



BOARD OF ETHICS

RYAN DE LA PENA, CHAIR
ROSE RAMOS-BENZEL, VICE CHAIR
CHANTAL ZARBAUGH, SECRETARY

JOHN LATKIEWICZ, MEMBER
KEVIN MCGINNIS, MEMBER
AMBER MOKUAHI, MEMBER

Meetings of the Board of Ethics will be conducted as follows until further notice:

- Meetings will be publicly noticed pursuant to HRS Chapter 92.
- Minutes of meetings will be completed pursuant to HRS Chapter 92 and posted to the Commission's website upon completion and approval.

Public Comments and Testimony:

- **Written testimony** will be accepted for any agenda item herein.
 - Written testimony indicating your 1) name, and if applicable, your position/title and organization you are representing, 2) the agenda item that you are providing comment on, and 3) contact information (telephone number and email address), may be submitted to adavis@kauai.gov or mailed to the Board of Ethics, c/o Office of Boards and Commission, 4444 Rice Street, Suite 300, Lihue, Hawaii 96766.
 - Written testimony received by the Board of Ethics at least 24 hours prior to the meeting will be distributed to all Board of Ethics Members prior to the meeting.
 - Any testimony received after this time and up to the start of the meeting will be summarized by the Clerk of the Board during the meeting and added to the record thereafter.
 - Any late testimony received will be distributed to the members after the meeting is concluded.
- **Oral testimony** will be taken during the public testimony portion of the meeting.
 - It is recommended that anyone interested in providing oral testimony register at least 24 hours prior to the meeting by emailing adavis@kauai.gov or calling (808) 241-4917. Any request to register shall include your 1) name, and if applicable, your position/title and organization you are representing, and 2) the agenda item that you are providing comment on, and 3) contact information (telephone number and email address).
 - Per the Board of Ethics's and Chairs practice, there is three-minute time limit per testifier per agenda item.
 - Individuals who have not registered to provide testimony will be given an opportunity to speak on an agenda item following the registered speaker.

SPECIAL ASSISTANCE

IF YOU NEED AN AUXILIARY AID/SERVICE, OTHER ACCOMMODATION DUE TO A DISABILITY, OR AN INTERPRETER FOR NON-ENGLISH SPEAKING PERSONS, CONTACT THE OFFICE OF BOARDS AND COMMISSIONS AT (808) 241-4917 OR ADAVIS@KAUAI.GOV AS SOON AS POSSIBLE. REQUESTS MADE AS EARLY AS POSSIBLE WILL ALLOW ADEQUATE TIME TO FULFILL YOUR REQUEST.

UPON REQUEST, THIS NOTICE IS AVAILABLE IN ALTERNATIVE FORMATS SUCH AS LARGE PRINT, BRAILLE, OR ELECTRONIC COPY.

BOE REGULAR SESSION NOTICE AND AGENDA

Friday, July 19, 2024
1:00 pm or shortly thereafter
Līhu'e Civic Center
Pi'ikoi Building, Suite 300
4444 Rice Street, Līhu'e, HI 96766

A. CALL TO ORDER

B. ROLL CALL

C. APPROVAL OF AGENDA

D. MINUTES of the meeting of the Open Session

1. June 21, 2024
[2024_0621_BOE Open Session Minutes DRAFT](#)

E. PUBLIC TESTIMONY

F. REQUEST FOR AN ADVISORY OPINION

1. [RAO 2024-01_DRAFT OPINION](#) Discussion and action on draft Advisory Opinion relating to whether a conflict of interest exists with the County Assistant Executive on Aging being married to the owner of Regenerative Services Kauai that has a contract with the County and may be considered for future contracts with the County.

G. EXECUTIVE SESSION

1. ES-006 Pursuant to Hawai'i Revised Statutes 92-4, §92-5(a)(4), §92-9(a)(1-4) and (b), the purpose of this Executive Session is for the Board to approve or amend the Executive Session Minutes of June 21, 2024, and to consult with its attorney on issues pertaining to the Board's powers, duties, privileges, immunities, and /or liabilities as they may relate to this item.

