COPY

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

---:---

In the Matter of the Estate of BERNICE P. BISHOP, Deceased.	EQUITY NO. 2048 **EXHIBITS RE DEPOSITION OF MARION MAE LOKELANI LINDSEY** (EXH 76-116)

EXHIBITS RE

DEPOSITION OF MARION MAE LOKELANI LINDSEY

Taken on November 8 and 9, 1999.

Note: Please bring this subpoena with you on the date specified.

10/27/99
8:50am

AO 110 (Rev. 12/89) Subpoena to Testify Before Grand Jury

United States District Court

COPY

DISTRICT OF HAWAII

TO:

PIONEER SAVINGS & LOANS/FIRST HAWAIIAN BANK
Attn: Custodian of Records
P.O. Box 1959
Honolulu, HI 96805

SUBPOENA TO TESTIFY BEFORE GRAND JURY

SUBPOENA FOR:

☐ PERSON ☒ DOCUMENT(S) OR OBJECT(S)

YOU ARE HEREBY COMMANDED to appear and testify before the Grand Jury of the United States District Court at the place, date, and time specified below.

PLACE	COURTROOM
U.S. COURTHOUSE 300 ALA MOANA BLVD., ROOM C-320 HONOLULU, HI 96850 (99-I-)	Room C-323
	DATE AND TIME Nov. 9/99 9:00 a.m.

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):*

THIS SUBPOENA CAN BE COMPLIED WITH BY EARLY DELIVERY TO, OR PICK-UP OF MATERIALS AS AVAILABLE, BY IRS SPECIAL AGENT CHUCK BANFE OR HIS REPRESENTATIVE. SEE ATTACHMENT FOR DESCRIPTION OF MATERIALS.

NOTE: ANY QUESTION ABOUT THIS SUBPOENA, PLEASE CALL IRS-CID SPECIAL AGENT CHUCK BANFE AT TELEPHONE NUMBER (808) 539-2817.

THE GOVERNMENT WILL NOT BE RESPONSIBLE FOR ANY PARKING VIOLATIONS WHICH YOU MAY RECEIVE.

Deposition Exhibit No. 76
Deposition of L Lindsey
Date 11-8-99

☐ *Please see additional information on reverse*

This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.

CLERK	DATE
WALTER A..Y.H. CHINN	10/19/99

(BY) DEPUTY CLERK

This subpoena is issued on application of the United States of America

NAME, ADDRESS AND PHONE NUMBER OF ASSISTANT U.S. ATTORNEY

LESLIE E. OSBORNE, JR., AUSA
U.S. Attorney's Office, Rm. 6100
PJKK Federal Bldg.
300 Ala Moana Blvd.
Honolulu, HI 96850
Telephone: (808) 541-2850
(IRS) S/A Chuck Banfe
Tel. (808) 539-2817

#42

*If not applicable, enter "none"

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FIRST HAWAIIAN CENTER
999 BISHOP STREET
23RD FLOOR
HONOLULU, HAWAII
96813
808-544-8300
FAX: 808-544-8399

WATANABE, ING & KAWASHIMA

A partnership of law corporations

November 5, 1999

VIA TELECOPIER (Original by mail)

Joseph A. Wolsztyniak, Esq.
345 Queen St., Second Floor
Honolulu, Hawaii 96813

Re: Probate No. 2048: Petition for Permanent Removal of Henry Peters, Richard S.H. Wong, and Lokelani Lindsey

Dear Mr. Wolsztyniak:

At about 2:00 p.m. this afternoon, you left a voice mail message indicating that Mrs. Lindsey would not be appearing at her scheduled deposition because you learned today that her bank records were subpoenaed by the FBI. I left telephone messages for both you and David Gierlach to call me but have not heard from either of you, thus necessitating this letter.

We do not believe this allows you to circumvent the court rules and the discovery order in this case by not appearing. We therefore insist that Mrs. Lindsey and you appear at the deposition scheduled for Monday, November 8, 1999.

The Discovery Master has already ruled on issues regarding parties refusing to testify on the grounds that it may incriminate them.

Deposition Exhibit No. 77
Deposition of Lindsey
Date 11-8-99

Any claim that Mrs. Lindsey may have regarding self-incrimination has already been litigated and Mr. Matsui's order is the law of the case. Furthermore, the Discovery Master has ruled that the privilege may not be asserted in a "blanket fashion". We note that copies of this order were duly served upon you.

Accordingly, we anticipate your good faith cooperation and adherence to the law of the case. In addition, you have not sought a protective order and thus we expect that Mrs. Lindsey and you will appear at her deposition. We expect to proceed with Mrs. Lindsey's deposition as scheduled for Monday, November 8, 1999.

By copy of this letter to the Discovery Master, we are requesting a hearing on Monday afternoon to address any unresolved issues.

Very truly yours,

Jerry Y. Kondo

for J. DOUGLAS ING
for
WATANABE, ING & KAWASHIMA

JDI:dk

cc: Melvyn M. Miyagi, Esq.
Emmett B. Lewis, Esq.
Hugh Jones, Esq.
Crystal K. Rose, Esq.
Renee Yuen, Esq.
Colleen I. Wong, Esq.
Wayne Sakai, Esq.
Glenn Sato, Esq.
Melvin Y. Agena, Esq.
Clyde Matsui, Esq.

Feb 19, 1993
Ozzie wants Dickey & I to consider a CEO for Bishop Estate
Spoke of decentralization of authority to director - heads of departments, etc

· Henry is Matsu's protégé
Ozzie said "Matsu is taking me around.

Deposition Exhibit No. 78
Deposition of L. Lindsey
Date 1/9-99

00085

3-16-93

Trustees Mtg

"Arms Length" —

1) KS/BE — when they KS/BE subsidiaries - for profit operate autonomously.

2) KS/BE as a tax exempt non-profit cannot

Sandwiches —

· Developer is in between. Lessees & BE.

· Henry Peters - work out the "sandwich" before we offer the condos for sale. Wants to know where the sandwiches are — at the time we ~~offer~~ approve the condos for sale.

WAVES —

· Mike McCartney & Terrence Tom asked Henry to ~~postpone~~ extend the deadline. Henry said NO. They asked him to speak

· Will write a nice letter to say they must sign "our" form.

Deposition Exhibit No. 19
Deposition of L. Lindsey
Date 11-8-99

LL 00115

9-13-93

Purpose of the Meeting - Mark

1. Go over mtg - + summarize - meeting w/ IRS in Seattle
   - Main question - is taxes levied

2. Unrelated business income tax
   - Credit of 2200^{00}
     - Adjustments centered around our parking lot + computed rents from RHSCL
   - Taxable - about 30000^{00} from these

3. CR Bishop
   - Contribution to Alumni Association ~~can~~ was not allowable because it is a C-7 organization. If it is a C-3 organization then CR Bishop Trust contribution is valid

4. Kamehameha Activities Assn
   Articles of incorporation has to be changed so they - under support org. rules - will not be a private ORGANIZATION.

9-13-93

Kamehameha Investment Corp.

. Capitalize some of the attorneys fees in the Shell exchange (ie BE to Shell - Shell to KIC (through shell) $4,700^{00}$ should be capitalized

4. Biggest issue - is the dropdown from Rock Capital (27 million in question)
5. Excess compensation of trustees salaries

Rock Capital

BE owned 14% of Rock Capital Corp invested in 3 entities

- Drake Bakeries
- Pandac
- Hospital Corp.

Then we had an outside loan to Rock Capital.

~~The~~ The question is when did the investment become worthless?.. and when

9-13-93

did we send it down to RHSCI. (We passed the losses down after we received a letter that said ~~the~~ it was worthless) According to a law ..... when in a partnership - the rules say look at the loss and treat it as a loss on the last day of the year. Therefore - it should be allowed for it was passed down to the sub before the last day of year. (This applies to 5 million of the 27 million) Gilbert has to meet w/ the local IRS agents to show them what the law says. 50-50 chance if not more.

3 Agents in Seattle then said - let's go back to the interest & recalculate for we should not be charged interest

9-13-93

IRS will win on 13.7 million of loans & investments outside of the partnership.

Recap:

- 5.1 million can be used in the '91 year.
- The 4.7 losses carryover from last year (90) can be used.
- The 16 million loss for the year, ~~the~~ plus 4.7 million from 90) ~~equals~~ a carry over loss of 20.7 million.
- If the 5.1 million is allowed so we will not have any taxable revenue
- If it is not allowed - pending Gil's mtg with the local agents - means we pay taxes plus interest on the 5.1 million
- There is no more loss left ~~[illegible]~~ to carry forward.
- Still have 70-80 million dollars worth of losses that still

LL 00416

9-13-93

haven't been addressed (for '92)
These losses came from Cambridge, Assessory (Place & Best)
, Most of this - under the law should be capitalized. However, if we loan the money - it is not clear whether or not we can take it as a regular loss. Can carry forward the capital loss for 5 years.
If we have capital losses then we should show capital gains in that year ('93) so we can deduct capital losses. The 5 years start in the year that we recognize the losses.

(NOTE: Best Products went down one week before bankruptcy).
We must pass the losses or potential losses before the loss occurs.
We must work from the FAD list that cites troublesome investments

9-13-93

Trustees Salaries

Mr. Pickles sub committee - asked 12 agents of IRS to share info. on what they saw re: coordinated program.

* IRS is trying to get the ~~conference~~ congress to enact laws that will regulate public charitable org. through to use as enforcement on public charities (i.e. United Way. The only punishment IRS had to deal with was Take away their exemption

Spent 45 minutes on Bishop Estate. Focused on trustees ~~sales~~ compensation. (Perform functions such as Goldman Saks who's ~~[illegible]~~ partners start with a salary of 25 million)

* Must educate the ..... about what we do.

IRS will prepare an initial

LL 00418

9-13-93

draft - after this we will have a chance to react to the draft.

Since IRS is put under the gun — ~~then anything~~ we must look at the ARMS length issue and decide ~~how~~ ~~can~~ to we clean it up

IRS - to this date - have not addressed Arms Length.

