four or less of us on it, it's okay. If  
25 five or more, it would not be allowed. So that's the

Page 39

1 benchmark, five. And so what we've done is if there is a  
2 public forum, for example, we're now on a -- most of us  
3 going to be leaving tonight to the NACo conference. So  
4 there's some general sessions for which we all sit there, we  
5 all sit in the same room, not necessarily together, but all  
6 sit in the same room. That is considered informational,  
7 Sunshine Law says okay. However, when we attend meetings,  
8 when we attend different conferrees or seminars, which may  
9 have some judicious -- or some jurisdiction back here or  
10 some premise when we return, then, if there's more than two  
11 of us, we have to make a report. If more than four of us  
12 walk into the room, somebody has to leave. So we've tried  
13 to balance the Sunshine Law in -- in the manner that is  
14 prescribed by law and not to overstep our bounds. It really  
15 gets difficult when you have a group and you want to listen  
16 to all the public's testimony, but it's not a function of  
17 the County or the Council, and then we have to have someone  
18 leave. So we been pretty good about saying, you know, to  
19 each other, "Are you going? Are you going?" So if we know  
20 that four are going, the fifth person won't go. That way,  
21 we won't have that situation.  
22 CHAIR LEACH: Sydney.  
23 MEMBER KIKUCHI: The entire Council was invited,  
24 correct?  
25 COUNCILMEMBER VICTORINO: I am going to say, yes,

Page 40

1 without knowing better. Erin, do you know? They were?  
2 Okay, yes.  
3 MEMBER KIKUCHI: And only the three of you  
4 attended?  
5 COUNCILMEMBER VICTORINO: Chose to go, yes.  
6 MEMBER KIKUCHI: Any other of the attendees, did  
7 they have to pay anything? Anybody else have to pay  
8 anything, do you know that offhand?  
9 COUNCILMEMBER VICTORINO: I don't know that. No.  
10 I cannot answer that. I apologize.  
11 MEMBER KIKUCHI: As far as you know, though,  
12 everything was free for every attendee?  
13 COUNCILMEMBER VICTORINO: As far as I know, yeah,  
14 but I cannot say that for a fact.  
15 MEMBER KIKUCHI: Okay.  
16 COUNCILMEMBER VICTORINO: You know, we would have  
17 to go back and check.  
18 MEMBER KIKUCHI: I notice it says, on the bottom,  
19 "By invitation only." So if someone didn't answer the  
20 invitation, they would have sent out another invitation to  
21 someone else to attend?  
22 COUNCILMEMBER VICTORINO: Again, I am not able to  
23 answer that question. I really don't know.  
24 MEMBER KIKUCHI: Okay.  
25 CHAIR LEACH: Under your current understanding of

Page 41

1 the financial disclosures, would you report this in next  
2 year's financial disclosure as a gift?  
3 COUNCILMEMBER VICTORINO: Considering what we're  
4 discussing here today, I would, probably. I would probably,  
5 yes, you know. Like other -- you know, like in my  
6 disclosure, I did receive certain gifts for different  
7 events. And so if you're going -- and, again, depending on  
8 your opinion, again, that's going to be pivotal. Once your  
9 opinion is given, then I will move accordingly.  
10 MEMBER WESTFALL: I guess the language of the  
11 letter frames it as though it's a gift. And the two  
12 questions that I am asking you to -- to verify in these  
13 other questions is -- second paragraph, is essentially this  
14 was an in kind gift, that you folks have come up with a  
15 value of \$120 --  
16 COUNCILMEMBER VICTORINO: That's fair market,  
17 yeah, if someone came --  
18 MEMBER WESTFALL: -- to pay that.  
19 COUNCILMEMBER VICTORINO: Uh-huh.  
20 MEMBER WESTFALL: The second question is, assuming  
21 it's a gift, under the Charter, would it be considered a  
22 prohibitive gift? That's the second paragraph in the back.  
23 COUNCILMEMBER VICTORINO: Yes. Okay.  
24 MEMBER WESTFALL: So those are the two questions  
25 that you're raising?

Page 42

1 COUNCILMEMBER VICTORINO: We're raising, yes,  
2 absolutely. Again, thank you for that clarification  
3 because, again, for us, we went in as educational, but then  
4 when all of this was brought up, those were the specific  
5 questions that we were asked to ask.  
6 MEMBER YABUTA: Excuse me. I think she had a --  
7 COUNCILMEMBER VICTORINO: You want to say  
8 something, Erin? I'm sorry.  
9 MS. FLEMING: I just wanted to add in relation to  
10 the invitation part.  
11 MS. JOESTING: Could you introduce yourself?  
12 MS. FLEMING: Yes. My name is Erin Fleming. I am  
13 a Legislative Attorney with Office of Council Services. Our  
14 entire office was invited, I was invited, all staff members  
15 were invited. I didn't -- I didn't attend and I didn't  
16 RSVP. So I don't think it was a "If you don't attend, we'll  
17 invite someone else." It was just a blanket invitation to  
18 our whole office. And certain people took advantage of  
19 that, other people did not.  
20 CHAIR LEACH: Has your office received other  
21 invitations like this?  
22 MS. FLEMING: I am fairly new to the office.  
23 Since I've been there, this is the first -- first invitation  
24 I've seen.  
25 MEMBER WESTFALL: Maybe if you would re-frame that

Page 43

1 to Mike. Do you know, on the Council level, if you get  
2 invitations like this?  
3 COUNCILMEMBER VICTORINO: At times, yes. At  
4 times, from different organizations, you know. So -- and  
5 this would be one of them. We've had invitations from the  
6 various watershed programs, they've asked us if we wanted to  
7 attend and go up in the mountains and see what they do.  
8 And, again, for us, you know, sometimes this -- again, I go  
9 back to that statement, a picture is worth 1,000 words.  
10 They can tell us all the things they do, they can even show  
11 us pictures what they do, but once we arrive on the actual  
12 site and see what has been done, whew, we're taken by that,  
13 we're very impressed.  
14 MEMBER NASCIMENTO: Mike, did the other two  
15 Councilmembers jump in the water with you?  
16 COUNCILMEMBER VICTORINO: Yes, they did.  
17 MEMBER NASCIMENTO: Okay.  
18 COUNCILMEMBER VICTORINO: Not simultaneously, but  
19 we all jumped in the water. Yes, all the three  
20 Councilmembers did get in the water and do the tour of the  
21 reef areas.  
22 VICE-CHAIR FRANCO: We had a similar situation a  
23 few months back where somebody was paid for a trip. Do you  
24 remember, Mike? You were --  
25 MEMBER WESTFALL: Yeah.

