



COUNTY OF KAUAI  
Minutes of Meeting  
OPEN SESSION

Approved with corrections 09/17/2021.

Board/Commission:	<b>BOARD OF ETHICS</b>	Meeting Date	<b>August 13, 2021</b>
Location	Teleconference	Start of Meeting: 1:00 p.m.	End of Meeting: 2:20 p.m.
Present	Chair Susan Burriss, Vice Chair Mia Shiraishi, Secretary John Latkiewicz. Members: Kelly Gentry, Dean Toyofuku. Also: Deputy County Attorney Aaron Larrimore. Boards & Commissions Office Staff: Administrator Ellen Ching and Administrative Specialist Anela Segreti. Testifiers: Councilmember Felicia Cowden, County Clerk Jade Fountain-Tanigawa, and County Attorney Matthew Bracken.		
Excused	Ryan de la Pena		
Absent			

SUBJECT	DISCUSSION	ACTION
<b>Call To Order</b>		Chair Burriss called the meeting to order at 1:00 p.m.  Roll call: Member de la Pena: excused Member Gentry: present Member Toyofuku: present Secretary Latkiewicz: present Vice Chair Shiraishi: present Chair Burriss: present Five members present, which constituted a quorum.
<b>Approval of Minutes</b>	<p><u>Open Session Minutes of July 23, 2021</u></p> <p>Vice Chair had a comment on page 2, BOE 2021-20, correct to former Chair Toyofuku and former Vice Chair Shiraishi.</p> <p>Chair Burriss stated that on page 4, paragraph 2 should be “there” instead of “they”.</p>	<p>Vice Chair Shiraishi moved to accept the minutes as corrected. Secretary Latkiewicz seconded.</p> <p>Voice vote: 5 ayes, 0 nays Motion carried 5:0</p>

SUBJECT	DISCUSSION	ACTION
<b>Public Testimony</b>	<u>None</u>	
<b>Communication</b>	<p><u>BOE 2021-27 Notice of Publication and Notice of Public Hearing received August 5, 2021 from Council Services regarding Bill No. 2830, A BILL FOR AN ORDINANCE AMENDING CHAPTER 3, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO FINANCIAL DISCLOSURES.</u></p> <p>Chair Burriss noted that the ordinance got a unanimous vote from the County Council.</p> <p>Vice Chair Shiraishi stated that no Council members had any objections.</p> <p>Member Toyofuku reported that it was good.</p> <p>Chair Burriss thanked Vice Chair Shiraishi and Member Toyofuku.</p> <p>Administrator Ching stated that the next step will be the second reading and that Vice Chair Shiraishi and Member Toyofuku will need to be present in case there are any questions.</p>	<p>Vice Chair Shiraishi moved to receive BOE 2021-27, Member Toyofuku seconded.</p> <p>Voice vote: 5 ayes, 0 nays Motion carried 5:0</p>
<b>Request For An Advisory Opinion</b>	<p><u>RAO 2021-03 Request for an Advisory Opinion from Felicia Cowden received July 9, 2021 relating to providing testimony to County Boards and Commissions and other State and National Governmental Entities.</u></p> <p>Administrator Ching confirmed that additional documents from Councilmember Cowden and County Clerk Tanigawa received today was reviewed by members.</p> <p><i>Board took a brief recess 1:08pm – 1:10pm to review the documents.</i></p> <p>Chair Burriss asked Deputy County Attorney Larrimore whether it was in the purview of the Board to define the nature of the correspondence that is acceptable.</p>	

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	<p>Deputy County Attorney Larrimore explained that the Board under the Charter given the responsibility to render an Advisory Opinion on the application of the Code of Ethics when someone comes before the Board and ask for that opinion. If the Board feels that defining the nature of the correspondence is beyond the scope of the Board then he suggested that they exercise caution.</p> <p>Chair Burriss stated that historically the Board has opined on specific requests as to specific incidences in terms of whether or not there is a conflict or some prohibition in regards to the proposed action and wondered if they could possibly honor the request.</p> <p>Deputy County Attorney Larrimore stated that he has seen other Board of Ethics look at larger conversations than just particular incidences. He further explained that if the Board felt that they could render an advisory opinion on a concept or idea that would be in their power, but if they felt they could not, that would be a decision for the Board to make.</p> <p>Chair Burriss welcomed Councilmember Cowden and asked if she needed a document that spells out what she is able to do or be limited from doing.</p> <p>Councilmember Cowden stated that her goal is to create a clarification between the Board of Ethics and herself on the use of letterhead. She stated that the use of letterhead is essential for her to do her job. She explained the process of her sending a letter on letterhead and her use of staff to write a letterhead that goes into the public records. Recently she was writing a letter to the Planning Commission regarding a Bill and she was told that she needed to go before the Board of Ethics to write the letter. She needed the letter to go out right away so asked the County Attorney for an opinion. She stated that the Board may need training to know that it is not possible for her to write a letter on letterhead without staff to ensure that it is properly written and well framed.</p> <p>Councilmember Cowden referenced memo (on file) from County Clerk Tanigawa, outlining the process for correspondence including sending out letters automatically from time to time, “housekeeping”.</p> <p>Chair Burriss asked about the turn-around time from penning a letter and going through the process.</p>	

