

KRISTIN E. IZUMI-NITAO
EXECUTIVE DIRECTOR



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STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION

235 SOUTH BERETANIA STREET, ROOM 300
HONOLULU, HAWAII 96813

December 16, 2015

Mr. Danton S. Wong, Esq.
Chun Kerr LLP
Fort Street Tower, Topa Financial Center
745 Fort Street, 9th Floor
Honolulu, Hawaii 96813-3815

Re: Advisory Opinion No. 16-01

Dear Mr. Wong:

This is in response to your request for an advisory opinion dated July 10, 2015 and your supplemental letter dated August 26, 2015.¹ Your request concerned the application of Hawaii Revised Statutes (“HRS”) §11-355, the State ban on government-contractor political contributions, to the following facts:

Corporation X is a government contractor subject to the ban contained in HRS §11-355. Corporation X’s parent company,² Corporation Y, desires to make contributions to Hawaii candidates and noncandidate committees through its federal political action committee Y PAC. Y PAC is a separate segregated fund registered with the Federal Election Commission. Corporation Y is the connected organization of Y PAC. Federal law allows Corporation Y to pay for the administrative expenses of Y PAC. Contributions to Y PAC are made by officers and employees of Corporation Y and its subsidiaries, including Corporation X.

Decisions related to Y PAC’s contributions are made by designated officers and employees of Corporation Y and its subsidiaries, including Corporation X. Y PAC will limit its Hawaii contributions to the amounts allowed by Hawaii law and will report those contributions to the Campaign Spending Commission (“Commission”). In Hawaii, Y PAC will make political contributions based upon a list of potential recipients submitted by officers of Corporation X, the government contractor.

¹ Attachment “A” is a copy of the original request. Attachment “B” is a copy of the supplemental letter.

² A parent company is one that owns more than 50 percent of the voting shares of another company, the subsidiary. Black’s Law Dictionary 1004 (5th ed. 1979).

You asked the following questions:

- (1) Because of the subsidiary-parent relationship between Corporation X (the contractor) and Corporation Y (parent company) and the support Corporation Y gives to Y PAC, are the contributions that Y PAC proposes to make to Hawaii candidates and noncandidate committees considered “direct” or “indirect” contributions by Corporation X or Corporation Y pursuant to HRS §11-355(a)(1) and a violation of the same?
- (2) Would there be a violation of HRS §11-355(a)(2) if Corporation Y solicits contributions to Y PAC, where such funds from such contributions are commingled with funds that are likely to be used to make contributions in Hawaii?

In short, based upon the facts contained in your letters, the Commission states that Y PAC’s contributions to Hawaii candidates and noncandidate committees, solely based upon a list of potential recipients submitted by Corporation X, the government contractor, would violate HRS §11-355(a)(1). However, the solicitation of contributions by Corporation Y, of its officers and employees and the officers and employees of its subsidiaries, would not violate HRS §11-355(a)(2).

HRS §11-355, entitled “Contributions by state and county contractors prohibited,” provides:

(a) It shall be unlawful for any person who enters into any contract with the State, any of the counties, or any department or agency thereof either for the rendition of personal services, the buying of property, or furnishing of any material, supplies, or equipment to the State, any of the counties, any department or agency thereof, or for selling any land or building to the State, any of the counties, or any department or agency thereof, if payment for the performance of the contract or payment for material, supplies, equipment, land, property, or building is to be made in whole or in part from funds appropriated by the legislative body, at any time between the execution of the contract through the completion of the contract, to:

- (1) Directly or indirectly make any contribution, or promise expressly or impliedly to make any contribution to any candidate committee or noncandidate committee, or to any candidate or to any person for any political purpose or use; or

(2) Knowingly solicit any contribution from any person for any purpose during any period.

(b) Except as provided in subsection (a), this section does not prohibit or make unlawful the establishment or administration of, or the solicitation of contributions to, any noncandidate committee by any person other than the state or county contractor for the purpose of influencing the nomination for election, or the election of any person to office.

(c) For purposes of this section, "completion of the contract" means that the parties to the government contract have either terminated the contract prior to completion of performance or fully performed the duties and obligations under the contract, no disputes relating to the performance and payment remain under the contract, and all disputed claims have been adjudicated and are final.