Oct 19 - IRS team will come down; trustees must be available to them so we can close out everything on this audit.

- Parking Lot
- Contractual services
- Rock Capitols

Mark 9-13-93

Options for trustees for deferring compensation

3 Non Qualified Deffered Comps.
1 Qualified Deferred Comps.

Qualified Deferred Comp
Set up a plan called tax qualified under the tax law
2 we set up
Defined Benefit Plan
" Contribution "

Defined Contribution -
Get a deduction up to 30,000 a year limit if we contribute.

Defined Benefit Plan
"A catch up plan" — fund it as much as it takes to provide a level of annual benefit level — but you can't exceed the annual benefit level.
Complicated - but it lets you

8

10-18-93

Bishop Estate - $13,490.00

1990-91 1991-92

· Changed six individuals who were qualified as independent contractors to employees;

1) i.e. Tutor at the school

Used 20 common law test but basically "if the person hired - furnishings own tools; set own hours & worked independent of ~~?~~ anyone else. If they work under supervision of anyone - they are not an independent contractor.

Parking Lot - Unrelated business expenses. (99T)

Lease - service fees.

· These fees are not reportable as income.

· BE is exempt - but if you recieve rent from good tenant - then the tax is payable from parent co.

81

Deposition Exhibit No. L. Lindsey
Deposition of
Date 11-08-99

LL 00486

10-13-93

Parking Lot Rental Receipts

Kamaikao Plaza (Receipts - $29000)

If real property is leased + you provide no services then the estate is accountable. Therefore it was a taxable source of recpts.

- We lease it to APCDA so the lease amount is non taxable.
- If we lease it out ourselves + get money from the tenant - then we ~~xxx~~ must pay taxes.
- If we lease it out ourselves - then we give ~~but~~ them a straight lease - then they pay for taxes + we are tax exempt for our income (i.e. 20^{00} a month)

10-18-93

4- Estate owns the physical plant. We have a mgt agreement
Rental income is not taxable

Argy
RHSCI - the value of the space that they are ~~ta~~ renting from you - ~~in~~

· We give RHSCI ~~space~~ space for their ~~in~~ offices.

Gil Ishikawa to change IRS

· Therefore RHSCI - should pay rent for the space they occupy.
Therefore
~~Mgt Fee~~ June 30 '90 change to taxable income 51000
Rent for offices - 14000
Credit IRS owes us - 19000

BIG ISSUES
Tech Advice from National Office re: Compensation Issue

Process
· Draft of request for tech advice goes from IRS to National office.

10-16-75

Charitable Organizations —

- Might be looking at what is just compensation for doing this job.

- Going for technical advice because BE is an unusual organization & cannot be described as a "charity" or charitable organization.

- IRS agents will:
  - Draft the facts
  - Give it to BE for additions/corrections

Disclosure Requirement
- Came down from Congress
- Came from complaints re: Tax Exempt vs Taxable Entities.
- ~~Qualify as a~~

I.E. We need to compare us to Harvard: They run it through a separate org. that are tax exempts

10-18-93

They have a discrimatory policy
Really have a non-discrimanatory policy because the kids run the gamut (Only a few full blodded Hawns the rest run the gamut)

Royal Hawaiian
Partnership in Rock Capital transfered to RHSCI –
Share of the loss should be by allocating the income + loss ~~prior to~~ in the year that was applicable.
· Loss from Pandrake + ____ should be losses at the estate ... + get a smaller share. Therefore

Loss accured at BE (2.7 mil)
· Only a portion (approx $.8 mil) to be deducted by RHSCI the rest need to be cared ~~for~~ by Trustees at the parent level.

10-18-93

Meeting w/ Mark Magonaghy - TAX LAWYER

Compensation

Performance Based Compensation System

We need to beef it up.

Key Points

· Is this ordinary + just compensation? difference is

Should not make a taxable or ~~tax~~ exempt organizations

— ~~Look~~ at ~~respon~~ duties + responsibilities.

(See analogy between taxable + tax exempt.)

— Must present a position paper.

— Performance Base Compensation

Independent Board to decide # compensation.

IDNJ

TSFJ

LL 00491

10-18-93

- Rise & Fall of Leasehold

Omnitrack (Nom)

- Marketing Study re: KS/BE
- Informational Mtg
-

Deposition Exhibit No. 82
Deposition of
Date

5-23-94

Mark McConaghy | $202-282-8570
Mike

Commission - we have the right to take commission & give it to someone else - we would be taxed on it.

Declaration prior to the start of the taxable year we don't get taxed.

Can give 50% of our income to public charities and 30% to private charities

1000 - adj gross income
500 - gave away then
500 - deductible

Waive in Commission goes to BE.
- Can waive a portion of it
- Can give part of it to a private foundation that becomes a public foundation.

Deposition Exhibit No. 82
Deposition of L. Lindsey
Date 11-8-99

LL 00835

5-25-[illegible]

"800,000 — Monica we ~~make~~ but
"400,000 wanna give to a foundation.
Our 1099 would show 1.2 million
no matter who we give it to.

Don't get a full deduction on
this because of 4% state tax
on gross.

What do we have to do to keep
our status as a

Educational & Exempt from tax.
without a full time staff:
i.e. Jackie Stowe - 501 3.c
National Geographic

To be a tax exempt public Charitable institution

No substainal part can be
for other than education.
How much can we do that
~~ot~~ are ~~note~~ is not for
education.

{5-23-94}

Should not do more than an substanial part. (Deminuca Rule)

Can we do something that is not a part of the organization?
The will & the IRS have constraints on that therefore we don't do it.
Some (Pinky) may want to do some of these things for PR purposes. It could be done - there are constraints on how it should be done
If Foundation
Do it very cautiously - key it seperate from the schools so it doesn't affect the tax exempt status.
Who wants to run it?
If we're going to fund it how much should we put into it so
Who's going to call the shots? How much time do we

5-23-94

as Trustees;

Do not want to do it?
· Do not want to violate the diminimus rule
· Need a structure that is separate from BE so we won't be criticize for spending too much time on this & not enough
· Does the Will allow us to put this money into other than

Why ask for this kind of pilikia when we are dealing with the tech advice.
Dont do it now!!

5-26-94

Smith & Gordy - who got us into this deal - They took fees and commissions which puts them into conflict. We can sue them - However Smith

Dicky - • Democratic Party Convention.
• Richard Post did not keep his word
• If the reps are killed in committee - nothing will happen.
• Russell & Gary will walk with us.

* Elisa - must have sheet ready stating time-date-etc for Saturday. where to meet - where to p/u Tees, etc

Deposition Exhibit No. 83
Deposition of L. Lindsey
Date 11-8-99

Deposition Exhibit No.
Deposition of
Date

8-11-96

Call Henry

Questions –

- Value of the estate. We all said 1.6 mil?
- What would we do to increase the income stream?
- Why should we have a tax exempt status? ~~or documents~~
- Compensation
- Selection process
- Why don't we invest more money at home? Why did we take this offshore?
- How are the assets managed.
- What about RE as a business.

Goldman Sachs – They want to talk to someone there

Deposition Exhibit No. 84
Deposition of L. Lindsey
Date 11-8-99

LL 00996

1

9-5-94

Susan - Characteristics
. Saiki - Cayetano - Caring
. Fasi - Effectiveness
- Integrity / Honesty

Poll
1. Saiki ahead { [illegible]
2. Cayetano
3. Fasi

Mavericks' Vote
. Pull [illegible] at the
[illegible]
. [illegible]
[illegible]
[illegible] Cayetano

[illegible] as of 9/5/94
[illegible] Morgado; Gill

. Maui Inc. will be Annual.
. Susan / John will be a small agency.

9-8-94
TRUSTEES MTG

Barbara Aikerschmidt - Omni Track
Statewide Issues - Qualitative - Focus Group
Quantitative Study Results

1. Quality of Life
18% Excellent - 12% Hawn's
59% Good - 62% of Hawn's

2. 5 Most Important
Crime / Drugs / Youth Gangs
Cost of Living /
Lack of Moderately Priced Houses
Traffic Congestion
Education
Lack of Job Opportunities - #1 problem w/ Hawaiians

3. Awareness & Favorability

Queen's -	73%	1:
KSBE -	62% -	13% Unfavorable
Punahou -	59%	3%
KSBE - Hawn's	83% -	10%
OHA - Hawn's	48% -	29%

Deposition Exhibit No. 86
Deposition of L. Lindsey
Date 11-8-99

LL 01050

55
.18
440
55
9.9

9-6-94

Top 5 Reasons for favoring KSBE
Providing a good education - 31%
Favorable in general

Unfavorable Responses 108 - commented
55 - Hawaiian

Quality of Education
Punahou 8.2
KS 8.1
Public Schools 5.5

(1) Must tie the job opportunities to education. Why you want a college education → to get good jobs

(2) Video on who was selected as trustees

(3) Income statements in % of income
% from diversified investments
% from leasehold

11/6/94

Deposition Exhibit No. LB
Deposition of
Date

Steiner
HHk

Line for API - Inc }
Line for UPAC - }

Paul Ahr -
Called about

David C...
4:42pm
FEC Bill did not contain our provision
Conyers

At 4:10 pm ...
... contacted as they don't object
... meeting w/Rep Conyers
... introduced in the house
... within the next hour
Sen. Inouye is keeping the bill in a Senate bill; he's pretty optimistic its going to happen
Rep Mink + Abercrombie are going to Rep. Conyers.

Lindsey/KSBE
CONFIDENTIAL DOCUMENT

Conference Call

{ 12-1-94
Trustee Mtg

Conference Call
Mark McGonaghy
, Dale Snape

Mark
Mentioned to Gilbert re: The Technical Advice in the IRS.
, Put a little light on how they deal w/ the BE
- TAX Exemption
- Discrimination
- Any other audit we have
, If they are inquiries from the hill to the service they (IRS) will respond in their generic way.

