

STAND. COM. REP. NO.

1896

Honolulu, Hawaii

APR 23 2007

RE: GOV. MSG. NO. 267

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fourth State Legislature
Regular Session of 2007
State of Hawaii

Madam:

Your Committee on Judiciary and Labor, to which was referred Governor's Message No. 267, submitting for study and consideration the nomination of:

ATTORNEY GENERAL OF THE STATE OF HAWAI'I

G.M. No. 267 MARK J. BENNETT,
for a term to expire 12-6-2010,

begs leave to report as follows:

Upon review of the resume, written statement of the nominee, and testimony, your Committee finds that the nominee holds a B.A. degree in Political Science, summa cum laude, from Union College, and a J.D. degree, magna cum laude, from Cornell Law School. He was a partner at McCorriston Miho Miller Mukai MacKinnon, LLP, and previously served as Assistant United States District Attorney in Hawai'i and as Special Assistant Prosecuting Attorney, City and County of Honolulu. He was a law clerk to the Honorable Samuel P. King, Chief Judge, United States District Court, District of Hawai'i, and an Adjunct Professor of Law at the William S. Richardson School of Law. The nominee has served as the Attorney General for the State of Hawai'i for the last four years.

Your Committee received testimony in support of the nominee from United States District Court Judges Samuel King and David Ezra, United States Senator Daniel Akaka, United States Representative Neil Abercrombie, the Prosecutor's Office of Honolulu, Hawai'i, Maui, and Kaua'i, State of Hawai'i Organization of Police Officers, Hawai'i Government Employees Association, the United Public Workers, the Honolulu Police Department, the Hawai'i

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County Police Department, Maui County Police Department, The Hawai'i Family Forum, the Sex Abuse Treatment Center, the Hawai'i Medical Association, the Office of Hawaiian Affairs, the Native Hawaiian Bar Association, the Hawai'i State Bar Association, the State Department of Public Safety, the Department of Hawaiian Homes Lands, the Department of Transportation, the Department of Human Resources, the Department of Education, the Catholic Diocese of Honolulu, and approximately one hundred forty individuals most of whom are lawyers.

Your Committee notes that the testimony in support of the nominee credited him with implementing Megan's Law, passed by the Legislature and the nominee's support and implementation of policies relating to sex offenders, sexual and spousal abusers and his governance of an office of over 700 employees. Furthermore, your Committee received numerous testimonies praising the nominee for his intellect and his ability to simplify complex legal cases quickly and act upon them immediately.

SUBSTITUTE TEACHERS

Your Committee received testimony in opposition to the nominee from approximately eighty individuals, most of whom are substitute teachers who view the nominee as the reason they are owed approximately sixty-five million dollars by their account. The substitute teachers noted that their case has been appealed by the Office of the Attorney General after they prevailed at the Circuit Court before Judge Karen Ahn.

CHILD SUPPORT ENFORCEMENT AGENCY

Your Committee had several concerns about the nominee. Your Committee finds that the Child Support Enforcement Agency is administered by the Attorney General's Office. In 2005, the Office of the Attorney General failed to collect more than \$500 million in delinquency payments for Hawaii's children. Hawaii ranked last in the nation in collecting those delinquent payments. Your Committee finds that the delinquency payments presently exceed \$584 million and Hawaii continues to be ranked last in the nation, behind Puerto Rico, the Virgin Islands and Guam.

Your Committee notes that the nominee indicated that for the population size the State of Hawai'i is "ranked where it ought to be". Respectfully, your Committee is disappointed in the response



and disagrees. Your Committee believes that Hawai'i should exceed any and all measurements regardless of population size or ranking because the 500 million dollars in arrearages severely impacts custodial parents and hampers the well being of the family unit of the parents and children in a state where the cost of living is in the top five in the United States. Your Committee further notes that in 1988 the Legislature authorized automatic paycheck wage deductions because it was concerned about child support payments not being made by the non-custodial parent.

POLITICAL CAMPAIGN ACTIVITIES

Your Committee finds that Chapter 28 of the Hawai'i Revised Statutes delineates the authority of the Office of the Attorney General. Although the nominee could not state what section gave him authority to actively and personally campaign against a constitutional amendment passed by the Legislature regarding the mandatory retirement age for judges, the nominee indicated that he was educating the public on the criminal justice system. Your Committee notes that judges' mandatory retirement age does not relate to the criminal justice system because there are judges who are not within the criminal justice system. In addition, your Committee is concerned that there exists an appearance that the nominee's action in personally opposing the constitutional amendment was inappropriate and partisan.