Page 44

1 VICE-CHAIR FRANCO: -- Chair then.  
2 MEMBER WESTFALL: The fire guys.  
3 VICE-CHAIR FRANCO: We felt that if it had value  
4 to the County, it would be acceptable. So, Mike, I am going  
5 to ask you the same. What is the outcome, you think, of  
6 your participation? Do you have -- you say you had  
7 enlightenment as to the condition of the reef, but what  
8 specific action you going to take now since you attended  
9 this event?  
10 COUNCILMEMBER VICTORINO: Well, I don't think  
11 there's anything on the agenda at this time for any action  
12 in this area; however, in the -- there may be. And you're  
13 well aware of our injection well issue. And so that may  
14 again come up somewhere along the line, come back to us as a  
15 Council. So it would, at least in my mind, give me a better  
16 understanding of what these people are saying specifically  
17 to that issue. So I guess there's the value in that, you  
18 know. So that's what I would be banking on right here.  
19 CHAIR LEACH: Any more --  
20 VICE-CHAIR FRANCO: In responses of this event, it  
21 probably has an economic interest in preserving the reefs  
22 besides the ecological aspect of it. Because they get  
23 tourists out here, right?  
24 COUNCILMEMBER VICTORINO: And, again, I think  
25 economic benefit, if you're talking this situation, and the

Page 45

1 various entities that were involved, yes, for tourism, but  
2 it's also for the -- reef welfare for future generations of  
3 our families and our children that live here and fish here  
4 and have enjoyed the recreation that we have. So I think  
5 it's a dual purpose. I don't think it's just for the  
6 tourists. I really think it's for the residents that live  
7 here, and -- and what we will be looking forward to in the  
8 future, if we don't take corrective measures.  
9 CHAIR LEACH: Any other questions? It's 1:00.  
10 COUNCILMEMBER VICTORINO: Yes, I am a little late  
11 to my next one, but that's okay. Thank you very much,  
12 again, for all you guys' services. I truly appreciate it.  
13 Now I have a special appreciation of being on this side of  
14 the podium. Hadn't been here for so long, I forgot about  
15 it. God bless you all. Take care.  
16 VICE-CHAIR FRANCO: Good luck on your trip.  
17 COUNCILMEMBER VICTORINO: Thank you.  
18 CHAIR LEACH: Would anyone like to make a motion  
19 to start the discussion?  
20 MEMBER YABUTA: I have a question --  
21 MS. JOESTING: Go ahead.  
22 MEMBER YABUTA: -- to start the discussion.  
23 CHAIR LEACH: Or a motion to -- how would we word  
24 that?  
25 MS. JOESTING: Well, you don't have to have a

Page 46

1 motion to discuss.  
2 CHAIR LEACH: Okay, we'll open the discussion.  
3 MEMBER WESTFALL: I will throw in something. You  
4 know, looking -- this goes back to the memo on gifts and  
5 whatnot. Following what the State looks at, sort of  
6 Linden's word element, they look at the dollar amount, the  
7 benefit to the county, and then are there any matters that  
8 might suggest influence or something. I personally think  
9 the dollar amount is low enough that it kind of negates the  
10 issue of influence. And then certainly it seems like there  
11 was educational value to it. So I think it's okay. The  
12 only question I have is their first question which is this  
13 was an in kind gift and they're asking if they should pay it  
14 back. I am not sure if that would be within our purview, if  
15 you will.  
16 MEMBER YABUTA: I was wondering if someone could  
17 clarify for me. So they're invited, these people, so -- and  
18 Councilman Victorino is asking should his office pay that  
19 back. But the people that invited him, the coral reef  
20 alliance, didn't ask for that, did they? That's where I am  
21 confused. Is anyone asking for payment back?  
22 MS. JOESTING: No.  
23 MEMBER YABUTA: No. Okay. So they're just -- the  
24 Councilmembers are just wondering if they should pay them  
25 back? Didn't we mention earlier -- did someone mention

Page 47

1 earlier that they are occasionally asked to attend workshops  
2 and things like this --  
3 MS. JOESTING: Why did they ask this time?  
4 MEMBER YABUTA: Yeah.  
5 MEMBER WESTFALL: Yeah. What prompted this?  
6 MS. JOESTING: I think there was a discussion in  
7 the Office of Council Services about whether or not this  
8 would be considered a gift and if they should come to the  
9 Board for an advisory opinion. And they asked me, and I  
10 said I can't advise them, but they can come to the Board and  
11 ask for advice.  
12 VICE-CHAIR FRANCO: Well, I think, like what Mike  
13 said, since there's some benefit to the County, it's in line  
14 with their duties to look after the welfare of our island, I  
15 see no problem with any conflict. I see it's okay. And the  
16 dollar amount is not that high. I cannot see using this as  
17 a way to influence the Council people.  
18 MS. JOESTING: I will tell you there is a lawsuit  
19 that's been publicly filed about the injection wells that  
20 Councilmember referred to that you can anticipate that there  
21 would be discussion on it before the Council at some point  
22 if there is a discussion on settlement on what should we do  
23 about this case. So you can foresee that this would be a  
24 matter on the agenda of Council.  
25 MEMBER WESTFALL: Is it any of the parties that