, People in Seattle have a good relationship w/ Gil

Deposition Exhibit No. 88
Deposition of L. Lindsey
Date 10-8-99

Conference Call

12-1-94
~~TRUSTEES MTG~~

· National Office will be

· Valuation of Assets
  · What are the assets worth.
  · Be consistent with our valuation - so our answers to the issues.

· Compensation issue will come up again

5 or 6 · Discrimination issue

We need 5 or 6 strong statements that we repeat time & time again.

Conference Call

12-1-94
~~TRUSTEES MTG~~

- Moneyline is not viewed by a number of people.
- Hits 2 or 3 million people
- Likely – the series will be shown on Moneyweek – & a summary show on Sat

- Sen. Inouye has been acosted by members who say – What is this all about.

- Second Phase will be a p/u in National Magazine

- ~~T~~ May become a 60 minute piece – ~~[illegible]~~

- What this will do is spur others to do this in their national coverage.

3

Conference Call 12-1-94

- CNN comes with a different content
- Fundamental to our fiduciary duties ... is to get our perspective out to the public — IRS - etc. They will feel in Wash D.C. that they must respond to scandal.
- We have to protect our interests. The media will not be our friend — we have to be very direct
- Response must be forthright - consistent.
- Must have 3rd party endorsements — professional trust -
- Make a case

Short window?

Remarks are Anti-Native Hawaiian

Racist — Successful Native Hawaiians is criticized

Conference Call 12.1-94

Separate out individual

• ~~To~~ Hire an unimpeachable Republican lawyer to do a ethics audit.
Need a validation outside of the democratic world to have a defense that is more than a paper defense

• Must showcase our successes

• If tonights show ~~goes here~~ ~~can~~ question the quality of the education system.
Create our own standard of success.

How many of our students have committed their lives in Hawaii to making the lives of Hawaiians better.

LL 03263

Conference Call 12-1-94

This is a historical ~~[illegible]~~ theme -
we were subjugated and
KSBE is the way out.
The Native Hawns are subject
to the angry white male
who sees the Hawn as
having something they can't
have.
Hi is not understood by
the mainland nor by the haoles (my word)
that are here
Lou Dobbs used Patsy Mink's
& Neil Abercrombie's remarks
is "unusual"
Must call the delegation

Alumni & folks in Hi outraged -
have the outrage
Outrage directed to →

Media's goal is to create bad
guys that they can take down.

Conference Call 12-1-94

Direct the outrage to the media
Producer from CNN
~~[illegible]~~ was at the U of H as a
Gannett Fellow ~~[illegible]~~

She had no ground rules
Betrayal of Trust

Point of View - we are
robbing the piggy bank -
They want to change the
organization of the estate -
change the way trustees
selected - etc.

Shore up our political support.

Get our own advocacy group.

Re: IRS - Rep Stark +
Bill Archer

Conference Call 12-1-94

Discretionary Spending to offset Tax Cuts.

Must be careful we are not used as a tool to accomplish some things.

Successful is saying KSBE is a mixture of all races

• If we are identified as a minority group and a disadvantaged group - then we can "discriminate"

• Can make the case that we are like Indians - Aleuts, etc - ~~that we~~ and that we need the same privileges.

LL 03266

Conference Call

12-1-94
Trustees Mtg

Strategy
Say things over & over again
i.e.; We are a protected class
by the mere fact

- Get our base shored up
- Have 3rd party speakers.
- Manage this effort:
  - strong response now
  - Point by point rebuttal of what was said

If all we get is this CNN series & no one picks it up — then the Washington angle should be more manageable.

Letters to our delegation
with point by point rebuttal

~~Embarrassed~~ Embarrass CNN by their racist views —

12-1-94

TRUSTEES MTG

Conference Call

Letters to our delegation

Commentary in the newspaper

Get seven paragraphs written with the facts that refute the CNN presentation.

David Vesey's Brother a leasee

After

Attacking trustees
" financing
" back room politics stuff
" the school

Slurred trustees
" native Hawaiians
"

FED-EX a tape to Dole

With a little editing this may be a response to CNN

What is the best media to ~~let~~ deal with this. Print Ads or VIDEO.

2-10-95

Arlene - 877-5517

~~American Savings - No!~~

~~International " - No!~~

First Federal — 705^{00}

50 Puunene Avenue

1-800-352-9656

524-7976

Jaime Hagen

Henry -

Legal people feeling better having the trust that is far more friendly

Hawaii Electric - 322^{64}

00-5139-002

Arlene - 877-5510

Jan Buen - MECO

Maxine

4-13-95
EXEC. SESSION

Pule: Loke
Senator Inouye
Carry out the will of the Princess; wants this estate to flourish; People attacking us - wants to see our demise. this has a profound effect on how we do business.
Rescission Bill - House took out all the $ for Native Hawn's Senate put almost all back in.
• Senator is part of the Conference Comm. Cannot predict what happens in Conference. Sometimes in a contentious situation they split the difference. Senator does not want to split the difference. He wants it all.
For the 1st time in history - The Pres met w/ the entire

Deposition Exhibit No. 90
Deposition of L. Lindsey
Date 11-8-99

LL 01510

4-13-95

delegation to discuss one thing - Native Hawaiians. As a result of that mtg - Native Hawaiians will be included in the Carl Perkins Act and Drug Free Programs.

He worked w/ all kinds of ~~programs~~ Congresses - This one - Despite the difference in philosophies they work for the people. This one - is mean.

KSBE was selected to administer funds ... despite criticism - because we were the only ones around. Many are attacking us because of this .... but he feels he can defend us because we have done an exceptionally job. He wants us not only to continue to be involved in the Health services, early childhood & all other services.

4-13-95

Not only does he want us to continue but he wants us to do more & he wants to increase our involvement.
Given the circumstances in DC he predicts:
Gingrich will not go away -
House may increase in Republicans
Senate can hold its own

Things in Wash that will impact us:

TAX EXEMPT
Attempts to take away our status
If that goes we're gone

. Farm Bill - that includes the Sugar Act. For the 1st time:
- Sugar Cane & Beets are split
- The sweetners are out to get us
- Reynolds & big companies bought out sweetners

LL 01512

3

4-13-95

· Reynolds (Tobacco) etc have gotten the Senators vote because they supported sugar.
· Hamakua - he couldn't get ag money so he appropriated defense money
· Waialua - gave them money

~~[illegible]~~

· I would hope that you would look seriously in letting your ag group to look at ag products for your land.

· The military will continue to be here - & we hope that KSBE will continue to work with the military
PH - will have more people Sub base of the Pacific - etc.

LL 01513

4-13-95

Barbers Pt - Reconfigured ~~CA~~ to be there [illegible]
Bellows - if that disappears
The Marines will disappear
Pohakuloa - if that disappear
The Army dissappears.

KSBE has tourist hotels
we have a strange situation.
Many on waiting lists to
come to Hi. Airlines are
reducing the flights. Chicago-
2 - 1$^{\underline{o}}$ in income. ~~before~~
Hawaii is a pleasure
stop. Hawaii is counter-
productive because of
high landing fees &
Hotel tax.
As land managers, KSBE
cannot just collect rent.
You have to be concerned
about the laws in Wash
& the impact this has upon us

4-13-95

The laws here have an impact on us. We are not here only to make money. We have to fit in the scheme of things. If we make money & everybody else makes money we are OK. If only we make money -- pretty soon we won't make money.
Reassure us he stands here to help us
He suggest we work closely. with him going forward.
Always had the question as to whether Hawaiians are Native Americans. He's tied this in with everything else but line item veto so zip we can be gone.

He's been in 40 years. With all his experience (he's 70 years old) he will go one more term.

4-13-95

IRS will call upon them for their input & he wants to tell them we are involved in all these things.

Sugar Act - makes a difference If he can get a Visa waiver to bring in Co

If we are not successful You will not be successful. Keálii Pauahi was a visionary & I think ~~out~~ her will should be carried out.

Questions

Q - Asked about Sugar being cut out of the Farm Act.
- Maui & Kauai making money. May meet the quota However, the head of the Ag Committee is running for Pres & he is against the Sugar Act

4-13-95

HSPA - greatest research. Not only for sugar but also for ag. research. State wants to give this to the UH Tropical Ag. This is not a research arm.

* Terry - Asked about Native Hawn monies.
He said in Wash they know that we administer the funds & we give 1:3 (He can defend this

Right of First Refusal
He asked us if we want to continue this. We said yes. He ~~set~~ said the climate in Wash was conducive to this because Feds want to sell surplus land to reduce the federal debt.

4-18-95

Jerry - Talked about conservation, ag & commercial land being sold if the govt (C&C-State) officials prevail!

Dickie - Brought up Calvin Say hearing several resolutions on ~~selling~~ commercial

Tax exempt status
. Come out w/ a memo to delegation on what we have done over the years & what we intend to do.
(Advice given because Lake asked a question about our tax exempt status.
He gave the above & continued though criticism starts here -- decisions are made in DC.

Senator
Whenever you deal in investments you deal in risk
Sometimes you make it - sometimes you don't. When we're forced to sell we are forced to invest in risk.

4-13-95

continued from Senators remarks
Therefore you cannot put it in BOH & FHB; nor can you put in Treasury Bonds. You must take risks. You win some & lose in some.
Senator is going to meet with Native Hawn & One of the clouds over us is what is KSBE going to do re: this?
His assessment is ~~Kalua~~ kapalua.
If its our decision is ~~to~~ get out of this — we all have
the way we are doing to sit down & discuss things — this.
is right in Senate able to get the hand with money because it went Republicans to us. We were able to prove thinking ourselves
They went cited -- mobile schools. partnerships Parents - come to

Its the spin that counts.
When KSBE got involved

4-13-95

other Hawn agencies raised hell w/ us & said why KSBE now - they are worried about us.

Now - we should very carefully analyze a PR program in Wash DC. Need to be ~~sure~~ the opinion molders have the info they need.

He is willing to sit down & give us some help with the PR - he has some connection with the opinion molders.

* If its the Senators hope that we dont get out of the ~~grant~~ business of Native Haw'n agencies!