H. RETURN TO OPEN SESSION

I. ANNOUNCEMENTS

Next meeting: Friday, August 9, 2024

J. ADJOURNMENT

NOTICE OF EXECUTIVE SESSION

Pursuant to Hawaii Revised Statutes §92-7(a), the Board may, when deemed necessary, hold an executive session on any agenda item without written public notice if the executive session was not anticipated in advance. Any such executive session shall be held pursuant to HRS §92-4 and shall be limited to those items described in HRS §92-5(a). Discussions held in Executive Session are closed to the public.



Draft to be Approved

**BOARD OF ETHICS MEETING MINUTES
FRIDAY, JUNE 21, 2024, 1:00 PM
Līhu`e Civic Center, Pi`ikoi Building, Suite 300
4444 Rice Street, Līhu`e, HI 96766**

A. CALL TO ORDER

Chair de la Peña called the meeting to order at 1:00 pm.

B. ROLL CALL

Chair Ryan de la Peña
Secretary Chantal Zarbaugh
Member Kevin McGinnis
Member Amber Mokuahi

Excused: Vice Chair Rose Ramos-Benzel, Member John Latkiewicz

Staff Present: Tyler Saito, Deputy County Attorney, Ellen Ching, Boards & Commissions Administrator, Anela Davis, Administrative Specialist.

C. APPROVAL OF AGENDA

Member Kevin McGinnis moved to approve the agenda, seconded by Member Amber Mokuahi.

The motion to approve the agenda was passed by a vote of 4:0.

D. MINUTES of the meeting of the Open Session

1. May 17, 2024
[2024_0517_BOE Open Session Minutes DRAFT](#)

Member Kevin McGinnis moved to approve the minutes of the May 17, 2024, Open Session, seconded by Member Amber Mokuahi.

The motion to approve the minutes of the May 17, 2024, Open Session was passed by a vote of 4:0.

E. PUBLIC TESTIMONY

No public testimony. Kealoha Takahashi will speak on RAO 2024-01 at that time and the guest in audience did not have any testimony.

F. REQUEST FOR AN ADVISORY OPINION

1. [RAO 2024-1 Response for More Information](#) Request for an Advisory Opinion from Ludvina K. Takahashi, County Executive on Aging, received on May 8, 2024 relating to whether a conflict exists with the County Assistant Executive on Aging being married to the owner of Regenerative Services Kaua'i that has a contract with the County.

Administrator Ching reported that she communicated the questions that the Board had from the last meeting to the County Executive on Aging, Kealoha Takahashi and she provided a written response (on file) which the Board received as part of their packet. Ms. Takahashi is present at the meeting to answer additional questions or clarifications the Board may have.

Member McGinnis clarified with Ms. Takahashi if the Grants Manager was the same as the Program Specialist II that reports to the Assistant Executive. He also clarified that when the contract was awarded, Ms. Loo, Assistant Executive, was not in her current position. Ms. Takahashi stated that she was a Program Specialist I and overseeing the RSVP program, under volunteer development. She also clarified that the upcoming contract will go out for open bidding.

Chair de la Peña asked about the selection committee and Ms. Takahashi clarified that Celia Melchor is the Grant's Manager, El Doi was a Case Manager, and Emily is the other Program Specialist II, and that El Doi and Emily they deal with the consumers and are aware of the needs and what kind of services are needed.

Member Amber Mokuahi moved to defer decision of RAO 2024-01 pending executive session, seconded by Secretary Chantal Zarbaugh.

The motion to defer decision of RAO 2024-01 pending executive session was passed by a vote of 4:0.

G. BUSINESS

1. [BOE 2024-01](#) Discussion and possible action on the recommendations presented by the Permitted Interaction Group (PIG) on BOE initiatives and/or strategic plan.

Ms. Ching reminded the members that they can have discussion and action on this report.

The Board did not have any questions. Chair de la Peña went over the six items that the PIG recommended (on file).

Ms. Ching stated that she did reach out to the City and County of Honolulu but has not received a call back and will try again. She reported that the PIG wanted to focus on outreach and training.

Member Amber Mokuahi moved to adopt the recommendations of the Permitted Interaction Group, seconded by Secretary Chantal Zarbaugh.

