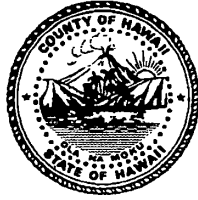


**Susan L.K. Lee Loy**  
Council Member  
District 3



Office: (808) 961-8396  
Fax: (808) 965-8912  
Email: [sue.leeloy@hawaiicounty.gov](mailto:sue.leeloy@hawaiicounty.gov)

## HAWAI'I COUNTY COUNCIL

25 Aupuni Street, Hilo, Hawai'i 96720

### MEMORANDUM

DATE: January 16, 2018

TO: Valerie T. Poindexter, Council Chair; and  
Members of the Hawai'i County Council

FROM: *SL* Susan L.K. Lee Loy, Council Member

SUBJECT: Communication No. 665: Andy Levin

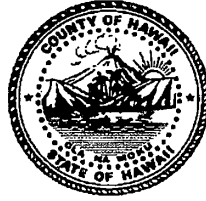
2018 JAN 16 PM 4: 12  
COUNTY CLERK  
COUNTY OF HAWAII

For informational purposes only, I am providing a letter from Corporation Counsel Joseph K. Kamelamela regarding a determination of whether Andy Levin is required to register as a lobbyist. A copy of Mr. Levin's contract is also attached.

SL:ps  
Att.

Comm. No. 665.2  
Ref. To: \_\_\_\_\_  
Ref. Date JAN 18 2018

Harry Kim  
Mayor



Joseph K. Kamelamela  
Corporation Counsel

Renee N. C. Schoen  
Assistant Corporation  
Counsel

COUNTY OF HAWAII  
OFFICE OF THE CORPORATION COUNSEL

101 Aupuni Street, Suite 325 • Hilo, Hawaii 96720 • (808) 961-8251 • Fax (808) 961-8622

January 8, 2018

Council Member Sue Lee Loy  
Hawaii County Council  
25 Aupuni Street  
Hilo, Hawaii 96720

Dear Council Member Lee Loy,

Re: *Whether Andy Levin is Required to Register as a Lobbyist*

On January 3, 2018, at the Governmental Relations and Economic Development Committee meeting, you opined that County of Hawaii State Legislative Assistant, Andy Levin, was required to register as a lobbyist pursuant to State law, and that his failure to do so suggested a lack of transparency. As you may recall, I respectfully disagreed with your opinion, citing previous research conducted on the issue, and stated that he did not have to register as a lobbyist because he was considered a County employee under the 89-day employee contract.

Our further review of the relevant law related to lobbyist supports our prior opinion on this matter. Hawaii State law requires every lobbyist to file a registration form with the State Ethics Commission within five days of coming a lobbyist. Hawaii Revised Statutes (HRS) Section 97-2(a). The registration requirement, however, **is not** applicable to governmental employees acting in their official capacity. Section 97-2(e)(2), HRS, states as follows:

“this chapter shall not apply to . . . [a]ny federal, state, or county official or employee acting in the official’s or employee’s official capacity, unless the federal, state or county official, or employee contracts for the services of a lobbyist.”<sup>1</sup>

Where a county official or employee “contracts for the services of a lobbyist,” the official or employee becomes the “employing person” and the lobbyist, who is not a

---

<sup>1</sup> Section 97-1(2)(1)(A), Hawaii Revised Statutes defines a “Lobbyist” as any individual who. . . (A) Engages in lobbying in excess of five hours in any month of any reporting period described in section 97-3; (B) Engages in lobbying in excess of ten hours during any calendar year; or (C) Makes expenditures of \$1,000 or more of the person’s or any other person’s money lobbying during any reporting period described in section 97-3.

Council Member Sue Lee Loy  
Hawai'i County Council  
January 8, 2018  
Page 2 of 2

county official or employee, must then register as a lobbyist. Accordingly, given a plain reading of the statutory provision, we again opine that Mr. Levin does not have to register as a lobbyist because he is a county employee acting in his official capacity.

I also reviewed the Hawai'i State Ethics Commission website for any decisions or guidelines related to HRS §97-(2)(e)(2) as it pertains to Mr. Levin's employment contract. Finding no decision or guideline on point, on January 4, 2018, I spoke with Nancy C. Neuffer, an attorney with the Hawai'i State Ethics Commission. Ms. Neuffer confirmed that there were no Hawai'i State Ethics Commission decisions or guidelines directly related to Mr. Levin's situation. Ms. Neuffer, nevertheless, determined that Mr. Levin was exempt from registering as a lobbyist given the terms and conditions of his 89-day employment contract, and the fact that he previously served as an Executive Assistant from 2000 to 2008 performing duties and responsibilities which also included the tracking and monitoring of legislative bills.

