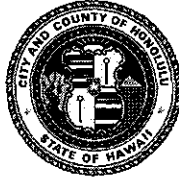


DEPARTMENT OF THE CORPORATION COUNSEL  
**CITY AND COUNTY OF HONOLULU**  
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KIRK CALDWELL  
MAYOR



DONNA Y. L. LEONG  
CORPORATION COUNSEL DESIGNATE

April 10, 2013

The Honorable David Y. Ige, Chair  
and Members  
Committee on Ways and Means  
State Senate  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Ige and Committee Members:

Subject: S.C.R. 102 and S.R. 68 Requesting the Auditor to Conduct an Audit of the Kapiolani Park Trust to Evaluate its Governance Structure and Identify the Permissible Uses of the Park Lands, Including Delineating any Limitations on Commercial or Other Inconsistent Uses that May Fall Outside the Scope of the Trust's Purpose or May Constitute Waste of the Trust Property.

The City and County of Honolulu opposes S.C.R. 102 and S.R. 68, which contain factually incorrect statements concerning the *res* of Kapiolani Park Trust. The 11<sup>th</sup> "whereas" provision in each Resolution incorrectly states that the new ocean safety substation will be developed on Kapiolani Park Trust land. Contrary to the testimony of the Kapiolani Park Preservation Society ("KPPS") provided to the Legislature, the proposed site for the new ocean safety substation is neither within the boundaries of the Kapiolani Park Trust nor subject to the terms of the Kapiolani Park Trust.

In City and County of Honolulu v. Warren Price, III, et al., Circuit Court of the First Circuit, S.P. No. 89-0015, the KPPS had argued that lands makai of Kalakaua Avenue, including the proposed site of the ocean safety substation, were within the boundaries of the Kapiolani Park Trust. In total disagreement with the position of the KPPS, the Circuit Court of the First Circuit ruled that the lands makai of Kalakaua Avenue are not in the Kapiolani Park Trust:

The Honorable David Y. Ige, Chair  
and Members  
Committee on Ways and Means  
April 10, 2013  
Page 2

2. The Court finds that the issue of ownership of the oceanfront lots and the Tam Pong Ditch lands has been previously litigated and that prior court orders have determined that these lands are not included in the Kapiolani Park Trust and need not be treated by the Trustees as part of the Kapiolani Park Trust.

Order Denying Intervenor-Defendant Kapiolani Park Preservation Society's Second Petition for Instructions to Trustees of the Kapiolani Park and Request for Attorney's Fees and Costs Filed February 11, 1999, filed on March 29, 1999, in S.P. No. 89-0015 (copy enclosed).

In addition, it is our position that it is not the Auditor to whom the two Resolutions are directed, but the State Attorney General, as *parens patriae* of charitable trusts, who is responsible for overseeing the activities of the trustees to the end that the trust is performed and maintained in accordance with the provisions of the trust documents, and for bringing any abuse or deviation on the part of the trustees to the attention of the court for correction. Hite v. Queen's Hospital, 36 Haw. 250, 262 (1942). The City appreciates the interest of the Legislature concerning the Kapiolani Park Trust; however, generally, only the Attorney General has standing to enforce the terms of a charitable trust and to oversee the activities of the trustees.

For these reasons, we respectfully object to S.C.R. 102 and S.R. 68.

Thank you for the opportunity to provide our comments on these Resolutions.

Very truly yours,



DONNA Y. L. LEONG  
Corporation Counsel Designate

DYLL:ey

Enclosure

DAVID Z. ARAKAWA, 2908  
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 JAMES C. BUTT, 4633  
 CYNTHIA M. NOJIMA, 3596  
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RECEIVED  
 CORPORATION COUNSEL  
 CITY AND COUNTY OF HONOLULU

1ST CIRCUIT COURT  
 STATE OF HAWAII  
 FILED

1999 MAR 29 PM 3:23

'99 MAR 30 P3:39

REFERRED TO

B. CHG  
 CLERK

Attorneys for Trustees

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU,	)	S.P. NO. 89-0015
a municipal corporation,	)	(Special Proceedings)
	)	
Plaintiff,	)	ORDER DENYING INTERVENOR-
	)	DEFENDANT KAPIOLANI PARK
vs.	)	PRESERVATION SOCIETY'S
	)	SECOND PETITION FOR
MARGERIE S. BRONSTER, Attorney	)	INSTRUCTIONS TO TRUSTEES
General of the State of	)	OF THE KAPIOLANI PARK AND
Hawaii,	)	REQUEST FOR ATTORNEY'S FEES
	)	AND COSTS FILED FEBRUARY 11,
Defendant,	)	1999
	)	
and	)	
	)	
KAPIOLANI PARK PRESERVATION	)	Date: March 5, 1999
SOCIETY, a Hawaii non-profit	)	Time: 10:30 a.m.
corporation,	)	Judge: Kevin S. C. Chang
	)	
Intervenor-	)	
Defendant.	)	
	)	

ORDER DENYING INTERVENOR-DEFENDANT KAPIOLANI PARK  
 PRESERVATION SOCIETY'S SECOND PETITION FOR INSTRUCTIONS  
 TO TRUSTEES OF THE KAPIOLANI PARK AND REQUEST  
 FOR ATTORNEY'S FEES AND COSTS FILED FEBRUARY 11, 1999

The Petition of Intervenor-Defendant KAPIOLANI PARK  
 PRESERVATION SOCIETY ("KPPS"), filed herein on February 11,  
 1999, having come on for hearing on March 5, 1999, at 10:30 a.m.,  
 before the Honorable Kevin S. C. Chang, Judge of the above-  
 entitled Court, with Deputies Corporation Counsel Cynthia M.