Page 48

1 took them on this?  
2 MS. JOESTING: Yes.  
3 MEMBER WESTFALL: It is. Okay. That kind of  
4 makes it a little different.  
5 MS. JOESTING: Yes, it does.  
6 MEMBER WESTFALL: We didn't have that information  
7 until you just said it. So --  
8 VICE-CHAIR FRANCO: That's the only --  
9 MS. JOESTING: That's a matter of public record.  
10 MEMBER YABUTA: I am just wondering why they don't  
11 ask now and not before they go? I am just -- you know, I  
12 mean, just curious.  
13 MS. JOESTING: I would suggest you look at the  
14 date of the event and the date of the request.  
15 MEMBER YABUTA: Yeah. We hadn't met since then.  
16 Right. Okay.  
17 MEMBER KAHOOHANOHANO: I just -- the thing that  
18 bothers me is -- about this whole thing is not the amount,  
19 but it's -- you set a precedent for yourself because then  
20 every group that asks you to go out and look at their --  
21 what they trying to do, are you obligated to pay them back,  
22 too. I mean, you pay them back, you pay these guys \$120,  
23 and -- and you don't pay somebody, a farmer, that asked you  
24 to come up to his place, and I will take you on a tour of  
25 the county farms and, what do you call, see what we doing up

Page 49

1 here, so that you guys better educated and stuff. So you  
2 don't pay them back. I mean, where do you draw the line?  
3 You know, to me, I think the bigger problem would be why  
4 would he even get into something like this. You know, they  
5 ask you to come out, you accept the invitation, just go and  
6 do it because they -- their -- their benefit gonna be that  
7 you better educated and your benefit is that you are better  
8 educated about the whole situation. I don't think it really  
9 gives 'em a upper hand on anything, but I don't think that  
10 the ethics part of -- of that part, I don't think it's a  
11 problem at that. The only thing I am saying is that once  
12 you start it, how do you -- you pick each one and say, okay,  
13 we going to pay this one, not gonna pay that one, we would  
14 pay this one, but not that one. So that's the way I see the  
15 problem.  
16 VICE-CHAIR FRANCO: It's kind of like a failed  
17 discovery event. Like he said, it's probably the job to go  
18 out there and look at what is going on. It has some value.  
19 MEMBER WESTFALL: And since Linden gave that  
20 revelation, I take back what I said. It would seem that  
21 there was sort of an intent to influence because there is  
22 something coming up that's significant. It wasn't -- what  
23 am I trying to say -- just a non -- just a fun little event.  
24 They had -- it would appear they had some other purpose, so  
25 that sort of changes things.

Page 50

1 MS. JOESTING: May I ask a couple questions?  
2 Erin, can I ask you a couple questions?  
3 MS. FLEMING: Yeah.  
4 MS. JOESTING: Do you know if there was a Sunshine  
5 Law report done under HRS 92?  
6 MS. FLEMING: Yes, there was.  
7 MS. JOESTING: Would it be possible to get a copy  
8 of that?  
9 MS. FLEMING: Sure. I had two other points to  
10 add, if I may.  
11 MS. JOESTING: Yes.  
12 MS. FLEMING: The first was, we did discuss  
13 postponing this event, but, because it wasn't organized  
14 strictly for the Councilmembers and other people were  
15 invited and attended from other departments outside of the  
16 County, that wasn't -- that wasn't feasible.  
17 And then there was one other thing that I can't  
18 think of anymore.  
19 CHAIR LEACH: You said "we" were going to cancel  
20 the event. How did you become part of the "we?"  
21 MS. FLEMING: Just in our office, we discussed.  
22 When this issue came up, the question was asked by someone  
23 can we -- can we suggest that we move this so we can come to  
24 the Board of Ethics, ask beforehand, and then go on -- go on  
25 this educational workshop.

Page 51

1 CHAIR LEACH: Oh, they would change the date for  
2 the workshop.  
3 MS. FLEMING: Right. But because it wasn't  
4 exclusively organized for the Councilmembers, that just  
5 wasn't workable.  
6 VICE-CHAIR FRANCO: Are you aware that there's a  
7 lawsuit?  
8 MS. FLEMING: Oh, thank you. That was the second  
9 thing. Actually, in our -- in our request, on the second  
10 page, on the -- in the third paragraph, we did mention the  
11 lawsuit. So we were not trying to -- to hide that fact.  
12 MS. JOESTING: Do you know, by any chance, who the  
13 people were or the entities doing the presentations on the  
14 tour?  
15 MS. FLEMING: Mike, Councilmember Victorino,  
16 mentioned that NOAA was -- was one of the organizations that  
17 gave a presentation onboard. I am not exactly sure who was  
18 responsible for the other little workshops they had set up  
19 on the boat and who was guiding them through the coral  
20 reefs.  
21 VICE-CHAIR FRANCO: We got to look at the parties  
22 to the lawsuit to see who they are. If it's the same people  
23 that sponsored this event, then it kind of raises some  
24 questions and red flags just to the timing of what they were  
25 trying to achieve. So I think we should get more

Page 52

1 information concerning the lawsuit. Seems like it's tied  
2 in.  
3 MEMBER KAHOOHANOHANO: I would be interested to  
4 know what you were telling them in that excursion with  
5 reference to the lawsuit. I mean, you know, the -- the  
6 overall -- you know what I am getting at. I mean, whether  
7 you're trying to sway 'em one way or the other. I mean, to  
8 me, it's a very dangerous situation to get into. If you a  
9 public servant and, you know, you go on something like that  
10 with being very -- you know, not having any bad intentions  
11 or intentions to sway one way or the other, but, I mean, I  
12 just think you are putting yourself at risk when you do  
13 something like that. Because if I am in a situation, I look  
14 at it as a red flag because I know the big picture. I see  
15 the big picture. And I let 'em know. Just my opinion.  
16 MS. JOESTING: You had something else you wanted  
17 to offer?  
18 MS. FLEMING: Yes, one other thing. I did speak  
19 with Councilmember Cochran and Councilmember Couch. And  
20 because they weren't able to be here, they did run me  
21 through, you know, what happened, what happened on the -- on  
22 the tour. And they mentioned that they did -- they did show  
23 them where you could see bubbles coming up from the  
24 injection wells, but, beyond that, there was no discussion  
25 of the lawsuit at all. It was -- it was all about the coral