4-13-95

Henry - Appreciate what Senator has done. Support his efforts.

Note: Senator - without asking directly - wants us to continue administering native Hawaiian Ed. monies. We should continue to be involved in Native Hawn programs. Not only for KSBE but for Hawaii.

"If I were a legislator & KSBE went out of business, I would be scared shitless" Native Hawn Monies.

Conference begins May ~~4~~-5th ~~for~~ will last for about a week. However he would want a transition plan - before June

Even if we get out of the business - we must let them know. If we're going to get out of this business - the authorization bill needs to be changed. Asked for a one year transition.

4-12-95
EXEC. TRUSTEES MTG

Agenda

1- Goldman Sacs Amendment of the Partnership - Approved

2- KSBE Travel Program
Approved curtailing AMEX + going with ITS + Panda Travel. Staff can work w/ either agency.

3. Donation of Changs to KAA - ~~Approved~~ Defer to Tuesday

Oz - INVESTCO + SOXCO
Harvard offered to buy everybody out; we put in $5.2 mil + they are buying us out at $260,000
Oz asked Eric to meet w/ Yale on Sosco - Harvard + KSBE; Investco - KSBE + Harvard to find out what the future is all about.

4-13-95
EXEC TRUSTEES

Take SOXCO - move it to Kukui for:
1) Appearance of what we did to Kukui, ~~Lacoh~~ to put the energy projects
2) SOSCO is going to fail too!

Henry rather take the loss here so we don't highlight the investment.

Oz asked if Eric can do EXIT due diligence on ~~all~~ these two entities. This was approved by the trustees.

Jerry - Yale Symposium:
He personally approves of a Conservative approach to Sovereignty. 200-300 students
Met w/ the Vice Chancellor & found that they use home equity as a measure of wealth so it excludes Hi students from the scholarship program.

4-13-95

Discussed
- HCR 195
+ Sandy Beach
+ Meeting of Dan Inouye's staff on Waialua (indirectly Hamakua) - Kau
Buffy Lindsey contacted by Oz to be invited; Loke told Nam to call Jennifer Goto to insure were invited.
+ Kona Lagoon (Ayabe Group. John Miko & Jerry) Jerry to come back w/a proposal.
+ Dickie proposed a way to bring staff in up front - then release them + make decisions after the fact.
+

4-13-95
TRUSTEES MTG

Tony - Kahala Renovation

Mike - # of students going to college is forthcoming
Kids getting acceptance now - they're excited.

BUDGET HEARING

Rodney - Asset Management
etc

May 7th
Sunday

9:00 AM
Monday
Education

Elisa - Gave us GS questions.

Approved minutes for 3-7-95

4-13-95

Mark McConaghy

Gil - Nat - Mark & Gary (SCA) met with the IRS on unreasonable comp.

They feel that (National Office) they do not feel that what we ~~should~~ do ~~that~~ is comparable to what we get paid; They (IRS) feels who you work for is more important than what you do.

Chuck Merrett wanted to see what SCA did with the educational side & not just the investment side.

However - he spent the rest of the time on the articles printed in the newspapers. He wanted to talk further about these issues.

He also wants to

4-13-95

get the rest of the news articles and he wants to ship the audit back to the LAX office & have the branch Chief of the LAX office to

Who head the team. Wants to increase the time limits. If we are not prepared to extend the statutes to beyond Dec 1995 & he hopes we are prepared to be cooperative. Also wants to put a couple exempt organizations people on the team.

There is a move to impose restrictions on "public Charities".

We have always known that the media beats up on BE and trustees. But there's too

LL 01527

4-13-95
TRUSTEES MTG

Damon 670,000 However, the articles coming out
Campbell 840,000 now are full on things that
are of concern to the IRS.

Clearly - some people are giving
some information to the press
that shouldn't be given.

Manual - We are growing; Obviously
we're caught up
Tax Rules on Lobbying
" " "
" " " Arms length
Should be done by
3 mos. Too long (Jerry)
The faster, the better.

~~IRS takes the position that~~
if

LL 01528

4-13-95

Nat - Be concerned re:

a Credit Enhancement - i.e. Rubin

· Is there a quid pro quo? Consideration?

· Should that income be taxable?

· Is it regularly carried on? and/or part of the total transaction.

b. Drop Downs - is there a business reason for doing this.

Private Inurnment.

~~dis~~ divident to insider in the organization.

Need to be careful of who's talking to the IRS.

{Kona Enterprise} ~~R~~BE must be
McKenzie}

Concern wondered if individuals benefitted from funds being spent by 6 mos of due diligence

4-13-95

Lobbying Issues

Rules are — how much did we spend on lobbying.

- These are the rules
- These are the procedures
- Alika i.e. some of his work is lobbying.

LL 01530

3-13-95

Jackie Harrison
1-808-437-8615
Provo Canyon School
PO Box 30015
Tampa, Florida 33630

3/13/95
1110pm

<u>Mark McGonaghy</u>
Wants to talk w/ you on
Wednesday.
"This person seems to have
made their mind up & wants
to do something that may be
against/adverse to the ~~Bishop~~ Estate
<u>Two or three persons</u> told Mark
that you two have a "chip" on
their shoulder
<u>One of the people who</u>
• not appropriate for a tax exempt
<u>institution to build shopping centers</u>
~~buildings~~ etc
• 20%
Rule does not apply to public
Charities <u>???</u>

Deposition Exhibit No. 91
Deposition of L Lindsey
Date 1-8-99

LL 01467

Does not understand what the ruling process with the IRS

They are going to do a "profile" now.

Mark
Stick to the theme of education
We are a school
Primary function is ed.
Big Job - funding / earning the funds

Some I good & some bad

Done a good job

TECH ADVICE
Non-conclusive
SCA - why weren't schools used in the study? No comparable schools.

- IRS concerned w/ precedence setting
- Don't like the formula under the statute allows more than what is currently paid

The only limiting factor in the drawers

IRS didn't like this.

- Harvard U - top 2 or 3 people are paid - 1.2 mil

800,000

- Top 5 Harvard & Harvard Investment are paid comparable of 25% ~~to 75%~~

- It's clear IRS feels they can pre-empt the state statute.

Shared a wrong attitude - if in a tax exempt should get paid less than a non tax exempt doing the same job.

Continue to be a school

→ Need to fund that school

→ Must be R

LL 01469

3

6-25-95

Trustees Meeting
Pule - Nathan

Discussion - Wall Street Journal.
Three things require a response:
1 - School Announcement
2 - How they calculate the !
3 -

Mark 71

(1) ~~WSJ article is~~ Going to mean a close look by the service at some of the things stated in ~~these~~ article

(2) Hope 20 minutes ~~seconds~~ doesn't do this & this (WSJ) is the end of it

(3) ~~Hope~~ Faulkner doesn't get expand on this

Deposition Exhibit No. 92
Deposition of L. Lindsey
Date 4-8-99

LL 01546

Hopes ~~IRS~~ ~~Legislature~~ Congress doesn't use this as a reason for eliminating the 3 tier system.

Business People said

Corporation - they met with business people - said this (KSBE) outfit was interested in business. Howard Shore (sp.)

Talk to #2 at IRS - who will be joining us in Hi. He didn't feel the article was bad at all

Most lawyers would wish their clients would go to the IRS to get rulings ahead of time. This is prudent.

The RHSCI - did good tax planning.

4-25-95

Must do everything we can to minimize the article. We must be aware of the arms length issue must be dealt with.

- Must also look at what is passed down to the subs.

We can anticipate some others that are serious & we are going to look at these as we plan our strategy.

Advise re: Comment
→ We have to manage a business as well as a school
Forced to sell our

landholdings - got a lot of
cash that had to be
invested

Deal with an organization -
forced upon us by Supreme
Court - when we had to sell our land
fiduciary duty - to
maximize returns.

Grew fast - continue to
grow - more complex -
Putting things in perspective

C:

4-25-95

#1. Feel this is OK. Safety is Mike's kuleana

2- Pay back $41,000 - Approved

3- No! do the project in Hawaii. Visit PCC

4. OK

5. Henry walked in the Marguerite Cooper, HMS Hawaii Approved our 25 based on them getting 125 million.
We will take this up on Thursday when Ay is in attendance.

May 9th - 9:00 Am - Alden Haines

Kona Lagoon -

LL 01550

4-25-95

Mike -

. Boys won ILH Championship
. Girls " 2ND
. Won State Debate Championship
. Paradise Pursuit Team won
. Girls won State Tennis Champ.
. Lost Baseball - Tied for 1st place

Yuki

Open beds on Kinau Hale
4.2 million; (increased
beds from 43 — 65)
Allied Builders.
Kamehameha ~~Boys to~~ Girls to Boys -
Kaleiopapa — 22 — 28
Ke'opuulani — 30 net
Renovation that we can this
year -
~~Kinau~~ Kai Cottage -

4-25-95

Mtg. w/ Mike

- Phase In - Phase Out

- If a program ^In Between^ can be eliminated eliminate it now.

#'s

· Continuing Ed - Go Through the summer -

(1) CIP: } Yuki
New Programs }
sites

(2) Staffing Analysis } Gil
Pers. Phase Out - Retraining - Redep etc }

* (3) Communications — Elisa/Dennis

(4) [Implemention of New Programs]
New Program Curriculum } Rockne
Implementation - Org } coordinating
Criteria etc }

MEMORANDUM

TO: Trustee Richard Wong
Trustee Oswald Stender
Trustee Lokelani Lindsey
Trustee Henry Peters
Trustee Gerard Jervis

FROM: John Waihee

RE: Analysis of The Impact of the Wall Street Journal Article

DATE: April 27, 1995

I suspect by now each of you has had the opportunity to review and discuss among yourselves Tuesday's Wall Street Journal article on Kamehameha Schools/Bishop Estate. From my view, the article revealed little new information that has not already been in the media here in Hawaii.

From the national perspective, however, we are beginning to see some expanded interest in KSBE and a further interest not only by the Internal Revenue Service, but by the Treasury Department and the U.S. Congress.