The Hawai'i County Code has an ordinance similar to State law also exempting government employees acting in their official capacity from the lobbyist requirement. Hawai'i County Code, Section 2-91.3(5)(B) states that, "this section shall not apply to . . . '[a]ny federal, state, or county official or employee acting in the official's or employee's official capacity."

Since State and County law does not require Mr. Levin to register as a lobbyist, I do not believe there is a lack of transparency related to Mr. Levin and his 89-day contract. In fact, prior to the execution of Mr. Levin's employee contract, Mr. Levin introduced himself and met with several staff members of the County Council as the incoming Hawai'i State Legislative Assistant. Moreover, Mr. Levin's contract was, and is, available for review as a public record. I hope that Mr. Levin and I responded to all of the questions posed at the Governmental Relations and Economic Development committee meeting.

Should you have any further questions or concerns on this matter, please do not hesitate to contact me.

Sincerely,



Cathy Ferreira  
2018.01.08 15:44:32  
-10'00'

JOSEPH K. KAMELAMELA  
Corporation Counsel

JKK:clf

Attachments

c: Mayor Kim

Managing Director Wil Okabe

Chair Poindexter & Council Members

Andy Levin, Hawai'i State Legislative Assistant



## **CHECKLIST FOR CONTRACTS**

(For Informational Purposes Only – Not Required to be Completed)

	<u>Initial</u>	<u>Date</u>
<b>Included in the contract:</b>		
Sec. 103D-310 (see also HAR §3-122-112)	N/A	
Sec. 104 prevailing wages for construction exceeding \$2,000	N/A	
Sec. 103-55 wage certificate requirement (services over \$25,000)	N/A	
Inclusion of current applicable general conditions by reference	N/A	
Inclusion of federally mandated terms or use of federal forms if federal funding involved	N/A	
Federal or State Grant funds utilized	N/A	
<b>On the contract:</b>		
Departmental recommendation of approval		
Notarized signature of authorized representative of contractor		
Notarized signature of bonding agent (if applicable)	N/A	
Corporate seal of contractor (if applicable)	N/A	
Appropriate clause for procurement exemption under HAR §3-120-4(g) (if applicable)		
Appropriate clause regarding exemption from civil service (if applicable)		
<b>Attached to contract:</b>		
Hawaii Compliance Express Certificate showing the vendor as compliant. In accordance with HRS Section 103-53.	N/A	
Bond (if non-construction or under \$5,000, attach chief procurement officer's approval to require bond)	N/A	
Finance Director's certification of availability of funds	N/A	
Resolution of corporate or partnership authority	N/A	
Sec. 103-55 wage certificate (if services over \$25,000)	N/A	
Insurance certificate(s) (if applicable)	N/A	
Sec. 103-55 wage certificate (if services over \$25,000)		
Other:		



**Department Head Certification**  
**Regarding Civil Service Exemption:**  
**CHOOSE ONE ONLY!**

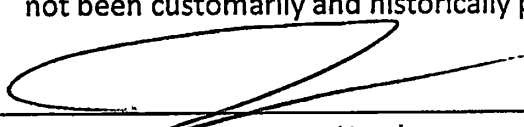
I certify that to the best of my knowledge, this contract is for goods only and any services provided are incidental to the delivery, installation and/or warranty/maintenance of said goods.

\_\_\_\_\_

Department Head Date

Or

I certify that to the best of my knowledge, services to be performed under this contract have not been customarily and historically performed by Hawai'i County civil servants.

 \_\_\_\_\_

Department Head Date

12/28/17

Or

I certify that the services to be performed under this contract are exempt from civil service pursuant to §76-77(12), Hawai'i Revised Statutes.

\_\_\_\_\_

Department Head Date

*(This box is NOT to be checked for exemption under §76-77(7), (8), or (12). For exemptions under Section 76-77(7), (8) or (12) complete Attachment A, B or C of Department of Human Resources Procedures on "Contracting Services and Civil Service Exemptions" and submit to Director of Human Resources for approval with appropriate clause on signature page of contract.)*

Or

I certify that the services to be performed under this contract are exempt from civil service pursuant to §76-77(16), Hawai'i Revised Statutes, as it is for positions or contracts for personal services with private persons or entities for services lasting no more than one year and at a cost of no more than \$750,000.