Page 53

1 reef health.  
2 CHAIR LEACH: Any more discussion?  
3 VICE-CHAIR FRANCO: Well, in face value, sounds  
4 like a good -- good event, you know, educated the Council  
5 people, but the time and the time of the lawsuit kind of  
6 raise a red flag. So --  
7 MEMBER WESTFALL: It doesn't appear to be neutral  
8 at this point. I think my first impression is this was sort  
9 of a neutral event.  
10 VICE-CHAIR FRANCO: Neutral, yeah.  
11 MEMBER WESTFALL: It wasn't. I guess, Linden, I  
12 had a question for you. You know, I don't think we've ever  
13 had on a financial disclosure anyone put in-kind gifts. I  
14 know the State campaign forms are pretty specific that you  
15 have to put in-kind gifts. So I don't -- so -- what am I  
16 asking? So would you agree that they don't have to put  
17 in-kind gifts on it, or --  
18 MS. JOESTING: I am not sure, actually. I didn't  
19 see the phrase "in kind" in the letter, so maybe I am not  
20 sure --  
21 MEMBER WESTFALL: Well, I guess what I am saying  
22 is they got a free event and somehow they're valuing that at  
23 \$120. So there was -- nobody asked them to pay. You know,  
24 who they would pay in the end, we don't know, the value  
25 would be at \$120.

Page 54

1 MS. JOESTING: Okay.  
2 MEMBER WESTFALL: They're describing it as a gift.  
3 They seem to think that they may have to record that on a  
4 financial disclosure form, but we haven't ever had anyone  
5 put "I got this in kind," or, you know, some -- free event  
6 or the value of this.  
7 MS. JOESTING: I think I've seen, before, people  
8 do that with the Lahaina Basketball Tournament in that  
9 section. They don't pay for the tickets, but they say  
10 Lahaina Basketball Tournament tickets, and the whole  
11 package, the estimated value would be \$200. So that --  
12 MEMBER WESTFALL: All right. That's better.  
13 That's good. All right. I take that back.  
14 CHAIR LEACH: I think that 120 is like the market  
15 value if you wanted to go on that boat trip.  
16 MS. JOESTING: Exactly.  
17 CHAIR LEACH: It would cost you 120.  
18 MEMBER WESTFALL: I guess my opinion is that's  
19 probably beyond us, whether they pay it back or not.  
20 CHAIR LEACH: Yeah.  
21 MEMBER WESTFALL: That's not our issue. The only  
22 issue is this -- the second question, whether this is an  
23 appropriate gift or not.  
24 MEMBER YABUTA: I just think that even though this  
25 was on the 31st of May -- when did they get this flyer? And

Page 55

1 then I agree with Mr. Kahoohanohano, you know what I mean.  
2 How often do the Councilmembers attend these educational  
3 events? Somebody, obviously, has to pay for it. I mean,  
4 the people that are putting on the events. I kind of think  
5 it's a CYA, but -- you know, not knowing what this watershed  
6 thing is about, really, it's just -- from what I hear, I  
7 mean, it just sounds like, you know, they just wanted to  
8 cover all bases by coming to the Ethics Commission.  
9 CHAIR LEACH: I think they get invited to a lot of  
10 educational events, you know, the nonprofits, the -- you  
11 know, I think this is just one where they said, well, let's  
12 get an opinion. Okay. We can either defer for more  
13 information to our next meeting or we can have a vote now  
14 requesting the advisory opinion.  
15 MEMBER YABUTA: I move that we vote now.  
16 CHAIR LEACH: Is there a second?  
17 VICE-CHAIR FRANCO: Second.  
18 MEMBER KAHOOHANOHANO: Second.  
19 CHAIR LEACH: Any more discussion? So, Dee Dee,  
20 your motion is that they could accept the gift for the  
21 educational --  
22 MEMBER YABUTA: I don't want to call it a gift.  
23 Is it a gift? I mean, is this considered a gift?  
24 CHAIR LEACH: They are asking.  
25 MEMBER YABUTA: I don't think that these people --

Page 56

1 well, I don't know, maybe other than Ms. Cochran -- normally  
2 go, you know, snorkeling or whatever. Right? I mean I  
3 don't think Councilmember Victorino and Councilmember Couch,  
4 you know, generally do that kind of thing. So I think that  
5 they -- they did it as a, you know, educational, to see what  
6 the other side is saying, or whatever, as their duties as  
7 Councilmembers.  
8 CHAIR LEACH: Can you craft that?  
9 MS. JOESTING: Well, if you folks make that  
10 decision.  
11 CHAIR LEACH: Any more discussion on that?  
12 MEMBER WESTFALL: Yeah, I would -- I sort of  
13 disagree with that. I think we've had a -- we've wrestled  
14 with this for some time, the definition of what is  
15 influence. And I don't think we've ever said it's  
16 something. This really seems to me like there's a pending  
17 lawsuit and, all of a sudden, they get invited to something.  
18 That -- that -- I am uncomfortable with that.  
19 MEMBER KAHOOHANOHANO: Me, too.  
20 MEMBER WESTFALL: I don't know if I -- you know, I  
21 am not making any allegations that somebody went over there  
22 and -- but it just seems a little too -- I think I would  
23 have tried to avoid it if I was in the same position given  
24 that this -- you know, the lawsuit. If there wasn't a  
25 lawsuit, then I don't think I'd have a problem. But that --