Today one of my partners, Lawrence Cooper, attended the first part of "Representing and Managing Tax-Exempt Organization", an annual two day continuing legal education program presented at Georgetown Law Center in Washington DC. The selected faculty for the program includes Treasury and IRS

VLDC01-35267.1

Deposition Exhibit No. 93
Deposition of L. Lindsey
Date 11-8-99

P01610

1

officials, counsel to Congressional committees as well as distinguished exempt organization practitioners.

The first speaker was Michael Superata, Esq., counsel to the House Subcommittee on Oversight of the House Committee on Ways and Means. The title of his presentation was "Tax Policy and Exempt Organizations: A View From the Hill". Most of his presentation addressed legislation considered during the 103rd Congress regarding the imposition of intermediate sanctions against public charities (such provisions are similar to present law sanctions imposed on private foundations). Pursuant to last year's proposed legislation, sanctions would be imposed in cases of excessive salaries and benefits paid to certain disqualified persons with respect to a public charity. He noted that these provisions could be reintroduced during the 104th Congress.

In the course of his presentation, he also mentioned that he had read a Wall Street Journal article regarding the Bishop Estate and commented on his surprise in learning that the trustees of the Estate received over $900,000 in compensation. Although he clearly stated that he did not know the circumstances, the mention of the Bishop Estate article at the particular point in his presentation highlighted his concerns.

VLOC01-35267.1

The second speaker was Catherine Livingston, Esq., Attorney-Advisor.- U.S. Treasury Dept. Office of Tax Policy. During her presentation on current matters before the IRS and Treasury, she noted that some guidance would be forthcoming on the Section 4941 self-dealing rules applicable to private foundations. One of the attendees asked whether the guidance on self-dealing would include any clarification of the Treasury and IRS positions on reasonable compensation. She responded that the attendee would have to review the guidance once it was released. It was Lawrence's impression that this non-answer suggests that the guidance will address reasonable compensation.

Based upon these developments, as well as our views expressed earlier, we would urge that contacts be made, not only with the Internal Revenue Service, but also, based upon what we learned today, with the Treasury Department. Additionally, contacts with the House Ways and Means Committee, Senate Finance Committee and the House and Senate Banking Committees should be considered. I believe that if a dialogue is initiated with these agencies and Congressional Committees, we will minimize the potential for conflict and the possible mischaracterization of the facts which may concern these entities by the Wall Street Journal, CNN or the Honolulu Advertiser reports. Without the initiation of a dialogue, the Estate's ability to provide both context and accuracy to the issues raised by the media will be diminished. Our concern is that KSBE will again be in the position of reacting to inquiries, only this time the inquiries will be from a much more serious source than the media.

This advice is not offered by way of attempting to supplant the ongoing relationship that the Estate has with Mark McConaghy. Although I have not talked with Mark, I believe that he will make the same suggestions. It is important, however, that these decisions be made quickly so that the Estate will be in a proactive position with each of these agencies and Committees and attempt to work with them, rather than responding to them.

Finally, Lawrence sent along the attached article which appeared in the April 1995 edition of The Exempt Organization Tax Review, and was handed out at today's Georgetown program. It contains a brief analysis of a private letter ruling (LTR 9505020) which the author was able to conclude was issued to the Bishop Estate. The author is concerned with the IRS failure to tax the real estate transactions described in the ruling. A copy of the analysis is attached for your reference.

Please let me know if you wish to discuss any of these matters further. I am prepared to work with you in any way that may be helpful to dealing with these developments.

VLDC01-35267.1

MEMORANDUM

TO: Dennis Dwyer

FROM: Lawrence Cooper

RE: CLE Program/Representing and Managing Tax-Exempt Organizations

DATE: April 27, 1995

Today I attended the first part of "Representing and Managing Tax-Exempt Organization, an annual two day continuing legal education program presented at Georgetown Law Center. The selected faculty for the program includes Treasury and IRS officials, counsel to Congressional committees as well as distinguished exempt organization practitioners.

The first speaker was Michael Superata, Esq., counsel to the House Subcommittee on Oversight, Committee on Ways and Means. The title of his presentation was "Tax Policy and Exempt Organizations: A View From the Hill". Most of his presentation addressed legislation considered during the 103rd Congress regarding the imposition of intermediate sanctions against public charities (such provisions are similar to present law sanctions imposed on private foundations). Pursuant to the proposed legislation, sanctions would be imposed in cases of excessive salaries and benefits paid to certain disqualified persons with respect to a public charity. He noted that these provisions could be reintroduced during the 104th Congress.

In the course of his presentation, he also mentioned that he had read a Wall Street Journal article regarding the Bishop Estate and commented on his surprise in learning that the trustees of the Estate received over $900,000 in compensation. Although he clearly stated that he did not know the circumstances, the mention of the Bishop Estate article at the particular point in his presentation highlighted his concerns.

The second speaker was Catherine Livingston, Esq., Attorney-Advisor.- U.S. Treasury Dept. Office of Tax Policy. During her presentation on current matters before the IRS and Treasury, she noted that some guidance would be forthcoming on the Section 4941 self-dealing rules applicable to private foundations. One of the attendees asked whether the guidance on self-dealing would include any clarification of the Treasury and IRS poistions on reasonable compensation. She responded that the attendee would have to review the guidance once it was released.

I also note that the April 1995 edition of The Exempt Organization Tax Review, which was handed out at the program, contains a brief analysis of a private letter ruling (LTR 9505020) which the author was able to conclude was issued to the Bishop Estate. The author seems to be a bit concerned with the IRS failure to tax the real estate transactions described in the ruling. A copy of the analysis is attached for your reference.

VLDC01-35394.1

Notes of Discussion w/ L. Cooper Re GU Tax Exempt CLE 4/27/95

Tax Exempt - ABA Bruce Hoskins

1st Speaker Michael Schaffer.

ATTY w/ House SC on oversight

Intermediate Sanctions

Context of Exam. Be bit much.

Agency & Limited ally

Letter Rules in November ruled favorably on lenders & Bus. transactions

In Tax Exempt org. Review

Obvious mis conduct

Exempt org Tax Review.

Treasury - Bruce Hopkins

Katherine Livingston - Tax Policy

Smith Foltberg Self Dealing rules for Private Foundation. Put in Revenue Ruling.

Whether issue unreasonable Compensation included

Amid area read

Intermediate Sanction - Gen basis of legis history

5-9-95
EXECUTIVE SESSION

Mark McConaghy

1. BE Case is referred to the LAX office.
2. Chuck Barrett did not want us to meet with him at this time.
3. The letter was a good idea so 3-4 mos when the word leaks out - we have a letter inviting the IRS here.
4. Procedure to review Branch Chief in LAX to be in control & name the team members.
5. Looking at 92-93 FY & will review 90-91 FY based on newspaper ads.
6. Contact will be made in the next 2-3 weeks. Some of Seattle people will be here but Seattle will not run it. Mike Mikita will be in charge

Deposition Exhibit No. 94
Deposition of L. Lindsey
Date 11-8-99

LL 01567

5-9-95.
EXECUTIVE SESSION

7. Re: Investments going ~~back & forth~~ down to the subs — is it clear that this was based on the ~~appostance~~ business need & not because its worthless.

8. Mark assured Chuck that we are looking at this positively & are trying to catch up with all that we need to do. MOVE IN THIS DIRECTION

9. Arms Length — We have to meet at RHSCI on issues that have been sent down

10. Don't duplicate expertise in each sub. But - house it at the head office & charge out the expenses when the sub needs it.

LL 01568

2

11. The need to funnel information through one person or you lose control ~~on~~ on what is released. Gil should be responsible and one or two trustees advising

12. Others — should not release info through the IRS.

13. Section 403 b plan for employees. IRS has found out there is a lot of non-compliance. BG hasn't kept up Voluntary Employees Benefits Plans (VIVAS?) IRS will waive penalties ~~prosecution~~ if we are ~~been~~ trying to be in compliance.

3

14. With holding has to take place in IRS has found out that the same thing that happened in VIVOS is happening with 403b. Mark suggests that Gil Ishikawa gets involved w/ Mary Ann because every major college + institution has found more + more non compliance. Its a job to go through. it's but we have to with hold. Insurance carriers have not.

15. Diminimus Rule

If we want to have a supporting org (ie Foundation) - we can do this if we do it right.

Chuck & Mark went through the 4 FACTOR TEST and the regulations.

Primary Mission must be dominate.

√ Chuck suggests - IRS is receptive to ruling on the diminimus ~~of~~ when we are ready to make a proposal re: this. Get the ~~existing ruling~~ diminimus rule in writing as a ~~[illegible]~~ IRS coming in ~~will be a~~ thorough investigation.

go in during the summer

Diminimus Rule - Mark can meet with Chuck

IRS is turned upside down with 30 district offices will be closed, 2000 positions will be cut, etc. this has caused a lot of turmoil at the service.

Re: Salaries for charitable org. 5

. Started with Pickles committee.
. There is a feeling that ~~that~~ there will be 2 basic rules:

1. Arms Length relationships between trustees + subs
2. Reasonable Compensation Law.

. What they are doing - is trying to impose fines through excise tax.

Presently: The only option they have is to take away the tax exemption for the institution

3. With BE ~~they~~ had difficulty with the compensation for charitable compensation should be less than

those that are in the private business

Inurement & Private Benefit

. Private benefit

officers, directors & decision-makers of the organization. IRS can find a significant amount of inurement & not cancel the exempt the status.

Inurnment

Can find a small amount & cancel the exempt status. If the fringe benefit is not treated as compensation then we can lose the compensation.

Florida Case - Revoked the exemption 7

~~Another case~~ Herman Hospital - did not revoke the exemption

→ Difference is the Florida Stonewalled & did not want to change while Herman Hospital was willing to work with the IRS.

Teachers Salary

We want to be competitive. so we give more - is this a problem.

Is our ed. activity commensurate with income?

Income - minus capital gains = ordinary income

To be sure income is used for the school - we must allocate services from estate personnel to the school. . . . . so at some point we must refine the process.