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	<p>Councilmember Cowden answered that it's very often less than 24 hours.</p> <p>Chair Burriss stated that it would take the Board a separate session to review each element of Councilmember Cowden's request to properly respond to it.</p> <p>County Attorney Matt Bracken stated that he believed that Councilmember Cowden is concerned that she does not violate the Code of Ethics. She is concerned about the use of County property, in this case the use of County letterhead. He advised her that if it's within her role as a Councilmember, she can use the letterhead, his general advice. When there are specific questions he refers them to the Board of Ethics.</p> <p>Deputy County Attorney Larrimore pointed the Board to Section 3-1.6 of the County Code, Fair Treatment provision, it states that no Councilmember or employee shall use or attempt to use his/her official position to secure or grant unwarranted privileges, exemptions, advantages, contracts or treatment for him/herself or others. He also read that, nothing in this article shall be construed to prohibit a councilmember from introducing bills and resolutions, serving on committees, or from making statements or taking action in the exercise of his/her legislative function. He stated that this supports County Attorneys statements.</p> <p>Chair Burriss clarified with Councilmember Cowden if she wants the Board to go further than what the County Attorney has told her.</p> <p>Councilmember Cowden stated that she does not. Her sense was that when she got push back and was told that she had to ask the Board of Ethics whether she could write a letter to Planning Commission. She thought this was a normal thing for her to do and is unsure why she needed to ask the Board. In this case she was sending a letter, with guidance from the Planning Department, to the Planning Commission. She did this and then got a push back, which is making her feel targeted, but she is not sure that's the case. Councilmember Cowden expressed that she thought it would benefit the Board to hear from County Attorney Bracken and County Clerk Tanigawa that this is a normal function in her job. She stated that she didn't actually ask for a Request for an Advisory Opinion, she wanted to just communicate that this is what she understands and does not want to worry that when she writes a letter that someone is choosing to misinterpret what she's writing in the letter. The letter that she was told needed to go before the Board was</p>	

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	<p>regarding her championing for the houseless community. She was writing as a council person trying to tell the Planning Commission that she's working on something parallel to a bill they are proposing regarding "glamping". She expressed her passion for her job and how she uses letterhead in her job. She clarified that she is not asking the Board for anything, but would like there to be an understanding of the policy regarding use of letterhead.</p> <p>Vice Chair Shiraishi stated that this is not the proper forum and that Councilmember Cowden is stating that it is not her intent to obtain an advisory opinion, and the County Attorney's email states that he does not view this as an ethics problem and that she could seek an advisory opinion from ethics, but it is not a directive to do so. She expressed that perhaps it's something that she should get together with the County Clerk and County Attorney to figure out what's best.</p> <p>Councilmember Cowden stated that they are already clear, but it appears it is not clear to someone.</p> <p>Secretary Latkiewicz shared a thought that there is some unknown person or department giving her a push back, being that it is vague, he doesn't want to deal with it. He prefers to wait if the person comes forward and states concerns, otherwise it's just a vague, something doesn't appeal to somebody.</p> <p>Councilmember Cowden asked if the County Clerk knew who asked her to ask the Board of Ethics. She asked Ellen Ching why she was required to ask the Board of Ethics to write a standard letter.</p> <p>Ms. Ching stated that if she is asked a question that should be directed to the Board of Ethics, she will direct them to the Board, she will not speak on their behalf.</p> <p>County Clerk Tanigawa stated that she can check and let Councilmember Cowden know if it was Council Services staff and who that person is.</p> <p>Councilmember Cowden apologized for wasting everyone's time. She asked and was told it came from across the street, she rested her issue and appreciated their time.</p>	