Page 57

1 you know, as I said, what the State looks at is, is there  
2 something before the committee, and if there is -- so --  
3 VICE-CHAIR FRANCO: You're trying to get more  
4 information, then, you want to be sure that there's no  
5 influence?  
6 MEMBER WESTFALL: I don't know about needing any  
7 more information. I mean, it's sort of -- it is -- it's an  
8 intuition. I guess what they're asking is just for an  
9 advisory opinion. They've already done it, so --  
10 VICE-CHAIR FRANCO: So the question is, are we  
11 going to consider this an in-kind gift or not, though,  
12 forget the idea of a possible influence.  
13 MEMBER WESTFALL: I guess the question is, is  
14 this -- I don't think there's a question that it wasn't a  
15 gift. I think they're saying it's a gift. The question is,  
16 is it a prohibitive gift. And by prohibited, was it a gift  
17 meant to influence or reward. And I am having a hard time  
18 getting beyond what the intent was, at some level,  
19 influence. It wasn't -- there's something else happening.  
20 There's two sides to it. It makes me a little nervous.  
21 MEMBER YABUTA: It looks that way. It does, it  
22 looks like that. I mean, I -- I kind of see them as  
23 lobbyists. But isn't every time they go on, you know, an  
24 educational -- you know, whether it's conference or  
25 whatever, event, it's some type of, you know, we're trying

Page 58

1 to influence you to, you know, see our side of it.  
2 CHAIR LEACH: Well, there's influence and then  
3 there's education.  
4 MEMBER WESTFALL: What I am looking at, I can see  
5 like they're talking about the watershed people inviting  
6 them up. That seems a little more neutral. There's not a  
7 lawsuit sitting behind. That seems like a pretty major  
8 event. So I am just uncomfortable. You can vote however  
9 you want, not just because I am in disagreement.  
10 CHAIR LEACH: Just procedural, Dee Dee has a  
11 motion. And was there a second to her motion?  
12 MEMBER KAHOOHANOHANO: I seconded it.  
13 CHAIR LEACH: You seconded it. Then we're in  
14 discussion on that motion. Is there any more discussion?  
15 Then I will call for the vote.  
16 MEMBER KAHOOHANOHANO: I'd just like to put in my  
17 two cents again. I agree with Mike. I mean, this thing  
18 is -- has badness written all over it. And I just think  
19 that I -- I don't want to accuse anybody, I don't want to  
20 say that they -- they out of line, but it seems that way  
21 very much, that it was meant to influence people. Because  
22 education -- when you educate somebody, you only educating  
23 them on what you telling 'em, you know. So that -- that  
24 part of it, that kind of makes me send up a red flag on,  
25 too, because it's like it's not an objective education, it's

Page 59

1 an education on what's happening in their opinion. So, I  
2 mean, I think it's -- personally, I think it's bad. I mean,  
3 they should never have gone on this thing.  
4 MEMBER YABUTA: But what does that have to do with  
5 \$120 that -- that's the issue? I mean, I agree that I think  
6 they were being lobbied, basically, but so is this -- maybe  
7 I don't understand what a gift is in this case.  
8 MEMBER KAHOOHANOHANO: I think it was a gift.  
9 MEMBER YABUTA: It was a gift? Because I don't  
10 think Victorino normally goes out and goes snorkeling, you  
11 know.  
12 VICE-CHAIR FRANCO: Probably the better action,  
13 because there's this cloud sitting here on influence and  
14 lobbying, they should just pay for the event. And,  
15 therefore, they're not gonna be in a situation where -- you  
16 know, they might be -- not coerced, but swayed in a certain  
17 direction considering the lawsuit pending. And that will  
18 indicate that possibility of undue influence. And he said  
19 he's willing to pay for it.  
20 MEMBER KAHOOHANOHANO: You know what, it seems  
21 like they're doing -- kind of cover their tracks. Okay.  
22 That, basically, they did this thing, then they thought, oh,  
23 boy, okay, lawsuit pending and all that, so, okay, but if we  
24 pay for the event, then it's not a gift. You know, so I --  
25 I mean, you're right. I mean, the issue is the \$120, should

Page 60

1 they pay it or not, is it considered a gift or not. I think  
2 it is a gift. I think they made a mistake. I think they  
3 went on this thing and then now they trying to pay for it so  
4 that it's -- they cannot be accused of being influenced.  
5 MEMBER NASCIMENTO: But the seed has already been  
6 planted.  
7 MEMBER KAHOOHANOHANO: Yes. The deed has already  
8 been done. Exactly.  
9 VICE-CHAIR FRANCO: Well, maybe in the future they  
10 should analyze the situation better and make sure there's no  
11 pending lawsuits or any undue influence. But in this case,  
12 I would say -- can you restate your motion?  
13 MEMBER YABUTA: I might retract it. Could I do  
14 that? I retract my motion. I -- I take it back or I cancel  
15 my motion. Can I cancel my motion?  
16 MEMBER WESTFALL: Let Sydney chime in here.  
17 MEMBER KIKUCHI: I don't want to be cynical about  
18 this. I think one of the things we got to remember is the  
19 Councilmembers' state of mind on how they viewed what they  
20 were being offered. I think -- I think it's very -- you  
21 know, it's hard to prove that they intentionally did it,  
22 knowing -- or knowingly or whatever, recklessly or whatever.  
23 But I think after they got -- they went through the --  
24 and -- well, let me backtrack. I believe it was  
25 educational. I'd like to believe it was educational. And

Page 61

1 whether they were lobbying or not, I -- I believe it was  
2 educational. Like I said, I don't want to be cynical, but  
3 maybe in hindsight, in hindsight, after they went on the  
4 thing, they -- they remembered or recognized that there is a  
5 lawsuit and it might not have been a good idea to go with  
6 this particular group that promoted the activity. So like I  
7 said, I don't want to be cynical about it, so I am trying  
8 give them the benefit of the doubt that, in hindsight, maybe  
9 they're realizing that, hey, maybe we exercised bad  
10 judgment.  
11 I don't know if they should pay for it. If they  
12 want to pay for it, they want to do that, I think they  
13 should do it as a -- as a three -- three of them should --  
14 maybe the two -- the three of them should pay it back, not  
15 just one. So that's -- that's my particular outlook on it.  
16 MEMBER YABUTA: Could they have even paid it back  
17 on their own without even notifying the Ethics committee?  
18 CHAIR LEACH: They could have.  
19 MEMBER WESTFALL: Yeah. If they paid for it and  
20 there's no gift, right?  
21 MEMBER KAHOOHANOHANO: That's a good point.  
22 MEMBER YABUTA: So --  
23 CHAIR LEACH: Is it Erin?  
24 MS. JOESTING: Erin.  
25 CHAIR LEACH: Erin, can I ask you, when did the

