



UNIVERSITY OF HAWAI‘I SYSTEM

Legislative Testimony

Testimony Presented Before the
Senate Committee on Higher Education
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by
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SCR 85 – REQUESTING A REVIEW AND EVALUATION OF THE UNIVERSITY OF HAWAII BOARD OF REGENTS’ CONFLICT OF INTEREST POLICY

Chair Hee, Vice Chair Inouye and Members of the Committee:

The purpose of SCR 85 is to request the Legislative Auditor to review and evaluate the University of Hawaii Board of Regents’ conflict of interest policy.

The University of Hawaii submits that this Resolution is not necessary for the reasons detailed below.

The March 14-16, 2004 Report of the Western Association of Schools and Colleges (WASC) Visiting Team, which is mentioned in the Resolution came at a unique period in the history of the University of Hawaii where a “nonproductive relationship exists between the Board of Regents and the President” (part of the WASC report). Since then dramatic changes have occurred, including the Board of Regents’ aggressive implementation of the conflicts of interest policy. The successful results of the foregoing are reflected in the WASC’s December 21, 2004 Report, when the WASC Visiting Team reported that “the Board has acted to improve its own functioning as well. It has compiled an orientation manual for new Regents, which the team found a very useful foundation in describing the role and responsibilities of the Regents, including attention to conflict of interest policy and practice. All of these steps, and the commitments of the Board to further developing its work, are very positive signs. The Board and the President are commended for the change both in the tone and substance of their relationship.”

In response to WASC’s March 14-16 Report and acting under its fiduciary duty to safeguard the best interests of the University, the BOR’s Vice Chairperson Kitty Lagareta stated in her May 3, 2004 letter to Lindsay A. Desrochers, Vice Chancellor for Administration as follows:

“During the past year, the Board encountered three issues relating to the Board’s Conflict of Interest policy. The first involved an agreement between the University of Hawaii with a sitting Regent to purchase land owned by the Regent and to enter into a development agreement for the construction of a facility for the Institute of Astronomy.

The second issue is related to the proposed revised agreement between the University of Hawaii and the University of Hawaii Foundation. The third issue involves an agreement between the University of Hawaii and a hotel property in which the vice chairman of the Board of Trustees of the University of Hawaii Foundation (and immediate past chair of the Board of Regents) has an interest. In all cases, the Board has raised and confronted these conflicts of interest very aggressively. In addition, the current Board has appointed a task group in consultation with the university counsel to review the current Board policy on Conflict of Interest and to consider for adoption some of the recommendations of the Sarbanes-Oxley Act.”

As indicated above, the BOR has addressed the conflicts of interest issues very aggressively. The Regents are subject to the State of Hawaii Ethics Code, Chapter 84 of the Hawaii Revised Statutes. In addition, the Regents are subject to the internal Conflicts of Interest policy, set forth in Article X of the Board of Regents Bylaws. (The Bylaws are posted on the University of Hawaii website.)

The Regents have complied with the State Ethics Code as well as its Bylaws. In certain instances, the requirements of the Bylaws are more stringent than the Ethics Code. For example, the BOR policy defines potential conflicts to involve not only the Regent but the Regent’s family “which shall be a spouse, parents, siblings, children and their spouses, and any household member.” By comparison, the State Ethics Code defines “financial interest” to include the “individual, the individual’s spouse, or dependent children.”

Moreover, the Regents’ policy requires that as soon as a Regent declares a conflict or is determined to have a conflict, that Regent must refrain from “participating in the consideration of the proposed matter. Those Regents may not vote on such matters before the Board and may not be present during the Board’s deliberation and at the time of the vote.” Article X, Section F, “Restraint on Participation.”

To the extent this Resolution seeks to study to clarify the Conflicts of Interest policy, the issue is already clear in policy and practice at the University. The current Regents have been fastidious about seeking the advice and counsel of the University General Counsel on possible conflicts of interest and in following the advice of Counsel. The University General Counsel has been consistent in advising conflicted Regents to refrain from being present during the deliberation and decision making, and not merely recusing themselves during the voting. Accordingly, the Regents have consistently adhered to the practice of absolutely no participation in any discussions on matters in which the Regents are conflicted and have recused themselves. The General Counsel also has consistently advised the Regents that the BOR Conflict of Interest policy is clear, consistent with the requirements of the State Ethics Code, and enforceable.

In fact, the records of the BOR reflect that there were at least a total of 75 instances of recusals due to conflicts of interest over the past period from 1996 to date. Of the foregoing, 29 recusals were in an open public meeting and 46 were recusals in an executive session.

As to the examples mentioned in the Resolution, we respond as follows:

- (1) In Example #1, the former Regent did not declare a conflict of interest and therefore there was no recusal. However, there is no clear evidence that the proposed major reorganization directly involved the Regent's family members.
- (2) In Example #2, the records of the BOR indicate that the former Board chairperson did declare a conflict of interest and did recuse herself from participation or discussions involving her law firm.
- (3) In Example #3, the records of the BOR do not indicate any participation or involvement by the subject Regent in any discussions about the subject lawsuit.
- (4) In Example #4, the Regent did declare a conflict of interest and recused himself from any participation or discussions on the proposed project on Maui. He did subsequently resign.

As to certain public/private development projects, the subject Regents' chairperson, along with other Regents, did declare a conflict of interest and did recuse herself from any and all participation or discussions in the selection of a developer in one of the development projects.

In light of WASC's response contained in its December 21, 2004 Report, we seriously question whether there is still a need to study the conflict of interest policy or issues any further.

In addition, the Concurrent Resolution proposes to make the financial disclosure statements from the Regents also available for public inspection. We first observe that this proposed change in the Ethics Code would treat the Regents of the University differently from all other members of state boards and commissions. The only exceptions to the foregoing are members of the Board of Education and trustees of OHA, who are subject to public disclosure. There is no consistent evidence or persuasive rationale to suggest that the Regents need to be singled out for special treatment of public disclosure. Therefore, we seriously question whether it is fair or necessary to require this kind of special treatment just for the Regents.

Thank you for the opportunity to testify on this measure.