Make sure the cost allocation is maximized to be sure more money is charged to education. Not a big priority — but it must be done sometime in the future.

REGULAR SESSION

Tony - Going through 2nd round of negotiations on Thursday

Michael -
Ann Morinato passed away
Japanese Language Tchr.
Rare lung disease.

6-29-95
TRUSTEES mtg

Nathan - Re: Meeting with Joint Committee on Taxation.

Kent Keys - Chief of Joint Comm.
Advisory Comm to House + Senate.

Met for 2 hours. Issues covered.

- All had Wall St article + asked questions from that article
- → wanted historical perspective.
- All 501 3(c)+(d) - tax exempt organizations are being looked at.
- Congress is looking for money
- Legislation may come out in Sept.

→ Trustees commission; RHSC; all subsidiaries; KSBE investments; interim sanctions + private inurements were all covered.

Deposition Exhibit No. 95
Deposition of L. Lindsey
Date 11-8-99

LL 01670

6/29/95
TRUSTEES MTG

Interim sanctions & inurements may be a part of legislation in Sept.

- Consolidated Returns - throwing losses down there
- Value - 1.9 book value
  other figures go up to 15 bil.
- Private Foundations must pay out 5% of its cap rate. KSBE - using 5% - estimates the value at about 2½ bil.
- Talked about statutory conditions

Follow up -

- Asking for info - Annual reports
- SCA Report re: Trustees Compensation.
- Nathan mentioned the ~~reasoa~~ of compensation
  Courts - IRS - Master
  Court ordered study; lots of scrutiny.

6/29/95
~~TRUSTEE~~ MTG

Talked about roles of trustees
i.e. school;

Mark felt ~~its~~ it was a
good meeting but we
must form a team

7-19-95
Minutes Mtg.

14. Cancellation of Lease - Center Art Galleries Hawaii Inc.

Tony - none
Michael - We will enjoy the game
Yuki ① Just started construction
on the Panakele access road
- Cost 4.5 million
- Contractor: Oahu Construction
- How many bids? 4 or 5
It went from 4.5 to ____
(Yuki to come back)
S+Y - The ~~engineer~~ architect
Nathan - requested an executive session
Re: Legislation re: Intermediate
Sanctions on Excessive
Compensations.
We ~~will~~ must get:
Spencer & Hecht on this
Vercieu & Leppert.
Briefing by Mark on the
entire document.

Deposition Exhibit No. 96
Deposition of L. Lindsey
Date 11-8-99

LL 01751

8-8-95
Trustees Mtg

Arm Length Policy - Nathan
Lots of questions on the individual guidelines. Trustees approved the policy. Workshops will be held for all employees Legal to hold the workshops.

Oz - ~~Reboot~~ ~~at~~ Reviewed the Roll Out Plan

Jerry - Invitation for Princess Kahanu

Dickie
. Steve - TEE Sponsership ?
. Cancer Society -

Deposition Exhibit No. 97
Deposition of L. Lindsey
Date 11-8-99

LL 01722

8-8-95
TRUSTEES MTG

Dr Ahr's presentation
Randy Ha's review of Non
Instructional Work Units.
Dr. Ahr provided the "color"

2

8-10-95
TRUSTEES MTG
EXEC. SESSION

ML&P - con't
• Come back with a formal statement

Loke:
Passed out Hecht, Spencers 8/7/95 memo re: Prohibition on Lobbying.

PR re: Kūā'pa Iele.

Tuesday 8-23-95 PE's Compensation – End of August
• Decision on PE's compensation

Tuesday 8-23-95 East Hawaii

Deposition Exhibit No. 98
Deposition of L. Lindsey
Date 11-8-99

LL 01726

10-17-95
TRUSTEES MTG

Walk In

OK Mercus Cable Fallows Vgs Broad
Street Investment L.P.

Elisa
· Report on the County Hearing.

Mike

Dickie ① Legislation in Congress
Update by Telephone Conference.
Status Report -
Archer is serious about this
proposal & will not give up
Senate mark up is scheduled for
the middle of next week.
Senators has assured us
that this will not be put in
the mark up
Lloyd Benson & Ann Richards

Deposition Exhibit No. 99
Deposition of L. Lindsey
Date 11-8-99

LL 01758

10-12-95
1. TRUSTEES MTG

will make contacts with the Representatives who can be softened up - namely the Texas delegation.

On the House front - Crane Crenshaw & William Thomas, Archer & Rep. Johnson will all be contacted.

Sen Inouye & Rep. Abercrombie will talk to minority conferees.

Democrat ~~Stare~~ is dangerous

Sen Inouye sent letters to members - & several letters have been rec'd from House people who agree w/ Inouye & can improve.

Focus on health associations as well.

"It's not over until its over"!

2) Mark is coming up with a memo on the tax impact of lobbying

10-19-95
TRUSTEES MTG

Henry
Socal - Chugging along

Mtg w/ ~~a Attachment~~ Asset Management Group up-date. Henry to be in charge until ~~to~~ a later date.

Dickie
· Update on Tax Exempt Status (30 min)

Protocol for Sen. Inouye
Do we have a table??

~~Exp~~ Agenda - Approved as Recommended.

EXECUTIVE SESSION:
TRUSTEES-NATHAN-RODNEY

11-28-95
TRUSTEES MTG

Larry Wangler - Towers Perrin Group.

[redacted] January - Draft Document
[redacted] February - Final Report
[redacted] Trustee Interview Guide

Using fiscal year June '95 as a cut off for comparables.

Executive Session w/ Nathan & Yuki

Nathan - re: Trip to Washington & Discussion of Tax Intermediate Sanctions & 11/22/95 letter from Mike Repass

Yuki - Interim Sites for East Hawaii
- Hilo Hotel - fit to make CR's etc.
- Waiakea Villas -

Deposition Exhibit No. 101
Deposition of L. Lindsey
Date 1-8-99

LL 01805

~~536-9453~~

521-4685

11-30-95
TRUSTEES MTG

Dickie

6 - Intermediate Sanctions
Dickie to D.C.; Henry talked to Mark. 1) We are in favor of Intermediate Sanctions, 2) We differ on some of the minor points i.e. FOOTNOTES - that refers to State Legislature, saying it is not an independent body.

Dickie's Kuleana + he will keep in touch with us

Deposition Exhibit No. 102
Deposition of L. Lindsey
Date 11-8-99

LL 01811

2-~~13~~ 22-96
TRUSTEES MTG

Tamera & Perrin Larry ~~Watt~~ Wangler

6.6 billion J. Paul Getty

	EDUCATION	Manufacturing
CEO	$1,260,000	2,355,000
COO –		
CFO		

added this two & divided by 5 ~~to get 511,000~~

RE Dev	Top Exec/Inv.	Fund
2,757,000	7.4	621.

– Per Trustee $511,000 – Floor

Unique about Trustees

- Full Time
- Liability
- Trustees 100% pay is based on performance

Weight → CEO 60% COO 20% CFO 10% Treas. 10%

In adding these adjustments together
$685,000 to 760,000
could go to ~~840,000 to 840,000~~

Deposition Exhibit No. 103
Deposition of L. Lindsey
Date 11-8-99

LL 01866

2-22-96
TRUSTEES

Problem - When compensation gets out of the area of reasonable - based on perception - legislation will bring the compensation into a reasonable arena.

Michael Eisner
25 mil
last year.

We have to do a better job of educating the press on what we do

Harvard 7.7 billion
Leverage 5.0 billion
Pres of Harvard gets $330,000

501(c)3
Trust

Asset Mgt. Foundation -
Duke; Stanford; U of Texas
(3/1/96)

Final draft - due in 3 weeks

3-21-96
TRUSTEES MTG

Bruce
Benson Forest donation

Mike
Song Contest

Agenda 4 OK

Yuki – Keaukaha Walk-In
$100,000

~~EXEC~~

Rodney –
Secretaries Dinner – Duke Barnum's secretary is the President. KSBE was formally recognized for assisting in the publication of its newsletter.

EXEC. SESSION

1. Rodney – Towers Perrin report
- Leave in draft until Lokes questions are answered re: defensibility

Deposition Exhibit No. 184
Deposition of L Lindsey
Date 11-8-99

LL 01916

4-9-96
TRUSTEES MTG

Nathan

RTJ

Issue 1 - Structure of the deal is part of the

Issue 2 - Cottage sites

Nathan to effect a settlement he will leave for

IRS Audit

I.D.R. - Information Document Requests - wants to interview 20 individuals

FOR 5 TRUSTEES
- benefits
- commission.
- drop down investments
- lobbying to date.
- private inurement / private benefit issues

operational

Lou; Phil; Colleen; Bruce; Eric
Paul; Shin (C.U.); Yuki; Suzanne;
Sandy Behenna; Raweena;

Deposition Exhibit No. 105
Deposition of L. Lindsey
Date 11-8-99

4-9-95

Nathan (con't)

U.S. World + News Report Dec. '95 — IRS is using this report. as well as all other media reports.

Re: Lobbying

2 Laws

Federal Laws

- Up to Dec '95 - Lobbying is only when contact is made with the Legislators
- From Jan '96 - Everything you do is lobbying

Self Defence -

Conflict of Tax Sanctions + Trust Law

Joint Representation Contract for Morrison + Forester needs to be signed.

5-14-96
Trustees Mtg

Elisa
Hawaii's - The Coach - Larry Price
- Subs - RHSCI - Sponser from Windward Mall not KSBE.

Native Hawaiian Advisory Council
- Request to buy a table

2 Requests for our Tax Returns
- Annual Report } to be filed
- Tax Returns } on 5-15-96
Star Bulletin } we have kept
Jim Dooley } it in-house
& they took at it
They can get it at court.

Annual Report - requires
- filing of the 990's & the audited financials.
- 990's - Probate Court Order
- Audited financials - Supreme Court orders.

Deposition Exhibit No. 106
Deposition of L. Lindsey
Date 11-9-99

LL 01960

5-14-96
TRUSTEES MTG

IRS - must make it available to the public

Discussion:

Have we ever xeroxed & given our copies to anyone?