Page 62

1 request for this advisory opinion come up or what was the  
2 genesis of that?  
3 MS. FLEMING: We had internal office discussions,  
4 not with Councilmembers, just with our Office of Council  
5 Services staff, prior to -- to this event taking place. It  
6 started out as Sunshine Law concerns, so we were trying to  
7 negotiate those. And then we also were thinking about --  
8 these ethical concerns also came up.  
9 CHAIR LEACH: And the request was after the fact?  
10 MS. FLEMING: Correct.  
11 CHAIR LEACH: Okay. Any more questions?  
12 MS. FLEMING: Just to reiterate, it was just a  
13 situation where by the time that we -- we thought about  
14 these ethical problems, there wasn't time to come to the  
15 Board before the event was taking place.  
16 CHAIR LEACH: Was the undue influence or lawsuit  
17 brought up? Was that part of the discussion? Or was it  
18 mainly how do we handle the \$120 gift?  
19 MS. FLEMING: We also discussed, you know, there  
20 was a pending lawsuit.  
21 CHAIR LEACH: Okay.  
22 MS. FLEMING: But -- but Councilmembers, you know,  
23 they are often invited to these kinds of events. They want  
24 to be able to freely attend them to learn about issues. So  
25 they thought this was an appropriate event to attend.

Page 63

1 CHAIR LEACH: Sydney.  
2 MEMBER KIKUCHI: That was my question, if it  
3 was -- if the ethical questions or dilemma that you were  
4 discussing, your group was discussing, was aware of the fact  
5 there was a lawsuit, a pending lawsuit?  
6 MS. FLEMING: We were concerned about that for  
7 Sunshine Law reasons but not so much for the ethical  
8 concerns, given that they could -- you know, they could pay  
9 to attend something similar and then it wouldn't be a  
10 problem, then the problem goes away in terms of receiving a  
11 gift.  
12 MEMBER KIKUCHI: Was that -- was that relayed to  
13 the Councilmembers?  
14 MS. FLEMING: Yeah, we had these discussion with  
15 the Councilmembers.  
16 MEMBER NASCIMENTO: So the Councilmembers knew  
17 that there was a pending lawsuit before they went on this  
18 trip?  
19 MS. FLEMING: Yes, they did. I think the --  
20 CHAIR LEACH: We don't know if these three groups  
21 that were sponsoring are a party of that lawsuit. It could  
22 be more of a -- someone else.  
23 MS. FLEMING: Right. I don't -- I don't know a  
24 lot about the pending lawsuit. I do know, again, there were  
25 other -- other groups involved other than just

Page 64



1 Councilmembers. This wasn't organized exclusively for them.  
 2 A lot of private individuals attended, other State  
 3 government officials attended.  
 4 MS. JOESTING: I don't want us to press you to  
 5 reveal your attorney-client advice because that would  
 6 fracture that privilege, but certainly whatever factual  
 7 information you may have relayed to them, assuming that you  
 8 can share in open session.  
 9 VICE-CHAIR FRANCO: I will make the motion that  
 10 they pay for it. It eliminates all the worries about undue  
 11 influence. I will make that as a motion. And get on with  
 12 it.  
 13 MS. JOESTING: In lieu of an advisory opinion,  
 14 just send a letter to them suggesting they pay for it?  
 15 VICE-CHAIR FRANCO: Yeah.  
 16 MEMBER KAHOOHANO HANO: Out of their own pockets.  
 17 VICE-CHAIR FRANCO: Out of their own pocket, each  
 18 one of them.  
 19 MEMBER KAHOOHANO HANO: I mean, it doesn't have to  
 20 come out of the office. I think you still stand the risk  
 21 of -- I mean, you still stepping in it, right, because they  
 22 paying from County funds, hey, your office's budget to pay  
 23 for something. I mean, pay for 'em out of your own pocket,  
 24 you don't have any problem with it.  
 25 VICE-CHAIR FRANCO: I don't have any personal

Page 65

1 problems.  
 2 CHAIR LEACH: Dee Dee's withdrew her motion. Now  
 3 we have a new motion on the table. Is there a second to  
 4 Norm's --  
 5 MEMBER NASCIMENTO: I second it.  
 6 CHAIR LEACH: Herman seconds it. Okay.  
 7 Discussion on his motion?  
 8 MEMBER WESTFALL: I would ask Linden, is that  
 9 something we could do? I guess we're only making a  
 10 suggestion.  
 11 MEMBER KAHOOHANO HANO: It's our opinion.  
 12 VICE-CHAIR FRANCO: It's an advisory opinion.  
 13 MS. JOESTING: Well, I can discuss your powers,  
 14 duties and abilities within Executive Session, but if I  
 15 discussed it in open session, then that --  
 16 MEMBER WESTFALL: That's fine.  
 17 MS. JOESTING: I'd be more than happy to do it.  
 18 MEMBER WESTFALL: We'll take this in a few  
 19 minutes. I guess we're almost there.  
 20 MEMBER KIKUCHI: I think, you know, it already  
 21 happened. Whether they pay \$120 or not, if it's a lawsuit  
 22 and they want to be -- they going to be bashed, they going  
 23 to be bashed, it's gonna be brought up, no matter what. So  
 24 paying \$120 just to say I paid it, in hindsight, I paid it,  
 25 you already -- you already did it already, so it doesn't

