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Council Services Division
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MEMORANDUM

December 1, 2010

From: Tim Bynum
Re: Appointment of County Clerk

After long and serious considerations of the issues I have come to the conclusion that I will not be voting for Peter Nakamura to be reappointed as County s Clerk this term. I had recommend that the Council appoint one of the capable alternatives available to us from our current staff as an interim County Clerk and conduct an open search for the best-qualified candidate available to lead Council Services. Had we gone this route, Mr. Nakamura could have participated as a candidate in the search process. While I recognize Mr. Nakamura’s talents, contributions and strong work ethic there are in my opinion unresolved issues. The following are among those that lead to this conclusion.

UIPA

The Uniform Information Practices Act is State law and requires a response within ten business days. The Clerk has repeatedly failed to respond as required by law in the required time frame and in a number of instances has completely ignored the request and not responded at all.

Examples: The Garden Island on their web site (<http://thegardenisland.com/app/sunshine/>) lists records request from various County Departments all of which were responded to on the time line required by State law, except those requests filed with the County Clerk. The requests made to Council Services were all ignored and not responded to at all. Requests from other Kaua'i citizens have also been ignored.

A UIPA request for documents made by Council members on May 26, 2009 was not responded to until July 8, 2009 and then only after follow up memos and an admonition from the County Attorney.

Records

The Kaua'i County Charter requires the Clerk to “take charge of, safely keep and dispose of all books, papers and records which may properly be filed in his office and keep in separate files all ordinances, resolutions and regulations and cumulative indices of the same, or exact copies thereof, enacted or adopted by the council.”

One of the Clerks important responsibilities is to keep the County code up to date. One can do a Google search of any Hawai'i County, except Kaua'i, and easily find an updated code. Not only can the public not find the Kaua'i County Code online, an up to date codified version has not been available in any form since 2006.

When seeking electronic minutes of Council meetings the Clerk informed Council members in writing that he "had difficulty locating electronic copies of Council meeting minutes" and that "extensive agency efforts have been required to search for and prepare the records for copying" This response and other instances related to key Council records have raised alarms about the integrity of Council records and led to the following written inquiry "Is it the case then that our key public documents exist only on paper in the Historic County building? Is it the case that our office documents are not backed up on the county network? Is it the case that we are not availing ourselves of the backup capabilities provided by the County IT department. Does this not leave an unacceptable risk that these key public documents could be lost completely?" There has been, to this date, no response to this written inquiry and concerns about the integrity of County records remain.

Salary issues

The County Charter requires that department head salaries be determined by the Salary Commission. The County Clerk is a Department head. By Salary Commission resolution, department head raises requirements include; 1. "employees completed performance evaluation evidencing that the appointee has met or exceeds job requirements" 2. "the appointing authority's recommendation on whether a proposed increase should be granted". Although neither criterion was met, the County Clerk received a pay raise in December, 2009. Other department heads and the mayor did not receive a salary increase in December 2009 due to economic conditions. This has led to a situation where the clerk's current salary at \$114,848.00 is higher than that of the Mayor's.

Over the last several years, without the knowledge of the Council body, the Clerk accepted and was paid unused vacation time. This is contrary to the County's policy and practice with other County employees. Unused vacation time pay paid to the clerk is in the neighborhood of \$50,000.00. The funds were apparently available without a separate appropriation because of salary surpluses in the Council Services budget resulting from vacancies. (Positions have remained unfilled for extended periods of time. Example: In the 06-07 budget a clerk typist position was added by a unanimous vote of the Council, despite repeated requests and promises made in each budget cycle the position remains unfilled four years later.)

The Garden Island opined in November "When the council goes to organize itself, we also hope the members do their due diligence to ensure the current county clerk and the individuals holding other key positions are still the most appropriate choices for those jobs." This position and recommendations I have made are a result of this process of due diligence and the belief that this course of action is in the best interest of the County and its citizens.