They should pay for the cost.

The whole premise in disclosure is that anyone who wants a copy ~~should~~ could come in and review this if they made a donation

It should be available but not reproduced.

Elisa - we did reproduce this

Gil - we will make this available to the public during normal working hours People can get a copy from the courts.

5-14-96
TRUSTEES MTG

Kevin Iwakayama will

Gil - Disclosure of 990's (proposed legislation)

Proposed Legislation

If a person calls in & request a 990 → we have 30 days to reproduce for a fee. if they come in we have to ~~request~~ reproduce - for a fee - immediately.

Bottom Line - Don't do it until we have to do it.

Executive Session

Rosehill - Go forward with the trial.

Primary - Olsen - sole practioner & Halstead - got a 100,000 tax hit

Trustees not willing to settle

5-15-96

Gil – Brief Henry before the tax returns are filed.

IRS –

We have a couple of problems.

· Should not give the press something we don't give to the IRS,

· Running a risk w/ Nikita. He may be looking at penalties, etc if we didn't do this

· Running another risk – if we ignore what the case manager said.

[Next year]

Tax Exempt Sub – beneath BE (Tier) ~~thas~~

Mark

· Ways & Means reported out a tax package –

Pkg an increase in the minimum wage; so they came out w/a pkg of small business breaks. Hope this should get ~~up on the~~ married up.

5-15-96

If they add a gas tax to this - then they may add on a taxpayer bill of rights. so Int sanctions may still be alive.

Dole

Did what he did because Gingrich is beating him up by calling himself Dole Jr. Dole has to

Mtg -

Paul Ahr
314-862-3200

Ben

6-25-96
Executive Session

Oz Stender

- ALC – Keawanui –
  Oz wants to keep it! Jerry wants a plan based on facts.
- Dr Ahr / E+Y
  When does it end? We have paid Dr. Ahr 700,000 + and E+Y 1.2 mil for

Loke

1. Items 5+6 of the June 18, 1996 – NI School Staffing Report.

2. Orientation of Big Island + Maui New Parents

3. Punaluu Parcels
   - Mitsunaga
   - Mills

Dickie

1. Will meet w/ Spencer / Hunt re: Int. Sanctions

LL 02229

7-16-96
EXECUTIVE SESSION

Jerry

Henry called ....

· Still meeting w/ Cayetano

The Masters is coming around again so Jerry suggested we address the Masters' report.

Jerry gave us a copy of the DRAFT of IRS/Conflict of Interest (N 5444) - what is this

Dickie

· Review of intermediate tax sanctions - no colloquy - concerns re: anti Hawaiian attitude in Congress & Inouye's position.

· Educational Plan

7-16-96
EXECUTIVE SESSION

Peter Harris
His perceptions:
- People here know a lot about KSBE
- Message Box of People
  - Hawaiian Children are in real need of many social services, education, etc
  - Believe the estate is worth 8-10 billion NOT 1.6 million
  - Trustee compensation

Needs of Hawaiians — compensation of trustees — great resources

prohibits KSBE from using resources to meet Needs of Hawaiians

Lease to fee conversion stands on its own.

Confusion & disagreement about the real mission of the students.

7-16-96
EXECUTIVE SESSION

PEOPLES' BELIEF BOX
- WEALTHY ESTATE
- GREEDY TRUSTEES
- NEEDY HAWAIIANS

- No consensus on what the school ~~is~~ is now.
Some think it should be for "average" or "disadvantaged" students.

- See hand-out dated 7-16-96 from Peter Harris etc ....

SO WHAT? — Peter's Plan - HAND OUT #2

We have to acknowledge that
- This estate is worth more than 1.9 billion
- There is a great need among Hawaiian people.

Plan should focus on —
- We are doing a good job
-

LL 02256

7-16-96
EXECUTIVE SESSION

Strategies
· Establish criteria ahead of time
· Test every message
·
See Peters #2 Handout.

· Got to show people "stuff".
· Take them to the campus.
assign someone to do this every 6 weeks
· 4 good human interest stories i.e.
· Kids redesigning the logo.
·

Educational Plan
Utilize communication ~~Technologies~~ ~~[illegible]~~
to enhance.

Alumni Association can give a quaterly ads to the alumni who does the most.

LL 02257

7-16-96
EXECUTIVE SESSION

Approved Peter's Plan
which includes -
· Goals of Communications Plan
· Strategies to Accomplish These Goals.
- Conservative / modest message & appearances - "COOL DOWN OUT THERE"

TEAM of prominent people who talk for the estate
ie.

NOTE:
DICKIE AFTER PHONE CALL

Senator Inouye
"If KSBE goes down - the Hawaiians go down.
We are the last independent Hawaiian organization
- Suggested getting a higher profile panel - who speaks for us.
- Suggested Alumni get involved.

8-13-96
TRUSTEES MTG

Rodney -
- Next Tuesday - Annual Service Awards.
- No mtg on 8/20/96
- Next meeting 8/27/96

Two Items - Security Plan & Conflict of Interest to be placed on the 8/27/96 mtg

~~Executive~~
Reviewed news clips on Channel 4;

Nathan
- Update on R.I.J.
- Lease Option for the Club
- Real Estate options & work outs

Henry
Mark - To update ~~us~~ us on Int Sanctions

Deposition Exhibit No. 107
Deposition of L. Lindsey
Date 11-9-99

LL 02281

8-15-96
TRUSTEES MTG

OK Jerry - Instead of approving the RTJ recommendation - we note this subject to all the other pieces.

- 35 million balloon to ~~fee~~ buy the fee due at the end of the lease.

Mark Mc - presentation on Intermediate Sanctions
Effective date per law retro to Sept. 9, 1995
- Need to look at several things w/ re: to this law:

1. Int sanctions gave the service the right to sanction excess benefit transaction. which means pay back what they consider excess + a 25% excise tax

8-15-96

2. Personal Benefit.

Discussion

- Unreasonable compensation -

- What we need to be ready for in case service comes in and says trustees have unreasonable compensation

a - Have a compensation study that results in a range. (SCA) that applies to each of the trustees

b - The trustees will be Topped ~~looked~~ at individually & separately based on individuals responsibilities, qualifications, etc and will determine individually if we should be compensated.

✓ How we function will be key.

8-15-96
~~[illegible]~~ TRUSTEES MTG
~~EXECUTIVE SESSION~~

Re: Duties & Responsibilities.
All 5 should be formalized in the process – we are a 5 headed CEO – we must document our role in the total process & become the 5 headed, closely knit, comprehensive body. Truly 5 fingers – one hand.

Documentation
If people were absent – we showed show

* Put in writing – our fiduciary responsibility
Mark – it will be definitely to our ~~position~~ advantage to have our process formalized

Jerry – is already putting together a fiduciary/process manual.

8-15-96
EXECUTIVE SESSION

Mark - Int. Sanctions - cont.

- Kathy Livingston - an attorney who will be working on exempt tax sanctions.
- "independent contractor -
- hallmark legislation & this is front & center.
- - all exempt proposed regs should be out by the end of the year and finalize it by the end of the year.

Jerry wants to bring Mark into the loop on the trustees operations & fiduciary manual.

Excise Benefit Transaction

Private Inurnment -
IRS won a court case against John Marshall Law School.
They had non-interest loan; free houses not a part of individuals compensation pkg.

8-15-96
EXECUTIVE SESSION

· If they don't treat something as compensation up front they cannot add it to the compensation ~~factors~~ package after the fact.
25% non deductible penalty.

$\boxed{\text{I.E.}}$

If you receive free parking is over $165.00 dollars than the excess is taxable.

Under ~~tax~~ intermediate tax $35.00 a month would be excess compensation.

· Strengthen Accounting procedures
Kinds of Things
Lower Non interest loans
Employer ~~paid~~ provided car
" " transportation
" provided club membership

8-15-96
EXECUTIVE SESSION

convenience of the employee

Housing, food, entertainment
Tuition + related
Vacations
Travel -
Limo
Maid service
Free tickets, theater, etc
Etc.

Should be included on a 1099 or a W-2.

People that are subject to the above - ~~are~~ apply to disqualified people.

A disqualified person is one who has (any individual who is in a position to exert substantial influence on the organization!

7

8-22-96
EXECUTIVE SESSION

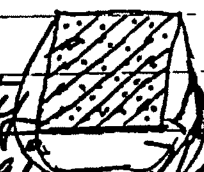
DISCUSSION

Intermediate Sanctions Discussion

I. Excessive Compensation
- Trustees
- PE's
- Other Qualifying

II Private Inurement

Mark McConaghy to come in on Sept. 3, 1996

Agenda Item 9. Campus Security 

- Oz-EKoma Mai — How were going to operate it like a military base. ~~He~~ He wants an open campus.

OK

- Rockne —
  - No increase in TAP
  - Increase cost in Sub Contractor.

9-3-96
EXEC SESSION

Mark McConaghy | MARK MC CONAGHY
Intermediate Sanctions
1. Unreasonable compensation
2. Excessive benefits transactions.
How do we deal w/ this going forward?
For Our Two-30 member lawyer group. to make recommendations to the IRS
Kathy Livingston is not a good friend of taxpayers.

How will the service going to deal w/ this?
We need to have a very good study re: our compensation
25%
TAXES on unreasonable compensation 25% } non deductible excess tax 25% on the individual
& on 10% } 10% on the manager

9-3-96
EXEC. SESSION

They will have transitional/temp. rules while they formulate the final rules & regs.

This impacts all individuals in public Charities & 501c4
Many 501c3's are now becoming more active.

Dickie Should we get a critical mass together to join us?
MARK Have some network through many organizations. where the organizations will support us because they have the same kind of issues that we have.
OREO (College group) Important its a group that has the same issues
One of the things we must do is to think about how we are going to do this going forward.

9-3-96
EXEC SESSION

IRS plans to look at each person individually instead of 5 trustees as a group.