Page 66

1 matter. To me, anyway, it doesn't matter.  
 2 MEMBER WESTFALL: I guess I -- I look at it as  
 3 though they're only asking us for an advisory opinion. So  
 4 this isn't a complaint. So in my mind, it tends to cross  
 5 the line to where this really looks like the intent was to  
 6 influence. So all they're asking is for an opinion. And  
 7 that would be my opinion. I don't have -- I am not at the  
 8 next stage where this is a complaint and I would have to go  
 9 prove that. So if they're asking my opinion of what it  
 10 looks like, what they're presenting, then I would say that  
 11 there was some influence. And at this point, like what  
 12 Sydney is saying, it's a little too late to go pay for it to  
 13 kind of wipe it away.  
 14 VICE-CHAIR FRANCO: Well, I think it's just how  
 15 the public would perceive this event. And we're always  
 16 looking at, you know, the possible hint of influence. But  
 17 the fact that mea culpa, mea culpa, you know, they coming  
 18 back and saying forgive us, you know -- and the only way I  
 19 can say give them forgiveness is penance. The penance is  
 20 pay it. Pay it and get on with it, right? Throw the holy  
 21 water and say, "Don't do it anymore," you know. That's the  
 22 way I see it. I mean, you know, it can't change, cannot go  
 23 back. It's done, but, you know, time for pay the penance.  
 24 MEMBER YABUTA: Are they going to bring this up  
 25 every time they get invited to an event? You know, I mean,

Page 67

1 whether there -- it's a controversial event or not or, you  
 2 know --  
 3 MS. JOESTING: I think if you address that in an  
 4 advisory opinion, you can make it clear in the discussion  
 5 that the reason this is a problem is because there is a  
 6 pending lawsuit, it was accepted, the amount of money, et  
 7 cetera, and their positions of authority over what to do  
 8 about the lawsuit. That's where the crux lies. Whereas  
 9 other people who may have gone, who were employees of DLNR  
 10 or employees of other departments, who don't influence  
 11 decision-making, will not have the same problem as people in  
 12 their position.  
 13 CHAIR LEACH: How about this? That we issue an  
 14 advisory opinion, because they were asking, that it does  
 15 look like it was a gift intended to influence. And then the  
 16 part about them paying back, you know, that's up to them.  
 17 That's not up to us to --  
 18 MEMBER WESTFALL: And I wanted just to add to your  
 19 thing. You know, I want to be clear personally as well as  
 20 maybe -- no one is making an allegation that anything was  
 21 done to influence them. What we're suggesting is -- their  
 22 question is, what does this look like. And so a reasonable  
 23 person might say you got on the boat with some people that  
 24 are suing, that's not a -- that doesn't look -- so there's  
 25 no allegation that anything occurred.

Page 68

1 CHAIR LEACH: And I think the important item that  
2 we're all going around and back to is the lawsuit part. And  
3 that wasn't addressed.  
4 MS. JOESTING: It was brought up in their letter.  
5 It's that third paragraph.  
6 CHAIR LEACH: Oh, right. Yeah. I'm sorry. I  
7 can't make a motion as a Chair.  
8 MEMBER YABUTA: Doesn't Norman have a motion?  
9 MS. JOESTING: He does.  
10 CHAIR LEACH: Norman's motion was?  
11 VICE-CHAIR FRANCO: To eliminate the possibility  
12 of undue influence, in retrospect, they should have come to  
13 us first. Just the timing of the event was to make it  
14 impossible. So we want to be sure in that advisory that,  
15 you know, it's just an advisory, to eliminate the  
16 possibility of undue influence because of a pending lawsuit,  
17 three Council people should pay out of their own funds.  
18 It's advisory. It's up to them. Is that reasonable?  
19 MS. JOESTING: That's your motion.  
20 VICE-CHAIR FRANCO: That's my motion.  
21 CHAIR LEACH: Is there a second?  
22 MEMBER KAHOOHANOHANO: Second.  
23 MEMBER NASCIMENTO: I will second.  
24 CHAIR LEACH: Any more discussion? Okay. Linden,  
25 do you want to restate the motion before our vote?

Page 69

1 MEMBER WESTFALL: I'm sorry. Just point of order.  
2 So you mentioned sort of another motion. So we're going to  
3 vote on his first and then come back to yours, or --  
4 CHAIR LEACH: Well, I couldn't really make a  
5 motion. Mine was more of a discussion item.  
6 MS. JOESTING: There's only one motion pending.  
7 MEMBER WESTFALL: Okay. His, then?  
8 CHAIR LEACH: So do you want to have some  
9 discussion?  
10 MEMBER WESTFALL: No. I am -- I liked what you  
11 were saying a little better than Norman. No offense,  
12 Norman.  
13 VICE-CHAIR FRANCO: Call for the question.  
14 MS. JOESTING: You want me to restate it?  
15 CHAIR LEACH: Just restate it so we know.  
16 MS. JOESTING: Let's see if I can do this. The  
17 motion is that the Board of Ethics issue an advisory opinion  
18 that the educational -- or that the trip was -- had an  
19 appearance of attempting to influence the Councilmembers.  
20 And that the recommendation was that they pay the money back  
21 out of their personal funds for the fair market value of the  
22 trip. However, that the -- there was an appearance, but  
23 there was no evidence of actual wrongdoing.  
24 VICE-CHAIR FRANCO: Yeah.  
25 MEMBER KAHOOHANOHANO: That's why we get the --

Page 70

1 CHAIR LEACH: I will call the vote. Everyone just  
2 raise their hand aye or nay. So all in favor of that  
3 motion, raise their hand.  
4 MS. JOESTING: Mike, you have to keep it up so he  
5 can count.  
6 CHAIR LEACH: One, two, three, four, five.  
7 Opposed?  
8 MEMBER YABUTA: I am abstaining.  
9 CHAIR LEACH: One abstention. And, also, because  
10 it's an advisory opinion, we would need five votes in the  
11 affirmative?  
12 MS. JOESTING: Right.  
13 CHAIR LEACH: Because of the total number of  
14 Members. So that would -- yeah. Okay.  
15 MS. JOESTING: Is there anything, Syd, that you  
16 wanted to add?  
17 MEMBER KIKUCHI: No. Actually, like for me, I --  
18 what I already stated was I -- I thought it was educational.  
19 I think, in hindsight, they used bad judgment because they  
20 knew of the lawsuit, but I wouldn't tell them they have to  
21 pay back, I mean, that's -- that's up to them.  
22 VICE-CHAIR FRANCO: Yeah. It's only advisory.  
23 MEMBER KIKUCHI: It's up to them.  
24 VICE-CHAIR FRANCO: Yeah, you're right.  
25 MEMBER YABUTA: You know, Councilmember Victorino