The Commission has considered HRS §11-355 in the past. In Advisory Opinion No. 07-07,³ the Commission determined that the partners, employees, and their spouses and family members, of a partnership that was a government contractor, were not barred from making political contributions under the contractor ban, even though the partnership itself could not make contributions.⁴ The Commission noted then that the legislative history of the contractor ban indicated that the Legislature intended that the ban only apply to the specific contracting entity and not individuals associated with the contractor, such as the individual owners of the contractor.

In this case, you do not assert that Corporation X or Corporation Y intends to directly contribute to Hawaii candidates and noncandidate committees. All political contributions in Hawaii will be made by Y PAC. All of the contributions to Y PAC that would in turn be used by Y PAC to make political contributions in Hawaii, come from officers and employees of Corporation X, the government contractor; officers and employees of Corporation Y, the parent company; and, officers and employees of other subsidiaries of Corporation Y. Corporation X and Corporation Y do not make contributions to Y PAC from their treasuries. However, HRS §11-361(a) provides:

All contributions and expenditures of a person whose contributions or expenditures are financed, maintained, or **controlled** by any corporation, labor organization, association, party, or any other person, including any parent, **subsidiary**, branch, division, department, or local unit of the corporation, labor organization, association, party, political committees established and maintained by a national political party, or by any group of those persons shall be considered to be made by a single person. [Emphases added.]

³ See also, Advisory Opinion No. 13-02 and Advisory Opinion No. 15-01.

⁴ At that time, the contractor ban was codified at HRS §11-205.5.

Based upon the facts that you shared with the Commission, it appears that the contributions made by Y PAC in Hawaii would indeed be controlled by Corporation X, the government contractor, since the contributions only go to candidates or noncandidate committees that are on a list provided by Corporation X to Y PAC. Since Corporation X essentially controls to whom Y PAC contributions go to, the Commission will attribute Y PAC's Hawaii contributions to Corporation X. Thus, in answer to your first question, the attributed contributions by Y PAC would violate HRS §11-355(a)(1).

In regard to your second question, in general, a subsidiary company is a distinct corporate entity from its parent company. Suzuki v. Castle & Cooke Resorts, 124 Hawaii 230, 233, 239 P.3d 1280, 1283 (Haw. App. 2010). Absent special circumstances, the courts will not disregard the legal entity of the corporation. Suzuki, 239 P.3d. at 1283, citing Chung v. Animal Clinic, Inc., 63 Haw. 64, 645, 636 P.2d 721, 723 (1981) ("In fact, the Hawaii Supreme Court has said 'the legal entity of the corporation will be disregarded only where recognition of the corporate fiction would bring about injustice and inequity or when there is evidence that the corporate fiction has been used to perpetuate a fraud or defeat a rightful claim.'"). In the absence of facts that would justify deeming Corporation X the *alter ego* of Corporation Y, the ban on the solicitation of contributions in HRS §11-355(a)(2) applies only to Corporation X, the government contractor, and not Corporation Y, the parent company. Thus, any solicitation by Corporation Y of officers and employees of Corporation Y and its subsidiaries, including Corporation X, for contributions to Y PAC, would not violate HRS §11-355(a)(2).

In response to receiving a draft of this advisory opinion, you sent a letter dated September 4, 2015⁵ in which you informed us that subsidiaries of Corporation Y, other than Corporation X, make recommendations on political contributions to Y PAC. Corporation X does not finance, maintain or control, any of these other subsidiaries.⁶ You wanted confirmation that Y PAC could act upon those recommendations from the other subsidiaries. Similar to what was stated earlier, so long as Corporation X does not finance, maintain, or control the other subsidiaries, Y PAC's political contributions in accordance with those subsidiaries' recommendations would not violate HRS §11-355(a)(1). Finally, in further response to your September 4, 2015 letter, contributions from Y PAC, even though it solicits contributions from officers and employees of its subsidiaries, including Corporation X, would not violate HRS §355(a)(1). As noted above, the contribution ban only applies to the specific entity with the government contract. Given the facts presented by you, Y PAC is not a government contractor.

The Commission provides this Advisory Opinion as a means of stating its current interpretation of the Hawaii campaign finance law in §11-301, *et seq.*, HRS, and the Commission's rules in chapter 3-160, Hawaii Administrative Rules. The Commission may

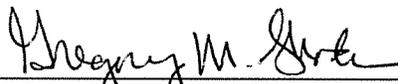
⁵ Attachment C is copy of that letter.

