

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

November 7, 2003

Committee
Report No. 03-137

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 October 13, 2003, makes reference to County Communication No. 03-20, from the Council Chair, regarding proposed contracts for special counsel.

Your Committee is in receipt of correspondence dated October 1, 2003, from the Department of the Corporation Counsel, requesting consideration of a proposed resolution entitled "AUTHORIZING ADDITIONAL COMPENSATION FOR SPECIAL COUNSEL MARR, HIPP, JONES & PEPPER, IN MICHAEL KAHO`OHANO HANO VS. COUNTY OF MAUI, CIVIL NO. 02-00296 HG/BMK". The purpose of the proposed resolution is to authorize \$70,000 in additional compensation for Marr Hipp Jones & Pepper as special counsel in Michael Kaho`ohanohano v. County of Maui, Civil No. 02-00296 HG/BMK, for a total compensation of \$190,000.

Your Committee notes that this case involves allegations of violations of the overtime compensation requirements of the Fair Labor Standards Act (FLSA).

Your Committee further notes that the prior Council authorized \$10,000 in initial compensation for this matter by Resolution No. 02-136. By Resolution No. 02-176, the prior Council subsequently authorized additional compensation of \$50,000, for a total compensation of \$60,000. By Resolution No. 03-96, the Council subsequently authorized additional compensation of \$60,000, for a total compensation of \$120,000.

At its meeting, your Committee met with the First Deputy Corporation Counsel; a Deputy Corporation Counsel; and Steven Nakashima, Esq. of Marr Hipp Jones & Pepper.

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There being no public testimony, the Deputy Corporation Counsel provided an overview of the case, stating that, in April 2002, the County was sued by an employee who claimed that the County had failed to properly calculate overtime pay as required by the FLSA. Similar lawsuits have been brought against the City and County of Honolulu, and the Counties of Hawaii and Kauai.

The Deputy Corporation Counsel further informed your Committee that, in September 2003, notices had been mailed to various current and former County employees concerning their ability to join as plaintiffs in the lawsuit. In addition, the cases filed against the Counties of Maui, Hawaii and Kauai have been consolidated before one Federal court magistrate (Consolidated Action).

Mr. Nakashima provided additional details on the status of the proceedings. He informed your Committee that the case against the City and County of Honolulu had not been removed to Federal court and was, therefore, separately pending in State court. With respect to the Consolidated Action, the parties are attempting to finalize timeframes that will govern the proceedings. Similar legal issues will be involved in each of the cases in the Consolidated Action, and the consolidation should provide for consistent rulings on those issues.

Mr. Nakashima further informed your Committee that the court will ultimately decide who will be permitted to join the class and which claims will be allowed to go forward. The class will need to be determined before any settlement discussions would make sense.

Your Committee discussed the fact that the named plaintiffs are all police officers. The question at issue is which differentials should be included when calculating overtime pay under the FLSA.

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.

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Your Committee of the Whole RECOMMENDS that Resolution No. _____, attached hereto, entitled "AUTHORIZING ADDITIONAL COMPENSATION FOR SPECIAL COUNSEL MARR, HIPP, JONES & PEPPER, IN MICHAEL KAHO`OHANOHANO VS. COUNTY OF MAUI, CIVIL NO. 02-00296 HG/BMK" be ADOPTED.

Adoption of this report is respectfully requested.

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