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DEPT. COMM. NO. 331



LEGISLATIVE REFERENCE BUREAU
State of Hawaii
State Capitol, Room 446
415 S. Beretania Street
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January 9, 2019

MEMORANDUM

TO: All Legislators

FROM: Charlotte A. Carter-Yamauchi *CACY*
Director

SUBJECT: 2017 and 2018 Attorney General Opinions

As required by section 28-3, Hawaii Revised Statutes, please find attached pdfs of the 2017 and 2018 Listing of Opinions Issued by the Attorney General, State of Hawai`i, which consist of digests for Attorney General Opinions Nos. 17-01 and 18-01. This LRB report can also be accessed on our LRB website at lrbhawaii.org/reports/ under the heading "Library Publications."

The full text of the opinions can be accessed on the Department of the Attorney General's website: ag.hawaii.gov/publications/opinions/.

If you have any questions, please contact Claire Marumoto, Research Librarian, at 587-0690.

Attachment

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**2017 LISTING OF OPINIONS
ISSUED BY THE ATTORNEY GENERAL
STATE OF HAWAII**

OPINION NO. (Date Issued)	DIGEST
17-01 (December 11, 2017)	Shoreline encroachment easements. The Board of Land and Natural Resources (Board) requires private owners of coastal properties to obtain easements for structures that were originally constructed on private property but are now located on State-owned land due to the landward migration of the shoreline. Six aspects of the issue were addressed: (1) Regarding the dividing line between public and private property for oceanfront property, the State owns all lands makai of the "the upper reaches of the wash of waves, usually evidenced by the edge of vegetation or by the line of debris left by the wash of waves." This description is referred to as the "shoreline." (2) If the shoreline moves landward, then the ownership line also moves mauka. (3) The State already owns an inchoate interest in land that might be gained through erosion or sea level rise. Ripening of this inchoate interest is not "acquisition" of land under statutes that require the Board or the Attorney General to approve "acquisition" of real property. (4) This result does not violate private owners' due process rights or constitute a "taking" of private property. (5) Ownership of land by erosion or sea level rise is not an acquisition of land, and the State is not acquiring land under statutes requiring the Attorney General to review and approve land acquisitions. (6) The Board can require the former landowner to pay fair market value in order to obtain an easement or other interest in land now owned by the State. Applicable statutes specifically provide for payment of fair market value in most cases.

Compiled by:
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January 2, 2019

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**2018 LISTING OF OPINIONS
ISSUED BY THE ATTORNEY GENERAL
STATE OF HAWAII**

OPINION NO. (Date Issued)	DIGEST
18-01 (September 11, 2018)	<p>Availability of unconcealed-carry licenses. Section 134-9, HRS, provides in part that “[w]here the urgency or the need has been sufficiently indicated, the respective chief of police” may issue a license authorizing an otherwise-qualified applicant who “is engaged in the protection of life and property” to carry an unconcealed firearm within the county. In <i>Young v. Hawaii</i>, a divided panel of the Ninth Circuit construed this provision as “[r]estricting open carry to those whose job entails protection life or property,” such as “security guard[s].” Based on this interpretation, the panel concluded that section 134-9, HRS, “necessarily restricts open carry to a small and insulated subset of law-abiding citizens” and thus violates the Second Amendment’s protection of “the right of <i>individuals</i> to keep and to bear arms[.]” 896 F.3d 1044, 1071 (2018). This interpretation is overly restrictive. Section 134-9 authorizes the issuance of such licenses to anyone “engaged in the protection of life and property” who demonstrates a sufficient “urgency” or “need” to carry a weapon. An applicant must satisfy four criteria to obtain an unconcealed-carry license: (1) meet the objective qualifications for possessing and carrying a firearm; (2) demonstrate a sufficient need to carry a firearm for the purpose of protecting life and property; (3) be of good moral character; and (4) present no other reason justifying the discretionary denial of a license. To satisfy these requirements, an applicant must demonstrate, among other things, a need for protection that substantially exceeds that held by ordinary law-abiding citizens.</p>

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