\_\_\_\_\_

Department Head Date

*(Note: Attachment D of Department of Human Resources Procedures on "Contracting Services and Civil Service Exemptions" must be completed and included with the Contract Routing Form for review by the Director of Human Resources.)*

*(If more than one department or agency involved, complete a copy of this page for each.)*

**Required Information for Certification  
Under §76-77, Hawai'i Revised Statutes  
Attach this page to your contract.**

***Note: Services to be exempt under §76-77(8), Hawai'i Revised Statutes may not exceed 90 days in length. An extension of 90 days is permitted for good cause, but will require the same certification by the director as the original 90-day period. Only one extension is permitted.***

1. Describe the services to be provided.

Legislative Assistant during the 2018 Hawai'i State Legislative Session

2. Why do you believe this service can be accomplished within 90 days?

Duties and responsibilities are for a limited time period only and any additional time would not benefit the county because the Legislative session would have been concluded.

Attachment B prepared by (name): Cathy Ferreira

Phone No: 961-8251

## CONTRACT FOR EMPLOYMENT

THIS CONTRACT is made and entered on DEC 29 2017, by and between the COUNTY OF HAWAI'I, a municipal corporation duly organized and existing under the laws of the State of Hawai'i, whose principal place of business and mailing address is 25 Aupuni Street, Hilo, Hawai'i, hereinafter referred to as "COUNTY," and Andrew C. Levin, whose mailing address is P.O. Box 703, Volcano, HI 96785, hereinafter referred to as "EMPLOYEE."

That for and in consideration of TEN THOUSAND AND NO/100 dollars (\$10,000.00) per month, the EMPLOYEE agrees to provide the COUNTY services not to exceed forty (40) hours per week as a Hawai'i State Legislative Assistant, commencing on January 3, 2018 and terminating on March 31, 2018. Payment will be provided and deductions made in the event that EMPLOYEE does not work the full pay period. EMPLOYEE shall be paid semi-monthly and shall be subject to applicable federal and state taxes and all other required withholdings.

This Contract shall be subject to all additional terms, conditions and covenants and the Statement of Duties and Responsibilities which are attached hereto as Exhibits A and B, respectively, and which are hereby incorporated by reference and made a part hereof.


It is understood and agreed that any services to be provided in accordance with the terms of this Contract may be terminated immediately, in whole or in part, upon a finding by the COUNTY or any court or other binding authority of competent jurisdiction that these services must be provided by public employees. It is further understood that should such a finding be made, the COUNTY will not be liable under this Contract for any resulting damages, and such a termination will not be considered a breach of this Contract.

It is also understood and agreed that the EMPLOYEE is bound by all provisions of the Hawai'i County Code of Ethics and, as such, shall not engage in any activity which might constitute a violation of the Code of Ethics.

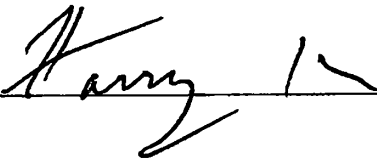
IN WITNESS WHEREOF, the parties have caused this Contract to be executed on the dates as set forth below.

EMPLOYEE:

ANDREW C. LEVIN

  
\_\_\_\_\_

COUNTY OF HAWAI'I

By   
\_\_\_\_\_


APPROVED AS TO AVAILABILITY OF FUNDS  
IN THE AMOUNT AND FOR THE PURPOSE  
SET FORTH HEREIN:

RECOMMEND APPROVAL:

  
\_\_\_\_\_

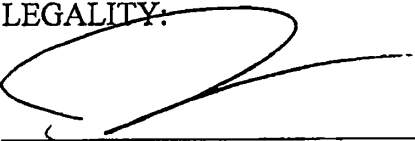
Corporation Counsel

Dated: 12/28/17

  
for Director of Finance, County of Hawai'i

sn Dated: DEC 29 2017

APPROVED AS TO FORM AND  
LEGALITY:

  
\_\_\_\_\_

Corporation Counsel

Dated: 12/29/17

CERTIFICATION:

*The services described herein are temporary in nature, not exceeding ninety (90) days. Recruitment through normal civil service procedures is not practicable. This certification is made pursuant to §76-77(8), Hawai'i Revised Statutes.*