⁶ Attachment D.

Mr. Danton S. Wong, Esq.
Advisory Opinion No. 16-01
December 16, 2015
Page | 5

adopt, revise, or revoke this Advisory Opinion if provisions of the campaign finance law or administrative rules are amended or repealed.

CAMPAIGN SPENDING COMMISSION



By: GREGORY M. SHODA
Its Chair



CHUN KERR LLP
a Limited Liability Law Partnership

Fort St. Tower, Topa Financial Center
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Honolulu, Hawaii 96813-3815
(o) 808-528-8200 (f) 808-536-5869 chunkerr.com

July 10, 2015

CAMPAIGN SPENDING
COMMISSION

Via Hand Delivery

'15 JUL 10 AM 10:09

Kristin E. Izumi-Nitao
Executive Director
Campaign Spending Commission
State of Hawaii
235 South Beretania Street, Room 300
Honolulu, Hawaii 96813

RECEIVED

Re: Request for Advisory Opinion on Contractor Contribution Ban

Dear Ms. Izumi-Nitao:

We have been following developments relating to the Hawaii campaign spending laws, including the recent decision by the federal Ninth Circuit Court of Appeals addressing in part the contractor contribution ban under Hawaii Revised Statutes ("HRS") § 11-355. This letter asks the Campaign Spending Commission (the "Commission") to issue an advisory opinion to clarify the meaning of HRS § 11-355 as applied to the facts and circumstances below.

Facts and Circumstances

Corporation X is a "contractor" to the State of Hawaii as defined in HRS § 11-355(a). It does not make or solicit political contributions in Hawaii. However, its parent company, Corporation Y, wants to participate in Hawaii's political process by making contributions to candidates and noncandidate committees.

Corporation Y has set up a national political action committee, called "Y PAC," through which it intends to make political contributions in various states. Y PAC is registered with the Federal Election Commission as a separate segregated fund, and in Hawaii, Y PAC intends to register with the Commission as a noncandidate committee. Consistent with federal law, Corporation Y pays for Y PAC's administrative expenses and overhead costs, such as those required to establish and operate Y PAC. Corporation Y also pays the cost of soliciting contributions to Y PAC from officers and employees of Corporation Y and its subsidiaries (including Corporation X).

Decisions related to Y PAC's contributions to particular candidates and noncandidate committees and the amount of such contributions are made by certain designated officers and employees of Corporation Y and its subsidiaries (including Corporation X). Y PAC will limit the Hawaii contributions to the amounts allowed by law, and will report these contributions to the Commission as being from Y PAC. As noted above, the source of Y PAC's

Attachment "A"

Kristin E. Izumi-Nitao
July 10, 2015
Page 2

funds will be officers and employees of Corporation Y and its subsidiaries (including Corporation X).

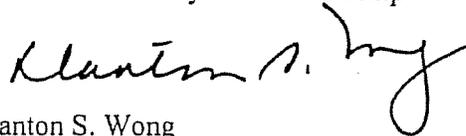
Questions to be Addressed in an Advisory Opinion

1. Because of the subsidiary-parent relationship between Corporation X (the contractor) and Corporation Y (parent company) and the support Corporation Y gives to Y PAC, are the contributions that Y PAC proposes to make to Hawaii candidates and noncandidate committees considered "direct" or "indirect" contributions by Corporation X or Corporation Y pursuant to IIRS § 11-355(a)(1) and a violation of the same?
2. Would there be a violation of IIRS § 11-355(a)(2) if Corporation Y solicits contributions to Y PAC, where funds from such contributions are commingled with funds that are likely to be used to make contributions in Hawaii?

Please do not hesitate to contact the undersigned should you or the Commission have any questions regarding this request or need additional information in order to issue the requested advisory opinion. Thank you for your assistance with this matter.