The motion to adopt recommendations of the Permitted Interaction Group was passed by a vote of 4:0.

H. **DISCLOSURES**

Volunteers:

1. Lawrence Borgatti, Arborist Committee
2. Sarah Bryce, Arborist Committee
3. Trevor Ford, Fire Commission
4. Sara Miura, Committee on the Status of Women

Candidates:

5. Abraham Apilado, Candidate for County Council
6. Addison Bulosan, Candidate for County Council
7. Ana-Lucia Des Marais, Candidate for County Council
8. Arryl Kaneshiro, Candidate for County Council
9. Bernard Carvahlo, Candidate for County Council
10. Clint Yago, Candidate for County Council
11. Fern Holland, Candidate for County Council
12. Jacquelyn Nelson, Candidate for County Council
13. Kipukai Kualii, Candidate for County Council
14. Ross Kagawa, Candidate for County Council
15. William Keahiolalo, Candidate for County Council
16. Luke Evslin, Candidate for Hawai'i State House of Representatives, District 16

Chair de la Peña asked if there were any issues regarding the disclosures received.

Member Mokuahi questioned Luke Evslin's disclosure regarding income for two employers. Chair de la Peña clarified that it is a state position, and a disclosure does not need to be filed with the Board and no action will be taken.

Member McGinnis questioned #1, Lawrence Borgatti. There is no employment, but had income from County of Kauai, is it retirement? Ms. Ching responded that he announced that he was retiring, and she asked him to complete a disclosure. Ms. Davis explained that Section II states to include employment other than County and Section III he disclosed County income. He completed that part of the form correctly.

Member McGinnis asked what the role of the Arborist Committee is, and Ms. Ching explained the role of the Committee, and clarified that they only make recommendations, they do not have authority to designate exceptional trees.

Chair de la Peña felt that Section II of disclosure #12 needed clarification on what "family business" was in Section II and source(s) of income Section III.

Secretary Chantal Zarbaugh moved to accept disclosures 1-11, 13, 14 and 15, seconded by Member Kevin McGinnis.

The motion to accept disclosures 1-11, 13, 14 and 15 was passed by a vote of 4:0.

Secretary Chantal Zarbaugh moved to return for clarification disclosure #12 for more information on Sections II and III seconded by Member Amber Mokuahi.

The motion to return for clarification disclosure #12 for more information on Sections II and III was passed by a vote of 4:0.

I. EXECUTIVE SESSION

1. ES-004 Pursuant to Hawai'i Revised Statutes §92-4, §92-5(a)(4), §92-9(a)(1- 4) and (b), the purpose of this Executive Session is for the Board to approve or amend the Executive Session Minutes of May 17, 2024, and to consult with its attorney on issues pertaining to the Board's powers, duties, privileges, immunities, and /or liabilities as they may relate to this item.
2. ES-005 RAO 2024-01 Pursuant to Hawai'i Revised Statutes §92-4, §92-5 (a) (4), the purpose of this executive session is for the Board to consult with its Attorney concerning the Boards's powers, duties, immunities, privileges, and liabilities as they may relate to the Request for an Advisory Opinion from Ludvina K. Takahashi, County Executive on Aging, received on May 8, 2024 relating to whether a conflict exists with the County Assistant Executive on Aging being married to the owner of Regenerative Services Kaua'i that has a contract with the County. Presentation by the Permitted Interaction Group (PIG) to provide recommendations on BOE initiatives and/or strategic plan.

Ms. Ching read the Board into Executive Session.

Member Kevin McGinnis moved to go into Executive Session at 1:25pm, seconded by Member Amber Mokuahi.

The motion to go into Executive Session at 1:25pm was passed by a vote of 4:0.

J. RETURN TO OPEN SESSION Ratify Board actions taken in Executive Session.

Chair de la Peña called the Open Session back to order at 1:47pm.

Ms. Ching reported that the Board approved the Executive Session minutes of May 17, 2024.

Chair de la Peña called for a motion on ES-005 RAO 2024-01.

Secretary Chantal Zarbaugh moved to find a conflict of interest exists in RAO 2024-01 and assigns the Deputy County Attorney to draft an opinion, seconded by Member Amber Mokuahi.

