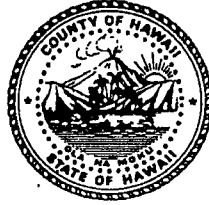


Harry Kim
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March 19, 2018

Ku Kahakalau, Chairperson
And Members of the Board of Ethics
County of Hawaii
101 Aupuni Street, Suite 325
Hilo, Hawaii 96720

RE: *Petition No. 2018-03*

Dear Chairperson Kahakalau and Members of the Board:

Council member Karen Eoff, District 8, Vice Chair of the Council, Chair of the Planning Committee, requests a determination from the Board of Ethics as to whether she can introduce, discuss, or vote on proposed Bill 108 that regulates Short Term Vacation Rentals of residential units in zones not currently specifically zoned for or designated for hotel and resort type uses. Bill 108 "serves to provide the County with the tools to allow short term vacation rentals to operate on the island of Hawaii and to regulate them," and "to protect our residential neighborhoods."

For the information and reasons stated hereafter, we believe that there is no conflict of interest that should refrain or recuse Council member Eoff from deliberating or voting on Bill 108.

Council member Eoff owns a unit within the Kona Islander Inn, which is designated for Resort-Hotel (V) uses by the Hawaii County Zoning Code. Bill 108 will not change the current zoning for Council member Eoff's unit, but she would have to register the use of the individual unit as a short-term vacation rental. Neither will she receive any additional land use privileges of her unit upon passage of Bill 108.

The County Council determines its rules and order of business. Section 3-7, Hawaii County Charter ("HCC").

In accordance with the County Council's Rules of Procedure and Organization, 2016-2018 Council Term, ("Rules"), any member of the Council "who has a **substantial financial and/or personal interest, direct or indirect**, in any action proposed or pending before the Council or a Committee, shall make full disclosure in writing to the Chairperson of such interest prior to the taking of any vote thereon as provided by Section 14-3(a), HCC. Rule 11, paragraph 1(emphasis added). "Any member who has a **substantial financial and/or personal interest directly** affected in any action proposed or pending before the Council or a Committee shall refrain from deliberating on said action and shall be excused from voting on the matter thereon. *Id.*, paragraph 2 (emphasis added). "**Substantial**" means an interest which is sufficient in magnitude to influence one's official action. *Id.*, paragraph 2(a)(emphasis added).

Council members must vote unless excused by the Chairperson for a stated conflict of interest. Rule 10, paragraph 6, states "[n]o member shall refrain from voting unless excused by the Chairperson for a stated conflict of interest."

Pursuant to the Charter and Rules, moreover, any alleged incidental or indirect financial and/or personal interest is not a basis for any Council member to refrain from deliberating or voting on a matter. Section 14-3(a), HCC, provides that "[a]ny member of the council who knows of a personal interest, direct or indirect, in any action proposed or pending before the council shall disclose such interest prior to the taking of any vote." So, for example, although a council member may have an interest in the increase or decrease of fuel or real property taxes, upon disclosure of such interest prior to the taking of any vote, the council member should be able to deliberate or vote on bills to increase fuel or real property taxes.

A failure to disclose a financial and/or personal interest, direct or indirect, could violate Section 14-3, HCC (and the Rules). In Hui Malama Aina O Koolau v. Pacarro, 4 Haw. App. 304, 316 (1983), there was evidence that a council member failed to disclose an indirect personal interest in a zoning proposal because he would have benefited from the road improvements. Such failure to strictly comply with the disclosure requirement "implicitly disqualified [the council member] until he made the required disclosure." *Id.*, at 318.

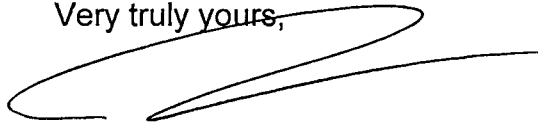
In this situation, there is no substantial financial and/or personal interest directly benefitting Council Member Eoff from her deliberation or voting on Bill 108. But even if you assume a conflict of interest, Council member Eoff should be able to deliberate and vote on Bill 108 so long as she discloses in writing, prior to deliberation and voting of Bill 108, ownership of the rental unit at Kona Islander Inn. This unit is already zoned for hotel and resort type uses. Bill 108 would now require her to register the unit as a

Ku Kahakalau, Chairperson
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short-term vacation rental with the Planning Department. Neither does she gain additional land use privileges from the enactment of Bill 108.

Should you have any further questions or comments, please contact me.

Very truly yours,

A handwritten signature in black ink, consisting of a large, sweeping loop followed by a horizontal line extending to the right.

JOSEPH K. KAMELAMELA
Corporation Counsel

JKK:clf