I do hereby certify that this is a full, true, and  
 correct copy of the original on file in this office.

Nojima, Natalie Hiu and Reid Yamashiro representing the Kapiolani Park Trustees ("Trustees"), Steven M. Shinn, Esq., representing KPFS, Deputy Corporation Counsel Dawn D. M. Spurlin representing Plaintiff City and County of Honolulu ("City"), and Deputy Attorney General Linnel T. Nishioka representing Defendant State of Hawaii ("State"), and the Court having duly considered the affidavits and memoranda of law, the arguments of counsel and reviewed the records and files herein, and the Court being fully advised of the premises and for good cause appearing;

THE COURT HEREBY FINDS AND CONCLUDES AS FOLLOWS:

1. The Court finds that prior court orders have determined that an accounting and/or listing of Kapiolani Park improvement, construction and maintenance projects, to be provided either annually or in the Trustees' tri-annual reports, are not required. The Kapiolani Park Trust is a unique trust in that its corpus consists of non-income-producing property. Prior court orders have determined that Hawaii Revised Statutes Section 560:7-303 does not apply to the Kapiolani Park Trust and that the members of the City Council, as Trustees, only serve as guardians of the Trust property with no day-to-day responsibilities.

2. The Court finds that the issue of the ownership of oceanfront lots and the Tam Pong Ditch lands has been previously litigated and that prior court orders have determined that these lands are not included in the Kapiolani Park Trust and need not be treated by the Trustees as part of the Kapiolani Park Trust lands.

3. The Court finds that a prior court order has determined that the Honolulu Zoo is a permissible use of the Trust's lands. The Zoo admission fee is a permissible user fee for admission to the Honolulu Zoo. Therefore, the City and Zoo may continue using such lands as a zoo and charging an admission fee to the Honolulu Zoo.

4. KPPS now attempts to relitigate issues which have been the subject of previous proceedings and orders. The Court determines that issue-preclusion doctrines prohibit the relitigation of the above issues, as they have been determined by prior court orders.

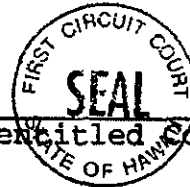
NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

A. The Court hereby denies KPPS' requests in toto, including its request for its attorney's fees and costs incurred in pursuit of these issues.

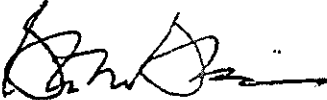
B. If KPPS desires interlocutory relief, it should request so in a separate petition.


DATED: Honolulu, Hawaii, MAR 29 1999

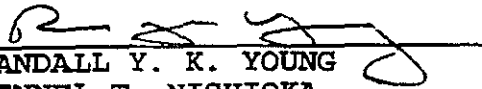
KEVIN S. C. CHANG  
Judge of the above-entitled Court



APPROVED AS TO FORM:

  
\_\_\_\_\_  
STEVEN M. SHINN  
Attorney for Intervenor-  
Defendant Kapiolani Park  
Preservation Society

  
DAWN D. M. SPURLIN  
Attorney for Plaintiff  
City and County of Honolulu

  
RANDALL Y. K. YOUNG  
LINNEL T. NISHIOKA  
Attorneys for Defendant  
Margery S. Bronster, in her  
capacity as Attorney General  
of the State of Hawaii

S.P. NO. 89-0015, CITY AND COUNTY OF HONOLULU v. MARGERY S.  
BRONSTER and KAPIOLANI PARK PRESERVATION SOCIETY - ORDER DENYING  
INTERVENOR-DEFENDANT KAPIOLANI PARK PRESERVATION SOCIETY'S SECOND  
PETITION FOR INSTRUCTIONS TO TRUSTEES OF THE KAPIOLANI PARK AND  
REQUEST FOR ATTORNEY'S FEES AND COSTS FILED FEBRUARY 11, 1999

OR-PET.2

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [WAM Testimony](#)  
**Cc:** [bdshafer@gmail.com](mailto:bdshafer@gmail.com)  
**Subject:** \*Submitted testimony for SCR102 on Apr 11, 2013 14:15PM\*  
**Date:** Tuesday, April 09, 2013 9:23:03 PM

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SCR102

Submitted on: 4/9/2013

Testimony for WAM on Apr 11, 2013 14:15PM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Benjamin Shafer	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [WAM Testimony](#)  
**Cc:** [mendezj@hawaii.edu](mailto:mendezj@hawaii.edu)  
**Subject:** \*Submitted testimony for SCR102 on Apr 11, 2013 14:15PM\*  
**Date:** Wednesday, April 10, 2013 10:09:36 AM

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SCR102

Submitted on: 4/10/2013

Testimony for WAM on Apr 11, 2013 14:15PM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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