

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

April 2, 2004

Committee
Report No.

04-71

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

Chair and Members:

Your Committee of the Whole, having met on March 15, 2004, makes reference to County Communication No. 03-20, from the Council Chair, regarding proposed contracts for special counsel and/or indemnification.

Your Committee is in receipt of correspondence dated March 5, 2004, from the Department of the Corporation Counsel, requesting consideration of a proposed resolution entitled "INDEMNIFYING EMPLOYEES ORLINO NONEZA, JR., GREGG A. KARONIS, AND NICHOLAS P. KRAU IN CIVIL NO. CV-03-00693 DAE/BMK; MANNY CARABELLO vs. MAUI COUNTY POLICE DEPARTMENT, ET AL.". Attached to the request is a copy of the First Amended Complaint, filed February 24, 2004. The purpose of the proposed resolution is to indemnify Orlino Noneza, Jr., Gregg A. Karonis, and Nicholas P. Krau, police officers with the Department of Police, County of Maui, in the referenced lawsuit.

Your Committee notes that this case involves allegations that Mr. Carabello's constitutional rights have been violated and that he has suffered discrimination on the basis of race.

At its meeting, your Committee met with a Deputy Corporation Counsel and the Deputy Chief of Police.

There was no public testimony. The Deputy Corporation Counsel provided an overview of the case.

The complaint alleges that Mr. Carabello holds an ocean recreational activity business permit issued by the County of Maui. He teaches surfing lessons, primarily out of Kalama Park in Kihei. Mr. Carabello has repeatedly been cited for violating conditions of the permit. As a result of the citations, Mr. Carabello alleges he has been discriminated against and harassed.

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In July 2003, the Director of Finance notified Mr. Carabello that his permit would be revoked. He was given the opportunity to dispute the revocation at a public hearing, but claimed the hearing was not conducted in compliance with due process requirements. His permit was not revoked at that time.

Mr. Carabello has petitioned the County to reform the ocean activities permitting process. He also alleges that the County has failed to properly train its employees.

The lawsuit is at a very preliminary stage. No trial date has been set.

Three County of Maui police officers and a firefighter have been named as individual defendants in the lawsuit. The Department of the Corporation Counsel is requesting indemnification for the three police officers at this time. The Department has yet to complete a preliminary investigation concerning the allegations against the firefighter, and for that sole reason, is not currently seeking indemnification for that employee.

According to the Deputy Corporation Counsel, the police officers were on duty at the time the citations were issued. At all relevant times, the employees were performing in their capacity as police officers.

A Committee member questioned whether the Police Commission had reviewed the allegations made against the police officers, and whether it was premature to consider indemnifying the officers before the commission had issued its findings and recommendations. He noted that the complaint contained allegations that the offending actions had occurred over a period of years. Under the Charter of the County of Maui, the Police Commission is required to investigate charges against the Department of Police or any of its members.

Your Committee asked the Deputy Chief of Police whether he had any information concerning the Police Commission's handling of the complaint. The Deputy Chief responded that he did not have any information concerning this particular case.

Your Committee directed that a written request be sent to the Police Commission inquiring how Mr. Carabello's complaints are being handled.

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Your Committee noted that it was relying on the presentation by the Department of the Corporation Counsel in considering the indemnification request. The Department has done a preliminary investigation and determined that the police officers were acting within the scope of their duties in issuing citations authorized by the Maui County Code. Your Committee noted that, under these circumstances, it was appropriate to provide the County employees with indemnification.

A Committee member questioned when the County would be permitted to file suit against the plaintiff if it found the complaint was baseless. Your Committee briefly discussed some pretrial motions that could be pursued on behalf of the individual defendants.

Based on the information received and the recommendation of the Department of the Corporation Counsel, your Committee voted to recommend adoption of the proposed resolution.

Your Committee of the Whole RECOMMENDS that Resolution No. _____, attached hereto, entitled "INDEMNIFYING EMPLOYEES ORLINO NONEZA, JR., GREGG A. KARONIS, AND NICHOLAS P. KRAU IN CIVIL NO. CV-03-00693 DAE/BMK; MANNY CARABELLO vs. MAUI COUNTY POLICE DEPARTMENT, ET AL." be ADOPTED.

Adoption of this report is respectfully requested.

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