Very truly yours,

CHUN KERR LLP
a Limited Liability Law Partnership



Danton S. Wong
Imran Naeemullah



CHUN KERR LLP
a Limited Liability Law Partnership

Fort St. Tower, Topa Financial Center
745 Fort Street, 9th Floor
Honolulu, Hawaii 96813-3815
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August 26, 2015

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CAMPAIGN SPENDING
COMMISSION

'15 AUG 26 P2:47

RECEIVED

Via Hand Delivery

Kristin E. Izumi-Nitao
Executive Director
Campaign Spending Commission
State of Hawaii
235 South Beretania Street, Room 300
Honolulu, Hawaii 96813

Re: Supplemental Information Further to Letter Dated July 10, 2015 Requesting
Advisory Opinion on Contractor Contribution Ban

Dear Ms. Izumi-Nitao:

This is to supplement our letter of July 10, 2015 requesting an advisory opinion on the contractor contribution ban under Hawaii Revised Statutes § 11-355. Specifically, we were asked by Gary Kam, on behalf of the Campaign Spending Commission (the "Commission"), to provide additional facts for the Commission's review regarding the decision-making process for the contributions described in our initial letter. The requested information is set forth below, using the same defined terms as in our previous letter, a copy of which is attached for ease of reference.

Y PAC's contribution-related decisions are made by Y PAC's treasurer with administrative support from employees of Corporation Y using the following process:

(1) Each year, Y PAC determines an annual allocation of funds for political contributions to make in each of the markets in which Corporation Y's subsidiaries operate.

(2) The representatives for each subsidiary of Corporation Y provide state-level contribution recommendations to Y PAC's management based on the allocation amount. Y PAC's management reviews those contribution recommendations and obtains legal review from outside counsel. Following that review, Y PAC's management incorporates into Y PAC's budget the contribution recommendations deemed by outside counsel as consistent with applicable state and federal laws. The budget therefore lists approved contribution recipients.

(3) The representatives for each subsidiary of Corporation Y advise Y PAC's management as to when a fundraising event will be held by an

Attachment "B"

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A LIMITED LIABILITY LAW PARTNERSHIP

Kristin E. Izumi-Nitao
August 26, 2015
Page 2

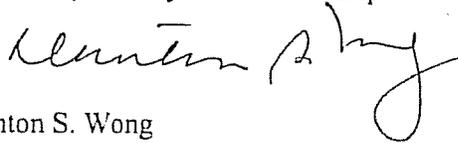
approved contribution recipient. Y PAC then issues checks for the requested amounts and sends them via U.S. Mail, with a cover letter attached, directly to the approved contribution recipient.

The process described above would apply to Corporation Y's proposed contributions to candidates and noncandidate committees in Hawaii, such that representatives of Corporation X in Hawaii would submit contribution recommendations to Y PAC's management for review but final decisions would be made at the Y PAC level.

If there are any further questions, please do not hesitate to contact the undersigned. Thank you for your continued assistance with this matter.

Very truly yours,

CHUN KERR LLP
a Limited Liability Law Partnership



Danton S. Wong
Imran Naemullah

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Enclosure
171719.1A



CHUN KERR LLP
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July 10, 2015

Via Hand Delivery

Kristin E. Izumi-Nitao
Executive Director
Campaign Spending Commission
State of Hawaii
235 South Beretania Street, Room 300
Honolulu, Hawaii 96813

Acknowledgment and receipt:

Ellen Kojima
Print Name: Ellen Kojima
Date: 7/10/15

Re: Request for Advisory Opinion on Contractor Contribution Ban

Dear Ms. Izumi-Nitao:

We have been following developments relating to the Hawaii campaign spending laws, including the recent decision by the federal Ninth Circuit Court of Appeals addressing in part the contractor contribution ban under Hawaii Revised Statutes ("HRS") § 11-355. This letter asks the Campaign Spending Commission (the "Commission") to issue an advisory opinion to clarify the meaning of HRS § 11-355 as applied to the facts and circumstances below.

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Kristin E. Izumi-Nitao
July 10, 2015
Page 2

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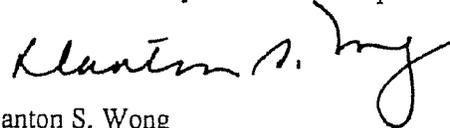
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2. Would there be a violation of HRS § 11-355(a)(2) if Corporation Y solicits contributions to Y PAC, where funds from such contributions are commingled with funds that are likely to be used to make contributions in Hawaii?

Please do not hesitate to contact the undersigned should you or the Commission have any questions regarding this request or need additional information in order to issue the requested advisory opinion. Thank you for your assistance with this matter.