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	<p>Chair Burriss stated that she and probably all the board members did not know that all her letters go through a vetting process, so it's hard for her to understand how anything that goes out with her signature becomes an issue. She explained that for the board the process of responding to an advisory opinion is typically narrowed in focus so that they can see, without going global, what it is that they should be writing an opinion on.</p> <p>Councilmember Cowden stated that she did not expect a written opinion from the Board. She wanted to make sure that everyone was clear on the process.</p> <p>County Clerk Tanigawa stated she provided an overview of a process, it is not full proof, but they do try their best at making sure that there is compliance with everything that's done.</p> <p>Deputy County Attorney Larrimore suggest that Councilmember Cowden formally withdraw the RAO and memorializing the event. Discussion regarding if she doesn't withdraw followed.</p> <p>Councilmember Cowden returned to the meeting and formally withdrew her request for an advisory opinion.</p> <p>Ms. Ching stated that a response will be sent acknowledging the original request and request to withdraw. Deputy County Attorney Larrimore agreed.</p>	<p>No Action</p>
<p><b>Business</b></p>	<p><u>BOE 2021-21 Update and discussion on Ethics bill that went before Council on August 4, 2021.</u></p> <p>Ms. Ching stated that it was covered under Communication. Recapped that there will be a second reading and the Vice Chair Shiraishi and Member Toyofuku will need to be available for that to respond to any questions.</p>	<p>No Action</p>
<p><b>Disclosures</b></p>	<p><u>Employees:</u></p> <ol style="list-style-type: none"> <li>1. Judith Hayducsko, Deputy Manager-Engineer, Department of Water</li> <li>2. Arryl Kaneshiro, Councilmember</li> <li>3. Cameron Takamura, Deputy County Attorney</li> </ol>	<p>Secretary Latkiewicz moved to approve disclosures #1 thru #4. Vice</p>

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	<p>4. Felicia Cowden, Councilmember</p> <p>Chair Burriss entertained a motion to approve #1 thru #4.</p>	<p>Chair Shiraishi seconded.</p> <p>Voice Vote: 6 ayes, 0 nays. Motion carried 6:0</p>
<p><b>Executive Session</b></p>	<p><u>ES-012 BOE 2021-22 Pursuant to Hawai‘i Revised Statutes §92-4 and §92-5 (a) and (2) and (4), the purpose of this Executive Session is for the Board to discuss a notarized formal complaint received July 29, 2021, charging that an employee or officer of the County has breached the Code of Ethics as set forth in the Kaua‘i County Charter section 20.02 E, Standards of Conduct.</u></p> <p><u>ES-013 BOE 2021-23 Pursuant to Hawai‘i Revised Statutes §92-4 and §92-5 (a) and (2) and (4), the purpose of this Executive Session is for the Board to discuss a notarized formal complaint received July 29, 2021, charging that an employee or officer of the County has breached the Code of Ethics as set forth in the Kaua‘i County Charter section 20.02 E, Standards of Conduct.</u></p> <p><u>ES-014 BOE 2021-24 Pursuant to Hawai‘i Revised Statutes §92-4 and §92-5 (a) and (2) and (4), the purpose of this Executive Session is for the Board to discuss a notarized formal complaint received July 29, 2021, charging that an employee or officer of the County has breached the Code of Ethics as set forth in the Kaua‘i County Charter section 20.02 E, Standards of Conduct.</u></p> <p><u>ES-015 BOE 2021-25 Pursuant to Hawai‘i Revised Statutes §92-4 and §92-5 (a) and (2) and (4), the purpose of this Executive Session is for the Board to discuss a notarized formal complaint received July 30, 2021, charging that an employee or officer of the County has breached the Code of Ethics as set forth in the Kaua‘i County Charter section 20.02 E, Standards of Conduct.</u></p> <p><u>ES-016 BOE 2021-26 Pursuant to Hawai‘i Revised Statutes §92-4 and §92-5 (a) and (2) and (4), the purpose of this Executive Session is for the Board to discuss a notarized formal complaint received August 3, 2021, charging that an employee or officer of the County has breached the Code of Ethics as set forth in the Kaua‘i County Charter section 20.02 E, Standards of Conduct.</u></p>	<p>Member Toyofuku moved to move into Executive Session. Secretary Latkiewicz seconded.</p> <p>Voice Vote: 6 ayes, 0 nays. Motion carried 6:0</p>

SUBJECT	DISCUSSION	ACTION
<b>Return to Open Session</b>		The Board resumed in Open Session at 2:17pm Roll call: Member de la Pena: present Member Gentry: present Member Toyofuku: present Secretary Latkiewicz: present Vice Chair Shiraishi: present Chair Burriss: present Six members present, which constituted a quorum.
	Ratify on Board actions taken in Executive Session.	None
<b>Announcements</b>	Next Meeting: Friday, September 17, 2021 at 1:00pm  Secretary Latkiewicz will not be able to attend the next meeting.	
<b>Adjournment</b>		Hearing no objections Chair Burriss adjourned the meeting at 2:20 p.m.

Submitted by: \_\_\_\_\_ Reviewed and Approved by: \_\_\_\_\_  
 Anela Segreti, Administrative Specialist Susan Burriss, Chair

- ( ) Approved as circulated.
- ( X ) Approved with amendments. See minutes of 09/17/2021