

ALAN M. ARAKAWA  
Mayor



PATRICK K. WONG  
Corporation Counsel

EDWARD S. KUSHI  
First Deputy

LYDIA A. TODA  
Risk Management Officer  
Tel. No. (808) 270-7535  
Fax No. (808) 270-1761

DEPARTMENT OF THE CORPORATION COUNSEL  
COUNTY OF MAUI  
200 SOUTH HIGH STREET, 3<sup>RD</sup> FLOOR  
WAILUKU, MAUI, HAWAII 96793  
EMAIL: CORPCOUN@MAUICOUNTY.GOV  
TELEPHONE: (808) 270-7740  
FACSIMILE: (808) 270-7152

April 17, 2015

**MEMO TO:** Riki Hokama, Chair  
Budget and Finance Committee

**FROM:** Jeffrey Ueoka, Deputy Corporation Counsel *JU*

**SUBJECT:** **FISCAL YEAR ("FY") 2016 BUDGET** (CC-4) (BF-1)

We are in receipt of your memorandum dated April 10, 2015, posing the following questions:

1. Pursuant to Section 5-3(3) of the Revised Charter of the County of Maui (1983), as amended, the County Clerk has "custody of the county seal." Explain whether this Charter provision requires that permission be obtained from the County Clerk to affix the County seal on t-shirts, cups, and other merchandise sold by the County. Further explain the level of authority the County Clerk has on the use of the County seal.

Our office has previously opined that the County seal should be used for official purposes only, and not for purposes that are, or may be mistaken as, private purposes. As stated above, the County Clerk has "custody of the county seal." "Custody" is defined as, "[t]he care and control of a thing or person for inspection, preservation, and security."<sup>1</sup> While there is nothing in the Revised Charter of the County of Maui (1983), as amended, or the Maui County Code which defines "custody" or gives guidance regarding the use of the County Seal, it would be our recommendation that any person or entity that desires to use the County seal consult with the County Clerk prior to use.

<sup>1</sup> Black's Law Dictionary 412 (8<sup>th</sup> ed. 2004)

2. Explain whether t-shirts and other items can be sold at public facilities, such as fire stations and a "county store." Further explain whether the fee for such items needs to be established as other County rates and fees are established – in Appendix B to the annual budget, relating to fees, rates, assessments and taxes. Also, indicate the fund into which the fees collected are deposited and the fund from which expenses are drawn.

We apologize, but due to the expedited response requested, we were unable to conduct an exhaustive inquiry into this matter. We contacted the Department of Fire and Public Safety in regards to sales at fire stations and the Office of Economic Development in regards to sales at the Maui County Business Resource Center ("MCBRC"). Based on our limited review, the sales activities conducted at the premises are a permissible, secondary use of the premises and do not appear to rise to the level of a "concession" as defined by Section 3.40.030(A), Maui County Code. We did not conduct any further inquiry into the general question of what constitutes permissible activities at these specific locations.

In regards to whether the fees for items sold must be included in the annual budget, we were informed that the sales activities at the respective locations are conducted by different nonprofit entities, all inventory is purchased by the entities, and the proceeds do not become County funds, therefore, we do not see the need for the fees to be included in the annual budget. We were informed that the proceeds from the sales at the MCBRC go towards supporting the entity and the proceeds from the sales at the fire stations primarily go to the entity with a portion of the sales proceeds helping to defray firefighter expenses at the station that the sale was made.

APPROVED FOR TRANSMITTAL:

  
PATRICK K. WONG  
Corporation Counsel

cc: Alan M. Arakawa, Mayor  
Sananda K. Baz, Budget Director  
Jeffrey A. Murray, Fire Chief of Department of Fire and Public Safety  
Teena M. Rasmussen, Director of Office of Economic Development  
Dennis A. Mateo, County Clerk