Very truly yours,

CHUN KERR LLP
a Limited Liability Law Partnership



Danton S. Wong
Imran Naeemullah



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745 Fort Street, 9th Floor
Honolulu, Hawaii 96813-3815
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September 4, 2015

Via E-mail (gary.k.kam@hawaii.gov)
and by Hand Delivery

Gary K. Kam, Esq.
Campaign Spending Commission
State of Hawaii
235 South Beretania Street, Room 300
Honolulu, Hawaii 96813

Re: Proposed Advisory Opinion No. 16-01

Dear Mr. Kam:

Thank you for the opportunity to review and comment on proposed Advisory Opinion No. 16-01 to be issued in response to our recent request (the "Proposed AO"), a copy of which is enclosed for your ease of reference.

After reviewing the Proposed AO, there are two aspects which we would like to clarify. Both relate to the following conclusion on page 2 of the Proposed AO: "In short, based upon the facts contained in your letter, the Commission states that Y PAC's contributions to Hawaii candidates and noncandidate committees, solely based upon a list of potential recipients submitted by Corporation X, the government contractor, would violate HRS § 11-355(a)(1)."

First, the foregoing conclusion implies that if the process of creating the list of potential recipients in Hawaii allows for recommendations from other subsidiaries of Corporation Y, none of whom are contractors under Hawaii Revised Statutes ("HRS") § 11-355(a), in addition to including recommendations from Corporation X, then there would be no violation of HRS § 11-355(a)(1). If the Commission agrees that such revised facts would support this further conclusion, we would appreciate it if the Proposed AO included that clarification.

Second, if Y PAC does not consult with or receive guidance from Corporation X regarding contributions to Hawaii candidates and noncandidate committees, it appears clear from the aforementioned conclusion that there would be no violation of HRS § 11-355(a)(1). However, we would appreciate confirmation in the Proposed AO that this is the case even though Corporation Y solicits contributions to Y PAC from officers and employees of Corporation Y and its subsidiaries, including Corporation X.

Attachment C

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CAMPAIGN SPENDING
COMMISSION

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RECEIVED

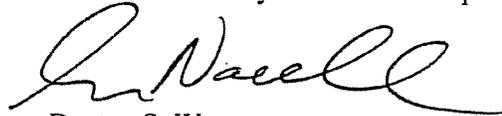
CHUN KERR LLP
A LIMITED LIABILITY LAW PARTNERSHIP

Gary K. Kam, Esq.
September 4, 2015
Page 2

If there are any further questions, please do not hesitate to contact the undersigned.
Thank you again for the opportunity to comment on the Proposed AO.

Very truly yours,

CHUN KERR LLP
a Limited Liability Law Partnership

A handwritten signature in black ink, appearing to read "Imran Naeemullah". The signature is fluid and cursive, with a large initial "I" and a long, sweeping tail.

Danton S. Wong
Imran Naeemullah

DSW/IN:jes
Enclosure
172358.1

KRISTIN E. IZUMIYATA
EXECUTIVE DIRECTOR



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STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION

235 SOUTH BERETANIA STREET, ROOM 300
HONOLULU, HAWAII 96813

CAMPAIGN SPENDING
COMMISSION

September 9, 2015

15 SEP -4 P3 59

Danton S. Wong, Esq.
Chun Kerr LLP
Fort Street Tower, Topa Financial Center
745 Fort Street, 9th Floor
Honolulu, Hawaii 96813-3815

RECEIVED

Re: Advisory Opinion No. 16-01

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Corporation X is a government contractor subject to the ban contained in HRS §11-355. Corporation X's parent company,² Corporation Y, desires to make contributions to Hawaii candidates and noncandidate committees through its federal political action committee Y PAC. Y PAC is a separate segregated fund registered with the Federal Election Commission. Corporation Y is the connected organization of Y PAC. Federal law allows Corporation Y to pay for the administrative expenses of Y PAC. Contributions to Y PAC are made by officers and employees of Corporation Y and its subsidiaries, including Corporation X.

Decisions related to Y PAC's contributions are made by designated officers and employees of Corporation Y and its subsidiaries, including Corporation X. Y PAC will limit its Hawaii contributions to the amounts allowed by Hawaii law and will report those contributions to the Campaign Spending Commission ("Commission"). In Hawaii, Y PAC will make political contributions based upon a list of potential recipients submitted by officers of Corporation X, the government contractor.