The motion to find a conflict of interest exists in RAO 2024-01 and for the Deputy County Attorney to draft an opinion was passed by a vote of 4:0.

Member Kevin McGinnis moved to ratify action taken in executive session to approve Executive Session minutes of May 17, 2024, seconded by Secretary Chantal Zarbaugh.

The motion to ratify action taken in executive session to approve Executive Session minutes of May 17, 2024, was passed by a vote of 4:0.

K. ANNOUNCEMENTS

Next meeting: Friday July 19, 2024

L. ADJOURNMENT

Chair de la Peña adjourned the meeting at 1:50pm.

NOTICE OF EXECUTIVE SESSION

Pursuant to Hawaii Revised Statutes §92-7(a), the Board may, when deemed necessary, hold an executive session on any agenda item without written public notice if the executive session was not anticipated in advance. Any such executive session shall be held pursuant to HRS §92-4 and shall be limited to those items described in HRS §92-5(a). Discussions held in Executive Session are closed to the public.

Tyler Saito, Deputy County Attorney

Submitted by: _____
Anela Davis, Administrative Specialist

Reviewed and Approved by: _____
Ryan de la Peña, Chair

() Approved as circulated. () Approved with amendments. See minutes of _____

THE BOARD OF ETHICS

COUNTY OF KAUAI

ADVISORY OPINION RAO 2024-01

The Kauai County Board of Ethics (“Board”), having reviewed a request for an advisory opinion, dated May 7, 2024 (“RAO”) from Ludvina K. Takahashi, County Executive on Aging for the County of Kauai, and having obtained all the information deemed necessary by the Board to make a proper determination regarding the subject request, renders this Advisory Opinion (“RAO 2024-01”) pursuant to the Charter of the County of Kauai and Rule 5 of the Kauai County Board of Ethics Rules and Regulations (“Rules”).

The issue before the Board is whether a conflict of interest exists because the County Assistant Executive on Aging, Donna Lynn Loo, is married to the owner of Regenerative Services Kauai (“Business”), which has a current contract with the County’s Agency on Elderly Affairs (“AEA”), and may participate in AEA’s upcoming procurement for a new contract later this year.

The Board concludes that a conflict of interest exists but can be mitigated if the Executive Assistant is disqualified from all official action affecting the Business.

BACKGROUND

On May 17, 2024, the Board convened at its monthly meeting and considered rendering an advisory opinion on the above referenced RAO. Ms. Takahashi and Ms. Loo were in attendance and responded to questions from members. After the members asked their questions, the Board entered into Executive Session to consult with the Board’s attorney. The Board requested supplementary information from Ms. Takahashi that it deemed necessary to make a proper determination pursuant to Rule 5(c) and deferred the RAO to the Board’s next open meeting.

On June 21, 2024, the Board convened at its monthly meeting and continued discussing the above referenced RAO. At this meeting the Board received and reviewed the requested supplementary information. Ms. Takahashi attended and answered members’ questions. The Board then entered into Executive Session to consult with the Board’s attorney. The Board returned to open session. With a quorum present and voting, the Board concluded that a conflict of interest exists.

FACTS

In reaching its conclusion, the Board relied on the facts in the RAO, the supplementary information submitted, and the testimony and representations of Ms. Takahashi and Ms. Loo. Based on the facts in the record, the Board finds that the Grants Manager of AEA is primarily responsible

for the agency's procurement activities and contract management. The Grants Manager is part of AEA's Grants Management division. The Grants Management division is one of four divisions within AEA. The other three divisions include Fiscal, ADRC/Information Referral, and Volunteer Development. Each of the four divisions are supervised by the Assistant Executive on Aging. The Assistant Executive reports to the County Executive on Aging.

