

COMMITTEE ON WATER, LAND, OCEAN RESOURCES & HAWAIIAN AFFAIRS

REP. KEN ITO, CHAIR
REP. JON RIKI KARAMATSU, VICE CHAIR

MARCH 14, 2008, COMMITTEE HEARING
CONFERENCE ROOM 312
10:00 A.M.

SENATE BILL 3166
RELATING TO THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY

CHAIR ITO AND COMMITTEE MEMBERS:

I SUPPORT THE PASSAGE OF SENATE BILL 3166

I AM CLIFFORD J. GARCIA. I REPRESENT TROPICAL LAMP & SHADE CO. WE ARE LOCATED AT 977 QUEEN ST. IN KAKA'AKO FOR OVER 60 YEARS.

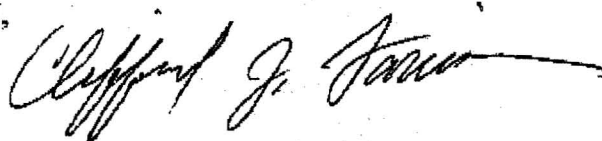
I WAS HAPPY TO HEAR THAT ACT 252 WAS PASSED BECAUSE I BELIEVE THAT COMMUNITY REPRESENTATION ON THE HCDA BOARD IS SO IMPORTANT TO THE SMALL BUSINESSES AND SMALL LANDOWNERS IN KAKA'AKO. WHO BETTER TO UNDERSTAND THE NEEDS AND PROBLEMS OF A COMMUNITY THEN A COMMUNITY MEMBER.

I WAS SHOCKED TO HEAR THAT THE TWO COMMUNITY MEMBERS ON THE HCDA BOARD HAD TO RECUSE THEMSELVES FROM THE ISSUES DEALING WITH KAKA'AKO. THEY ARE ON THE HCDA BOARD BECAUSE THEY ARE COMMUNITY MEMBERS, BUT BECAUSE THEY ARE COMMUNITY MEMBERS THEY CANNOT PARTICIPATE. THE REASONING SEEMS TO BE THAT ACT 252 DID NOT CLEARLY DEFINE THE COMMUNITY MEMBERS.

SB3166 CORRECTS THIS OMISSION AND ALSO PROVIDES FOR A SAFEGUARD FOR DIRECT CONFLICT OF INTEREST.

PLEASE PASS SB3166.

THANK YOU,





HAWAII COMMUNITY DEVELOPMENT AUTHORITY



KAKA'KO KALAELOA

Linda Lingle
Governor

Paul Kimura
Vice Chairperson

Teney K. Takahashi
Interim Executive Director

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File No.:

TRANSMITTAL FORM

TO: Mr. Dexter Okada
President
U. Okada & Co., Ltd.
P.O. Box 898
Honolulu, Hawaii 96808

DATE: October 29, 2007

RE: State Ethics Commission advice relating to HCDA Members

WE ARE SENDING YOU

Attached

Under separate cover via _____ the following items:

Copies	Date	No.	Description
1	10/26/07		Memo from Melvin Nishimoto, Deputy AG regarding State Ethics Commission advice relating to HCDA Members

THESE ARE TRANSMITTED as checked below:

- For signature
- For your use & files
- As requested
- For review
- For approval
- Other (see remarks)

REMARKS:

Dexter,
Attached is Mel's recommendation on the matter relating to the State Ethics Commission's previous advice to Paul Kimura. A copy was sent to Paul Kimura and will be given to the new Chairperson after the election.

Please be advised that staff will be proposing amending Section 206E-3, HRS to include representation by a small business owner and also representation from someone in the Kakaako district. This will be discussed at the next Authority meeting in November.

Teney

If there are any questions, please call Teney Takahashi at (808) 587-2870.

SIGNED: _____

Teney Takahashi

COPY TO:

LINDA LINGLE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
465 SOUTH KING STREET, Room B-2
HONOLULU, HAWAII 96813
(808) 586-1500

RECEIVED

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MARK J. BENNETT
ATTORNEY GENERAL
HAWAII COMMUNITY
DEVELOPMENT
AUTHORITY
LISA M. GINOZA
FIRST DEPUTY ATTORNEY
GENERAL

October 26, 2007

MEMORANDUM

TO: Teney K. Takahashi
Interim Executive Director
Hawaii Community Development Authority

THRU: Diane Taira *[Signature]*
Supervising Deputy Attorney General

FROM: Melvin Y. Nishimoto *[Signature]*
Deputy Attorney General

RE: State Ethics Commission advice relating to HCDA Members

We have reviewed the advice issued by the State Ethics Commission's Executive Director (Commission) to Paul Kimura, a member of the Hawaii Community Development Authority (HCDA), and confirm our disagreement with the Commission's conclusion that Mr. Kimura is a mandated member of HCDA board.

We understand that the Commission originally advised Mr. Kimura that as owner and president of City Fender & Body Service, Ltd. (City Fender), a small business located in the Kakaako Community Development District (Kakaako District), he was precluded from "...participating in policy-making, planning or rule-making or taking other official action directly affecting small business owners in the Kakaako District as a whole, because it appeared that such official action would directly affect City Fender." The Commission staff based its advice on Section 84-14(a), Hawaii Revised Statutes (HRS), which prohibits a state employee from taking official action directly affecting a business or undertaking which he has a substantial financial interest.

After receiving a letter dated July 16, 2007, from Senate President Colleen Hanabusa and House Speaker Calvin Say of the Hawaii State Legislature (Legislative Letter), the Commission staff issued a written opinion reversing its original verbal advice. The Commission staff relied on the statement in the Legislative Letter indicating that the Legislature had intended for small business to be represented on the HCDA board and that Mr. Kimura was appointed to the board for that very reason. Furthermore, the Commission's opinion letter set forth that said legislators will be

Teney K. Takahashi
Interim Executive Director
October 26, 2007
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supporting the amendment of Section 206E-3, HRS, in the 2008 Legislative Session to require small business representation on the HCDA board.

It is our opinion that the Commission staff erred in relying on the Legislative Letter to explain legislative intent of Section 206E-3, HRS. It is our opinion that Mr. Kimura has a definite conflict of interest in matters directly affecting his business interests. We, therefore, advise that Mr. Kimura refrain from taking action on HCDA matters directly affecting his business or undertakings in which he has a substantial financial interest until and unless Section 206E-3, HRS, is amended or another law is passed allowing action to be taken by members having an interest in the matter in question.

This recommendation would also apply to any other Kakaako small business owner presently appointed to the HCDA board.