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You asked the following questions:

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In short, based upon the facts contained in your letter, the Commission states that Y PAC's contributions to Hawaii candidates and noncandidate committees, solely based upon a list of potential recipients submitted by Corporation X, the government contractor, would violate HRS §11-355(a)(1). Further, the solicitation of contributions by Corporation Y, of its officers and employees and the officers and employees of its subsidiaries, would not violate HRS §11-355(a)(2).

HRS §11-355, entitled "Contributions by state and county contractors prohibited," provides:

(a) It shall be unlawful for any person who enters into any contract with the State, any of the counties, or any department or agency thereof either for the rendition of personal services, the buying of property, or furnishing of any material, supplies, or equipment to the State, any of the counties, any department or agency thereof, or for selling any land or building to the State, any of the counties, or any department or agency thereof, if payment for the performance of the contract or payment for material, supplies, equipment, land, property, or building is to be made in whole or in part from funds appropriated by the legislative body, at any time between the execution of the contract through the completion of the contract, to:

- (1) Directly or indirectly make any contribution, or promise expressly or impliedly to make any contribution to any candidate committee or noncandidate committee, or to any candidate or to any person for any political purpose or use; or
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(b) Except as provided in subsection (a), this section does not prohibit or make unlawful the establishment or administration of, or the solicitation of contributions to, any noncandidate committee by any person other than the state or county contractor for the purpose of influencing the nomination for election, or the election of any person to office.

(c) For purposes of this section, "completion of the contract" means that the parties to the government contract have either terminated the contract prior to completion of performance or fully performed the duties and obligations under the contract, no disputes relating to the performance and payment remain under the contract, and all disputed claims have been adjudicated and are final.

The Commission has considered HRS §11-355 in the past. In Advisory Opinion No. 07-07,³ the Commission determined that the partners, employees, and their spouses and family members, of a partnership that was a government contractor, were not barred from making political contributions under the contractor ban, even though the partnership itself could not make contributions.⁴ The Commission noted then that the legislative history of the contractor ban indicated that the Legislature intended that the ban only apply to the specific contracting entity and not individuals associated with the contractor, such as the individual owners of the contractor.

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³ See also, Advisory Opinion No. 13-02 and Advisory Opinion No. 15-01.

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The Commission provides this Advisory Opinion as a means of stating its current interpretation of the Hawaii campaign finance law in §11-301, *et seq.*, HRS, and the Commission’s rules in chapter 3-160, Hawaii Administrative Rules. The Commission may adopt, revise, or revoke this Advisory Opinion if provisions of the campaign finance law or administrative rules are amended or repealed.

CAMPAIGN SPENDING COMMISSION

By: GREGORY M. SHODA
Its Chair



RE: AO 16-01
 Imran Naeemullah
 to:
 gary.k.kam@hawaii.gov
 10/06/2015 03:48 PM
 Cc:
 Danton Wong, Maxine Yonemura
 Hide Details
 From: Imran Naeemullah [REDACTED]
 To: "gary.k.kam@hawaii.gov" <gary.k.kam@hawaii.gov>,
 Cc: Danton Wong [REDACTED], Maxine Yonemura
 [REDACTED]

Gary,

Thank you for following up and for the courtesy extended in allowing me additional time to respond. In finalizing the advisory opinion, please use the assumption that Corporation X does not control any of the other subsidiaries that make recommendations to Y PAC on political contributions to Hawaii candidates and noncandidate committees. Thank you again.

Imran

Imran Naeemullah
 Attorney
 [REDACTED]
 [REDACTED]
 [REDACTED]



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From: gary.k.kam@hawaii.gov [mailto:gary.k.kam@hawaii.gov]
Sent: Tuesday, September 29, 2015 9:13 AM

Attachment D

To: Imran Naeemullah
Subject: AO 16-01

Hi Imran:

As a follow-up to our telephone conversation last week, in regard to your second supplemental letter dated September 4, 2015, have you been able to ascertain whether Corporation X in effect has control over the other subsidiaries that make recommendations to Y PAC on political contributions to Hawaii candidates and noncandidate committees. If so, what is the extent of the control? Do they share the same directors or officers? If I don't hear from you by Friday, October 2, in the interest of finalizing the advisory opinion, I am going to assume that Corporation X does not control any of the other subsidiaries that make recommendations to Y PAC on contributions in Hawaii. Thank you.

Gary

Gary K. H. Kam
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