As it relates to the above referenced RAO, the Grants Manager, with the approval of Ms. Takahashi and the County's Division of Purchasing ("Purchasing"), prepared a request for proposal for fiscal year October 1, 2021-September 30, 2024 ("RFP No. 1"). RFP No. 1 was published for public bidding on August 27, 2021. RFP No. 1 sought to award a contract to a contractor who could provide personal care, homemaker, chore, and assisted transportation services to adults sixty (60) years old and older as part of the State of Hawai'i Kupuna Care ("KC") Program administered by the AEA. The KC Program is a state-sponsored program designed to meet the long-term care needs of older adults unable to live at home without adequate help to perform their activities of daily living and instrumental activities of daily living. There is significant need for these services on Kaua'i as evidenced by a growing waitlist for the KC Program administered by AEA. However, on-island providers are limited.

Only two service providers submitted proposals in response to RFP No. 1. One of the proposals was submitted by the Business. After the deadline, Purchasing then opened the submitted proposals and forwarded the proposals to the Grants Manager. Upon receipt, the Grants Manager convened an evaluation committee to review and score the submitted proposals. The evaluation committee used a set of criteria that was publicly posted with RFP No. 1 to grade each proposal. Following the scoring by the evaluation committee, the Grants Manager with approval by the Executive, completed a recommendation of award to Business, and forwarded it to Purchasing for review and approval. Purchasing then sent the Business a notice of award. The Grants Manager, with approval of the Executive, then completed pre-contract paperwork, including the formal contract. The Grants Manager then worked with Purchasing and other County entities to execute and then manage the contract. Ms. Takahashi signed the contract and the notice to proceed for AEA.

Ms. Loo was not a member of the evaluation committee for RFP No. 1. Importantly, Ms. Loo was not the Assistant Executive when RFP No. 1 was published, and the contract awarded to the Business. Rather, Ms. Loo was an employee in AEA's Volunteer Development division. In this position, Ms. Loo was not involved in any procurement activities related to RFP No. 1. Despite this, the Grants Manager consulted with Purchasing on whether a conflict of interest existed because Ms. Loo was an employee of AEA and her spouse's Business was about to be awarded a contract. Purchasing determined no conflict of interest existed because there was a competitive bid process and Ms. Loo was not involved in it. The contract was awarded and executed with the Business for a term of three years. The term of the contract expires in the Fall of 2024.

At some point during the term of this contract, Ms. Loo was promoted to Assistant Executive. Ms. Loo now supervises the four AEA divisions, including the Grants Manager position. The Grants Manager and Purchasing are now in the process of issuing a new request for proposals for the same services discussed above for a new term to begin later this year (“RFP No. 2”).

APPLICABLE LAWS

With regard to this request, the Board considered the following provisions of the Kauaʻi County Charter in rendering this Advisory Opinion:

Section 20.02. No officer or employee of the county shall:

- A. Solicit, accept, or receive, directly or indirectly, any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, thing, or promise, or in any other form, under circumstances in which it can reasonably be inferred that the gift is intended to influence the officer or employee in the performance of the officer or employee’s official duties or is intended as a reward for any official action on the officer or employee’s part.
- B. Disclose information which, by law or practice, is not available to the public and which the officer or employee acquires in the course of the officer or employee’s official duties or use such information for the officer or employee’s personal gain or for the benefit of anyone.
- C. Acquire financial interest in business enterprises which the officer or employee may be directly involved in official action to be taken by the officer or employee.
- D. Appear on behalf of private interests before any county board, commission, or agency.
- E. Use the officer or employee’s official position to secure a special benefit, privilege, or exemption for the officer or employee or others.
- F. Use county property for other than public activity or purpose.

The Board also considered the following provisions of the Kauaʻi County Code in rendering this Advisory Opinion:

Sec. 3-1.6. Fair Treatment.

(a) No councilmember or employee of the County shall use or attempt to use his or her official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment for him or herself or others, including but not limited to the following:

- (1) Seeking other employment or contract for services for him or herself by the use or attempted use of his or her office or position.
- (2) Accepting, receiving, or soliciting compensation or other consideration for the performance of his or her official duties or responsibilities except as provided by law.
- (3) Using County time, equipment or other facilities for private business purposes.
- (4) Soliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate or person or business whom he or she inspects or supervises in his or her official capacity.