Page 71

1 never said any of -- you know, like they were trying to  
2 influence us because of -- you know, he never mentioned any  
3 of that. And neither did the other two in their letters.  
4 So I think for us to say that in, you know, our findings,  
5 we're somewhat -- not overstepping, but -- how do you say  
6 it? It's like we're assuming -- I mean, it appears, you  
7 know, that there are certain -- there are appearances, like  
8 Mr. Westfall said, but -- and that's why I abstained.  
9 MEMBER KIKUCHI: Well, just -- just to add on. I  
10 think, you know, once again, it's really difficult to prove,  
11 even in criminal court, someone's state of mind. And just  
12 for us to say that you guys -- this is what you guys did or  
13 you were being influenced I don't think is really proper. I  
14 do believe, once again, in hindsight, maybe they realized,  
15 whatever. Maybe they weren't, I don't know, but I -- I  
16 don't think there's enough to say that they did wrong or --  
17 VICE-CHAIR FRANCO: We're not passing judgment,  
18 Sydney. We're just saying that to make sure that the public  
19 perceive this as strictly an educational event, and not  
20 because there's a economic value for the trip. It's their  
21 option if they want to pay or not. If I was in a similar  
22 position, I would say, "I will pay for it," then there's no  
23 hint of a possible influence type of an event or reason to  
24 persuade one way or the other.  
25 MEMBER KIKUCHI: No, I understand what you're

Page 72

1 saying.  
2 MEMBER WESTFALL: I will just continue to pile on  
3 here. The question they asked us, is this -- would it  
4 reasonably be interpreted that the gift was intended to  
5 influence. So their question is not did they do anything  
6 wrong, it's could somebody interpret that putting three guys  
7 on a boat and taking them out in the ocean for three hours  
8 was intended to kind of soften them up a little bit. I  
9 think a reasonable person might say yeah. And that's all  
10 we're saying.  
11 VICE-CHAIR FRANCO: That's right.  
12 MEMBER WESTFALL: We're not saying anything more  
13 than that.  
14 VICE-CHAIR FRANCO: Yeah, that's right. I have to  
15 be excused.  
16 CHAIR LEACH: Okay. Thank you.  
17 VICE-CHAIR FRANCO: I am taking therapy. You  
18 know, I had a quadruple bypass surgery about a month  
19 and-a-half ago. So -- and thank God I am still alive and  
20 can attend this meeting, but, at the hospital, they have a  
21 cardiac therapy I do Monday -- Monday, Wednesday and Friday.  
22 CHAIR LEACH: Thank you, Norman.  
23 VICE-CHAIR FRANCO: Thank you very much.  
24 Appreciate it. It was a great event. I wish I could eat  
25 some of that stuff, but can't. Thank you.

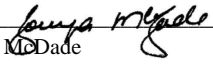
Page 73

1 CHAIR LEACH: Moving on, next Agenda Item Number  
2 6, Announcements, we have none.  
3 Our next scheduled meeting will be Wednesday,  
4 August 13th, at noon. That's the end of Regular Session.  
5 Does everyone wake to take a couple minutes break before we  
6 go into Executive Session? Okay. I will adjourn the  
7 meeting, open up Executive Session in a couple minutes.  
8 (Recess, 1:39 p.m. to 1:49 p.m.)  
9 CHAIR LEACH: Okay. We are now back in Regular  
10 Session.  
11 MR. MURAI: Good to see you all again.  
12 CHAIR LEACH: Thank you, Gary. Is there a motion  
13 to adjourn Regular Session? Is there a second?  
14 MEMBER KAHOOHANOHANO: Second.  
15 CHAIR LEACH: All in favor of adjourning the  
16 meeting, say "aye."  
17 (Response.)  
18 MS. JOESTING: No. Wait, wait. I'm sorry. There  
19 is something else that you wanted to address in Executive  
20 Session.  
21 CHAIR LEACH: Oh.  
22 MS. JOESTING: I'm sorry.  
23 CHAIR LEACH: What was that?  
24 MR. MURAI: You got to go back into Executive  
25 Session?

Page 74

1 CHAIR LEACH: We're going to go back into  
2 Executive Session.  
3 (Recess, 3:14 to 3:18 p.m.)  
4 CHAIR LEACH: We are out of Executive Session.  
5 We're back in Regular Session. Is there a motion to adjourn  
6 the Regular Session?  
7 MEMBER KAHOOHANOHANO: So moved.  
8 CHAIR LEACH: Second?  
9 MEMBER NASCIMENTO: Second.  
10 CHAIR LEACH: All in favor?  
11 (Response.)  
12 CHAIR LEACH: Meeting adjourned.  
13 (Meeting adjourned, 3:18 p.m.)

Page 75

1 CERTIFICATE  
2  
3  
4 I, TONYA MCDADE, Certified Court Reporter of the  
5 State of Hawaii, do hereby certify that the proceedings  
6 contained herein were taken by me in machine shorthand and  
7 thereafter was reduced to print by means of computer-aided  
8 transcription; and that the foregoing represents, to the  
9 best of my ability, a true and accurate transcript of the  
10 proceedings had in the foregoing matter.  
11 I further certify that I am not an attorney nor  
12 an employee of any of the parties hereto, nor in any way  
13 concerned with the cause.  
14 DATED this 5th day of August, 2014.  
15  
16  
17   
18 Tonya McDade  
19 Certified Shorthand Reporter #447  
20 Registered Professional Reporter  
21 Certified Realtime Reporter  
22 Certified Broadcast Reporter  
23  
24  
25

Page 76