  
\_\_\_\_\_

Director of Human Resources  
Department of Human Resources

Dated: 12-29-17

## EXHIBIT A

### ADDITIONAL TERMS, CONDITIONS AND COVENANTS OF EMPLOYMENT

1. EMPLOYEE is excluded from collective bargaining coverage under Hawai'i Revised Statutes (HRS) Chapter 89-6(f)(7). EMPLOYEE shall not be entitled to vacation, sick leave, or any other benefit not specifically identified in this contract.
2. EMPLOYEE is exempt from Civil Service (i.e., an "Exempt Employee") under HRS §76-77(8).
3. EMPLOYEE shall perform the duties as shown in Exhibit B, and made a part hereof, under the direction of the Mayor and Corporation Counsel of the County of Hawai'i.
4. EMPLOYEE shall be provided a County issued cellular phone, a County work station, a laptop computer, clerical support service, and paid travel to and from Oahu (including overnight accommodations, if deemed necessary) to attend State legislative sessions or meetings. All paid travel request must obtain prior written authorization directly from the Mayor in advancement of travel.
5. EMPLOYEE shall prepare and submit a time sheet semi-monthly for employment compensation.
6. This Contract is for personal services and cannot be assigned or delegated without the prior written consent of the COUNTY.
7. Unless a new contract is entered, EMPLOYEE shall not be entitled to continue employment after the completion of this Contract.
8. This Contract may be terminated without cause by either party upon ten (10) days' written notice to the other party before the effective date of such termination.
9. The following is mandated to be included in all COUNTY contracts under Executive Order No. 142. For purposes of this Contract, "contractor" is the EMPLOYEE:
  - a. The contractor shall comply with all requirements set forth in Federal and State laws and regulations relative to Title VI of the Civil Rights Act of 1964, as amended, which provide for non-discrimination in Federally assisted programs.
  - b. The contractor shall not discriminate against any employee or applicant for employment because of race, ancestry/national origin, religion, color, disability, age, marital status, military status, veteran's status, sexual orientation, lactation, arrest and court record, citizenship, or any other classification protected by state or federal law. The contractor shall assure that applicants are employed and that employees are treated during employment without regard to race, ancestry/national origin, religion, color, disability, age, marital status, military status, veteran's status, sexual orientation, lactation, arrest and court record, citizenship, or any other classification protected by state or federal law. Such action shall include, but not be limited to, the following: employment,

upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training. The contractor agrees to post in conspicuous places notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause.

- c. The contractor shall in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants shall receive consideration for employment without regard to race, ancestry/national origin, religion, color, disability, age, marital status, military status, veteran's status, sexual orientation, lactation, arrest and court record, citizenship, or any other classification protected by state or federal law.
- d. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract, this contract may be canceled or suspended in whole or in part and the contractor may be declared ineligible for further County contracts until such time that the contractor, by satisfactory evidence, in good faith, ceases such discriminatory practices or procedures.
- e. The contractor who subcontracts any portion of the contract shall assure the County that such subcontractor shall abide by the nondiscrimination provisions stated herein and agrees that any subcontractor who is found in violation of such provisions shall subject the principal contractor's contract with the County to be terminated or suspended pursuant to Section (c) above.
- f. The County may direct any bidder, prospective contractor, or subcontractor to submit a statement in writing signed by an authorized officer, agent, or employee of the contracting party that the signer's practices and policies do not discriminate on the grounds of race, ancestry/national origin, religion, color, disability, age, marital status, military status, veteran's status, sexual orientation, lactation, arrest and court record, citizenship, or any other classification protected by state or federal law, and that the terms and conditions of employment under the proposed Contract shall be in accordance with the purposes and provisions stated herein.

I have read, understand, and agree to the above conditions.



\_\_\_\_\_  
EMPLOYEE

Date: 12/28/17

**EXHIBIT B**

**STATEMENT OF DUTIES AND RESPONSIBILITIES OF EMPLOYEE**

EMPLOYEE shall perform the following duties and responsibilities as provided below:

- Work with the Mayor and Corporation Counsel to coordinate legislative oversight during the 2018 Hawai'i State Legislative session.
- Report directly to the Mayor and Corporation Counsel regarding legislative activity that would impact the County's interest;
- Attend County strategy and planning meetings to provide appropriate consultation and advice regarding proposed legislative activity that would impact the County's interest;
- Provide frequent updates of legislative activity to the Mayor and Corporation Counsel;
- Maintain a comprehensive bill profile that tracks all legislation relevant to the County's interest;
- Review the bill synopsis daily for any legislation that might be relevant to the County's interest;
- Regularly monitor committee schedules and prepare a weekly hearing schedule;
- Prepare and/or deliver testimony on County's behalf;
- Directly lobby the lawmakers on all County legislation, with an emphasis on County priority issues;
- Communicate regularly with sponsors, committee chairs, and committee staff regarding priority legislation and coordinate efforts;
- Help draft and place desired amendments to matters directly related to County's interest;
- If possible, be able to provide a hard vote count in committee on major legislation and hard vote counts on the floor when legislation passes committee;
- If possible, be able to identify and target potential swing votes on key legislation;
- Upon conclusion of this contract, provide a thorough review and analysis of the session (s) as it pertains to County's interests; and
- Fulfill such other duties as the Mayor and Corporation Counsel may assign from time to time

I have read, understand, and agree to the above conditions.

  
\_\_\_\_\_  
EMPLOYEE

Date: \_\_\_\_\_

12/28/17