Sec. 3-1.7. Conflicts of Interest

- (a) No employee shall take any official action directly affecting:
 - (1) A business or other undertaking in which he or she has a substantial financial interest; or
 - (2) A private undertaking in which he or she is engaged as legal counsel, advisor, consultant, representative, or other agency capacity.
 - (A) Except that a department head who is unable to disqualify him or herself on any matter described in Paragraphs (1) and (2) of this Subsection, will not be in violation of this Subsection if he or she has complied with the disclosure requirements of Section 3-1.9; and
 - (B) Except that a member of a board, commission or committee, whose participation is necessary in order to constitute a quorum to conduct official business on any matter described in Paragraphs (1) and (2) of this Subsection, will not be in violation of this Subsection if he or she has complied with the disclosure requirements of Sec. 3-1.9.
- (b) No Councilmember or employee shall acquire financial interests in any business or other undertaking which he or she has reason to believe may be directly involved in official action to be taken by him or her.
- (c) No Councilmember or employee shall assist any person or business or act in a representative capacity before any County agency for a contingent compensation in any transaction involving the County.
- (d) No Councilmember or employee shall assist any person or business or act in a representative capacity for a fee or other compensation to secure passage of a bill or to obtain a contract, claim, or other transaction or proposal in which he or she has participated or will participate as a Councilmember or employee, nor shall he or she assist any person or business or act in a representative capacity for a fee or other compensation on a bill, contract, claim or other transaction or proposal before the Council or agency of which he or she is an employee or Councilmember.

(e) No employee shall assist any person or business or act in a representative capacity before a County agency for a fee or other consideration on any bill, contract, claim, or other transaction or proposal involving official action by the agency if he or she has official authority over that County agency unless he or she has complied with the disclosure requirements of Section 3-1.9.

Sec. 3-1.8. Contracts.

(a) A County agency shall not enter into a contract with an officer or an employee or with a business in which an officer or an employee has a substantial interest, involving service or property of a value in excess of \$1,000, unless the contract is made after competitive bidding.

Sec. 3-1.3. Definitions.

[. . .]

“Financial interest” means an interest held by an individual, his or her spouse, or his or her minor children. A divorce or separation between spouses shall not terminate any relationship which is

- (1) An ownership in a business.
- (2) A creditor in an insolvent business.
- (3) An employment, or prospective employment for which negotiations have begun.
- (4) An ownership interest in real or personal property.
- (5) A loan or other debtor interest.
- (6) A directorship or officership in a business.

[. . .]

“Official act” or “official action” means a decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority.

OPINION

Based on the foregoing Code of Ethics provisions contained in the Kaua‘i County Charter and County Code, and considering the evidence in the record, the Board finds that a conflict of interests exists because Ms. Loo has a substantial financial interest in the Business by being married to its owner, and in her capacity as Assistant Executive of Aging, is in a position to take official action affecting the Business. Importantly, the conflict of interest gave rise when Ms. Loo was promoted to Assistant Executive. The following subparts discuss the Board’s Advisory Opinion and its recommendations on mitigating the conflict of interest.

(A) A conflict of interest exists whenever Ms. Loo can take official action that directly affects the Business

A conflict of interest exists because Ms. Loo has a substantial financial interest in the Business, and as Assistant Executive, is in a position to make decisions, recommendations, approvals, disapprovals, or other action (including inaction), which involves the use of discretionary authority, directly affecting the Business. When Ms. Loo was promoted to Assistant Executive, she assumed

supervisory duties and responsibilities over the Grants Manager and all other AEA employees who handle various procurement activities and contract management involving the Business. The Board finds that Ms. Loo's supervisory duties and responsibilities over AEA employees whose job functions include procurement activities and contract management involving the Business constitute official action under Kaua'i County Code ("KCC") § 3-1.3 and thus creates a conflict of interest pursuant to KCC § 3-1.7.

However, to make clear, no conflict of interest existed when RFP No. 1 was published to the public, nor did a conflict exist at the time the initial contract was awarded to the Business, because Ms. Loo was not in a position to take official action on anything relating to this procurement or contract award. But even if a conflict of interest existed, the County could still award this contract to the Business because it was made after competitive proposals pursuant to the Procurement Code in Hawai'i Revised Statutes ("HRS") § 103D, and in conformance with KCC § 3-1.8, Contracts.

