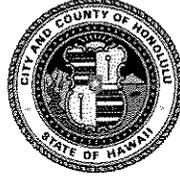


ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

715 SOUTH KING STREET, SUITE 211, HONOLULU, HAWAII 96813-3091
Phone: (808) 768-7786 · Fax: (808) 768-7768 · EMAIL: ethics@honolulu.gov
Internet: www.honolulu.gov/ethics

MUFI HANNEMANN
MAYOR



CHARLES W. TOTTO
EXECUTIVE DIRECTOR & LEGAL COUNSEL

Testimony of the Honolulu Ethics Commission
Resolution 09-5
Before the Executive Matters and Legal Affairs Committee
Wednesday, January 14, 2009
1:00 p.m.

RECEIVED

JAN 14 10 02 AM '09

CITY CLERK
HONOLULU, HAWAII

Good afternoon Chair Djou and members of the Committee.

My name is Chuck Totto and I am the Executive Director and Legal Counsel for the Honolulu Ethics Commission (Commission). The Commission supports Resolution 09-5 because it is needed to ensure that the civil fines process is available to the Commission.

In the general election of 2006 the voters passed a Charter amendment that authorized the Commission to impose civil fines on elected officers of the city for ethics violations. In the 2008 general election the public extended the civil fine authority to all city officers and employees who have significant discretionary or fiscal power, as that group is defined by ordinance. A bill to implement the 2008 Charter amendment will be offered to the Council shortly.

The Commission greatly appreciates the Council's support in implementing the voters' will. However, one more step is required before the civil fine process will work: state law needs to be changed in two specific areas.

Right now HRS Sec. 46-1.5(24)(A) requires that a county ethics agency must inform the ethics violator to cease and/or correct the misconduct. The agency may impose a fine only if the misconduct continues *after* the notice to cease or correct. This requirement makes no sense for an ethics violation because it lets a violator have a free pass to cause harm without financial penalty.

In addition, HRS Sec. 46-1.5(24)(F) requires the counties to set up an appeals board before a fine may be imposed on the ethics law violator. (The appeals process has been added to the ordinances, but the board has not been constituted or rules promulgated.) It would be more efficient to let any one who wants to appeal do so to the circuit court rather than add another layer to city government.

Neither of these conditions is required for the Hawaii State Ethics Commission to impose a civil fine. Our Commission has been working with the Senate Committee on Judiciary and

Governmental Operations and the House Committee on Judiciary to remove these two impediments in state law. Both Committees Chairs will introduce bills to do that. I anticipate that the bills will be supported by the ethics agencies of the other counties.

Passage of the Resolution will be a clear statement to the Legislature that the bills are important to the city and the Council.

Thank you for allowing me to testify in favor of Resolution 09-5. I am happy to answer any questions.