CONFLICTS OF INTEREST

Your Committee finds that as the chief law enforcement and legal officer of the State, the Attorney General must remain nonpartisan. The Attorney General must be free from politics and enforce the laws regardless of political affiliations. Your Committee is concerned about the Attorney General's involvement in the confirmation hearing of Mr. Peter Young for the Chairperson of the Board of Land and Natural Resources (and who acts as the Director of the Department of Land and Natural Resources). Although the nominee's office is presently conducting a criminal investigation of that Department, with Mr. Young being involved as a witness or otherwise, the nominee has submitted written testimony in support of the reconfirmation of Mr. Young. This outright and written endorsement of Mr. Young casts concerns as to whether the criminal investigation presently conducted by the Office of the Attorney General is being or would be impartially done.



PROFESSIONAL STANDARDS OF CONDUCT

Moreover, your Committee finds that the obligation of all lawyers is to maintain the highest standards of ethical conduct. Public confidence in law and lawyers must not be eroded by irresponsible and improper conduct of a lawyer. It has been noted in the past and continues to hold true today that when explicit ethical guidance does not exist, a lawyer should determine his conduct by acting in a manner that promotes public confidence in the integrity, efficacy and efficiency of the legal system and the legal profession. A consequent obligation of lawyers to maintain the highest standards of ethical conduct. Your Committee finds that a lawyer should strive to avoid not only professional impropriety, but as important, also the appearance of impropriety.

APPEARANCE OF IMPROPRIETY

Although Hawai'i does not have a nepotism law, the nominee must set a higher standard as the state's chief legal officer. Your committee is concerned that the fact that the nominee's wife works for the nominee casts at minimum the appearance of impropriety regardless that she predated his appointment as the Attorney General. Your Committee notes that since the public hearing was held on April 21, 2007, it has received inquiries regarding the working relationship between the nominee and his wife relating to the appearance of impropriety, the ethical concerns and the potential erosion of public confidence notwithstanding the absence of a Hawai'i nepotism statute. Furthermore, your Committee notes that this is not the first time this issue has been brought before the State Senate.

Your Committee finds that it is necessary that these concerns be expressed so the nominee is aware of public inquiries made to the Senate Committee on Judiciary and Labor. Your Committee finds that it is essential that the chief law enforcement officer of the State be nonpartisan, objective and beyond reproach and avoid even the mere appearance of impropriety in dealing with the public, the Hawai'i State Legislature, and the Judiciary.

Finally, your Committee notes that because nepotism is an important issue it has proposed in House Bill 1909 SD1 legislation governing legislators. If passed as proposed, spouses of legislators would not be allowed to lobby the legislature or work in their office. The legislative proposal is patterned after the



Executive White House standards employed by the United States President and is intended to send a strong signal that the Legislature is concerned about even the appearance of impropriety involving spouses.

HAWAIIAN ISSUES

Your Committee received testimonies in support of the nominee from the Hawaiian Bar Association, the Office of Hawaiian Affairs, and the Department of Hawaiian Home Lands. It wishes to note that in both cases the testimony reflected strong support for the nominee because of his unrelenting support for Native Hawaiian issues and people. Your Committee is aware that the long-standing settlement discussion with the Office of Hawaiian Affairs (OHA) for past due legal entitlements is still pending after over a decade of on again, off again negotiations between OHA and the Office of the Attorney General on behalf of the State of Hawai'i. Furthermore, your Committee is aware that the Attorney General exercised his prerogative to file an interlocutory appeal after a circuit court found that the plaintiffs had standing to sue in the case regarding a class action lawsuit, Kalima et al. v. State of Hawaii, et. al., Civ. No. 99-4771-12. Moreover, your Committee finds that on June 30, 2006, the Hawai'i Supreme Court ruled for the plaintiffs and remanded the case back to the Circuit Court. Respectfully, your Committee does not agree that the Attorney General has "always supported Hawaiians" or "has won every case for the Department of Hawaiian Home Lands."

As affirmed by the records of votes of the members of your Committee on Judiciary and Labor that are attached to this report, your Committee, after full consideration of the background, experience, and qualifications of the nominee, has found the nominee to be qualified for the position to which nominated and recommends that the Senate advise and consent to the nomination.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Labor,



CLAYTON HEE, Chair



The Senate
 Twenty-Fourth Legislature
 State of Hawaii

Record of Votes of the
 Committee on Judiciary and Labor
 JDL
 (Advise and Consent)

Governor's Message No.:* GM 267	Committee Referral: JDL	Date: 4/23/07		
<input type="checkbox"/> The Committee is reconsidering its decision.				
The Recommendation is to:				
<input checked="" type="checkbox"/> Advise and Consent (2340) <input type="checkbox"/> Not Advise and Consent (2345)				
Members	Aye	Aye (WR)	Nay	Excused
HEE, CLAYTON (C)	/			
KOKUBUN, RUSSELL S. (VC)	/			
INOUYE, LORRAINE R.	/			
NISHIHARA, CLARENCE K.	/			
GABBARD, MIKE	/			
TOTAL	5			0
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: <div style="text-align: center; font-family: cursive; font-size: 1.2em;">Russell Kohl</div>				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one Governor's Message per Record of Votes