(B) The conflict of interest is mitigated by disqualifying Ms. Loo from all official action that affects the Business

The conflict of interest is mitigated by disqualifying Ms. Loo from all official action that directly affects the Business. The Board is persuaded by State Ethics Commission Advisory Opinion 2000-1, dated March 15, 2000, and relies on it to identify activities that constitute official action. Official action includes but is not limited to developing policy; developing requests for bids; developing contracts or criteria for evaluating contracts; evaluating bids; awarding or approving contracts; personally executing contracts and other official documents or having the documents stamped in one's name; monitoring contracts; making decisions; making recommendations; providing input in substantive matters; handling complaints and grievances; conducting investigations; making referrals; issuing advice; interpreting laws, polices, and rules; rendering administrative decisions; and *oversight of any of these activities*.¹ The State Ethics Commission also provided guidance to define the degree to which conduct is considered *directly affecting* the Business, writing, "for example, . . . a decision to reduce the size of a contract award to a competitor of the Business that enabled the Business to receive a larger award might constitute official action impacting the Business."²

Disqualification is reasonable because it appropriately mitigates the conflict of interest under these specific circumstances. First, the Board does not believe the Code of Ethics was intended to be so restrictive as to preclude Ms. Loo from continuing to serve in her current position as Assistant Executive or to require her spouse to divest his ownership interest from the Business.³ Second,

¹ See *Hawai'i State Ethics Comm'n Advisory Opinion* 2000-01, 2000 WL 3672764, *6 (March 15, 2000).

² *Hawai'i State Ethics Comm'n Advisory Opinion* 2000-01, 2000 WL 3672764, *6 (March 15, 2000).

³ See *Hawai'i State Ethics Comm'n Advisory Opinion* 2000-01, 2000 WL 3672764, *6 (March 15, 2000) ("[T]he Commission did not believe that [HRS section 84-14(a)] was intended to be so restrictive as to preclude the employee from continuing to serve as the head of the Office or require his spouse to terminate her employment with the Business. The Commission however, advised the employee that he must disqualify himself from taking any official action that directly affected the Business, to the extent possible or practicable.").

disqualification takes into account the growing need for and the importance of the KC Program on Kāua'i and the significant impact on the community in the event AEA is prohibited from continuing with the current contract with the Business or from considering a proposal from the Business in a subsequent procurement. Accordingly, Ms. Loo is to be disqualified from all official action directly affecting the Business.

(C) Ms. Loo's conflict of interest does not prohibit AEA from contracting with the Business provided certain conditions are met

AEA may continue with the current contract and may contract with the Business in the future provided the following conditions are met:

1. The AEA administration works with Ms. Loo and all applicable AEA staff to develop and implement policies and procedures that accommodates Ms. Loo's disqualification from all official action directly affecting the Business consistent with the Code of Ethics and this Advisory Opinion. The Board requests AEA present these policies and procedures to the Board for comment. The request for a presentation should not prohibit AEA from immediately implementing policies and procedures that screen off Ms. Loo from all official action affecting the Business. The presentation should be made to the Board prior to the end of this calendar year.
2. For any new contract that may be awarded to Business or any of its competitors, the contract may only be awarded after it has gone through the competitive procurement process.

Moving forward, AEA is to keep the Board apprised of any changes in circumstances applicable to Ms. Loo or the Business as it may affect the recommendations made in this Advisory Opinion. If AEA has any further questions or concerns, please contact the Board for additional guidance. In closing, as a reminder to AEA, all employees must conduct themselves in strict accordance with the Code of Ethics and this Advisory Opinion. AEA supervisors must also ensure their direct reports understand the importance of and conduct themselves in strict compliance with the Code of Ethics. The Board thanks Ms. Takahashi and Ms. Loo for seeking its advice and for their cooperation on this matter.

Members present and voting: Chair Ryan de la Pena, Secretary Chantal Zarbaugh, Members Kevin McGinnis and Amber Mokuahi.

Absent: Vice Chair Rose Ramos-Benzel and Member John Latkiewicz.

Concurring, Dissenting: None

Abstaining: None

Board of Ethics:

Ryan de la Pena, Chairperson