* Look at the procedures & have the process in place & have the minutes reflect that all of the decisions are made by all trustees.

Our last study showed we all did this together.

We must insure that we are operating as a unit.

Dickie — Should we insist on 5 signatures or 3 out of 5?

MACK 3 out of 5 is okay but be sure when people are out of town — They call write & comment on agenda items.

9-3-96
EXEC SESSION

The need a new study to insure we all do everything.

. Other Excessive Benefit Transactions (Inurnment)

EXAMPLES

Non interest loan or a Low interest rate loan given to an individual becomes inurnment if it is a non compensation item.

If you included it as compensation & its considered unreasonable compensation.

. See pg. 39 for other examples

** "we Can get insurance against this excise tax" - mark

9-3-96
EXEC SESSION

Those that exert substainal influence over the organization. i.e. Nathan - Mike Chun - etc. It could apply to more than the 5 trustees

If there is a "personal use" component by an employee - this may apply.

* If Houses are not for the convenience of the employer - then its considered an excessive compensation benefit. It is taxable & must be included on the W-2 form.

Per. Pg 39

* MUST REVIEW THE HOUSING
HOUSING, FOOD, & DRINK;
FURNITURE etc
* MAID SERVICE

9-3-96
EXEC. SESSION

If we do it - we must include it as compensation on the W-2 and report it as income for anyone in our organization!

* Interim rules + regs in place by 12/31/96.

DICKIE What should we be doing?
MARK · DON LUBIC - head of IRS
(took the job 2-3 mos ago)
(Mark hopes Kathy Livingston leaves.

· TRUSTEE Manual MUST BE IN Place that include:
· Arms Length
. Procedures in accounting to be sure W-2 reports things correctly

LL 02314

9-3-96
EXEC SESSION

- TRUSTEES MUST ACT AS A UNIT
- We all talk about everything.
- Meet regularly
- Procedures set up to do it
- DON'T LET THEM PICK US APART

- NO SENSE IN US BEING UP THERE INDIVIDUALLY. THIS SHOULD BE PRESENTED TO THE OREO GROUP (75,000 college & universities) GET OTHERS TO HELP US.

- COMPENSATION REPORT (can use old one w/ inflation factors) How its WORDED IS IMPORTANT

9-3-96
EXEC SESSION

NATHAN & Mark should look at the compensation report so the service cannot pick us apart.

Oy
- Sits on the RITA Committee
- Provides funding to farmers who want to get into farming (FED MONEY)

- AFCO
  Investment under Kukui - someone ~~who~~ wants ~~need~~ to buy it so they plan to sell it.

- Kukui

LL 02316

11-21-96

EXECUTIVE SESSION

Oz

Do we do the deal on the Kamehameha painting?

Henry - IRS Issue

We spent $7000 for RW out of Trustees funds to buy a table. RHSCI should have paid for this.

- Oz + Jerry - part of HMSA Group Plan. From now on → Oz + Jerry will pay the bills with their own check.

Dickie

Int. Sanctions

- Representative Johnson got back in - she's going to give us trouble!

Deposition Exhibit No. 188
Deposition of L.L. McKey
Date 11-9-99

LL 02382

(TRUSTEES - EXEC. SESSION)

Henry
Submitted:
· Listing of all Investments
· Position description - REIAD
· Position description - Financial Asset -
· Position description - General Manager - Asset Division.
· Financial Asset Division Org. Chart
· Real Estate Investment + Appraisal Division
· Status Report on Marketable Equity Sales.

Jerry brought up the Intermediate Sanctions issue.
· One of the violations - private enurment
· Another - unreasonable compensation.

1-7-97

. Per Mark - a key piece is to insure all 5 trustees work together & share the responsibility.

Fiduciary Manual

Henry . For the federal gov't is oblivious to the 2% the law allows.

. If the study is lower than the law ... what happens?

Jerry - We agreed w/ the probate court to conduct a compensation study.

We are going to

1-30-97
EXECUTIVE MTG

Henry
· Compensation Recommendation
OK Education not included
because Ed Plan is not
completed · approved as
recommended

· Payment for Mike & his
Limited membership at
Swajalae. Reimbursement
of 33,300. Also - he is
responsible to pay all
taxes. This part of his
compensation

Discussion on:
1- Purpose of the Retreat
2- Parallel Track for
Asset Mix and Recommendation
and/or minimum
Competencies for Asset Mgr.
& 2 vacancies.
3. Working on replacement ASAP

LL 02439

4-2-97
TRUSTEES Mtg
EXECUTIVE SESSION

Jerry
Handout on KSBE Trust Administration & Fiduciary Handbook.
Thumb nail sketch of 3rd party reviewers i.e. IRS; Courts, etc & have we put their recommendation in writing as a part of our policy & guidelines.

Henry
1. Did not want to be restricted by the policy.
2. Concerned that this not be used against us
3. Overview of the master & his/her recommendation

Nathan
1. Court rules have extended the roles of the Master so its not accounts only.

Deposition Exhibit No. 109
Deposition of L. Lindsey
Date 11-9-99

LL 02521

4-8-97
Trustees Mtg.

Oz
Memorandum - 4-8-97 to
Trustees

Discussion included -
· Impact of intermediate
sanctions on ~~the~~ KSBE

Reference to #3

· Give a Hawn Law
student financial aid
if he/she is part of
Hi Law Sch Native Hawn
Rights Clinic.

Reference to #1
Establish Fellowship program

Keep this open

Decision:
Oz to write a letter
for Dickie's sig to Mark
McConnaghy to ask for his
input in view of the
intermediate tax sanctions.

MIKE
Conference at Maunakea

LL 02528

6-26-97
EXECUTIVE SESSION

Private Trust - Fiduciary Responsibilities
Process. Discussion lengthy
Good discussion!!!

LL 02640

Information Document Request

9-3-97

IRS has been auditing us for almost 2 years now! Mark is trying to bring closure

Media Ality is not helping us at all; they have a clipping service in LA; Wash; Seattle;

Rules state we have made an election to lobby for a tab of 1,000,000 million per year. for lobbying.
Lobbying does not mean self-defense. Self defense is not lobbying. R

Elisa

Re: ~~IN~~ INTERMEDIATE SANCTIONS
We weren't opposed to it - Int. Sanctions - we wanted to be involved + attacked it in certain ways. * ~~Mark~~ to draft a policy for us!

DATE	SUBJECT	CLASSIFICATION
8/5/97	Portlock Beach Survey Project - Proposal to Amend Contract with Park Engineering	Routine
8/12/97	Education Plan 1996-2005	Routine
8/12/97	Kaupulehu Makai Venture - Update of Fee Sales Activity	Routine
8/12/97	KSBE Annual External Audit - Proposal for Policy & Auditor Selection	Routine
8/12/97	Longs Drug Stores California, Inc. - Proposal for an Amendment to Lease and Request Authorization to Proceed with Related Changes at Keauhou Shopping Center	Routine
8/12/97	National Advertising Company dba 3M Media - Proposal for Issuance of a New Lease for Display Units in Various Locations	Routine
8/12/97	Neil T. Nakamura - Proposal for Issuance of a New Lease for Suite No. 220	Routine
8/12/97	Dr. Isaac J. Kaopua, Jr., O.D., Inc. dba Aloha Eye Care - Proposal for Issuance of a New Lease for Suite No. 116	Routine
8/12/97	DeLeon Medical Clinic, Inc. - Proposal for Issuance of New Lease for Suite Nos. 320 and 322	Routine
8/12/97	Trust Administration and Fiduciary Guidelines Handbook	Exec Sess/ACP
8/12/97	Werner-Chun, et al. v. Trustees of the Estate of Bernice Pauahi Bishop, Deceased, et al.; Civil No. 96-1419-04 - Information on the Arbitration Decision	Exec Sess/ACP
8/12/97	Waiahole Ditch - Proposed Decision and Order by the State Commission on Water Resource Management	Routine
8/14/97	Waialae Ridgeline Estates - Sawyer - Proposal for Sale of KSBE's Lease Fee Property to Lessees in a Lawsuit Brought by KSBE	Exec Sess/ACP
8/14/97	Proposal for Funds to Repair Two Newly Acquired Leasehold Apartments	Routine
8/14/97	Northbrook Properties - Proposal for Arbitration of Commercial Ground Rent	Routine
8/14/97	Jimmy Wong - Proposal for Arbitration of Commercial Ground Rent	Routine
8/14/97	Keauhou Resort - Alii Drive - Proposal for Electrical Transformer Lease of Easement	Routine
8/14/97	Isamu Kaneshige dba State Farm Insurance Co. - Proposal to Amend the Terms and Conditions of the New Lease for Suite No. 308	Routine
8/14/97	Year 2000 Evaluation - KSBE - Proposal for Funds to Perform a Preliminary Analysis of the Extent and Impact of the Year 2000 Problem at KSBE	Routine

Deposition Exhibit No. 110
Deposition of L. Lindsey
Date 11-9-99

9-4-97
EXEC. SESSION

IRS

Mtg. Carolyn Woods; Janet Hughes (DENVER); Gordon Waelke (LAX); Sharon Mahar (SEATTLE)

Exam Plan

- Will go through Mark for the most part
- Notice of Issue to KSDE & forprofit subs
- All ~~IDR's~~ by the end of February 1998
- If something is unusual in '95 + '96 it may be longer than Feb 1998

Page 7

1. • All IDR's in writing; 15 day turn around period unless a later date is agreed upon. Discussion by case manager if IDR's are 45 days late

2. • Form 5701; 30 day calendar response;

Deposition Exhibit No. 111
Deposition of L. Lindsey
Date 11-9-99

LL 02727

9-4-97

Oz-viewing
IRS not
doing
personal
mail.

Gordon Szalke

"Issues we're looking at are complex in nature ... we are not swayed by the media coverage ... is certainly for selling newspapers & watching TV" ... "what we are looking are purely internal revenue code tax law based & will have nothing to do with the media."

We are driven by a need to know basis.

There is an information sharing arrangements with a taxing authority only. Different states have different arrangements but cannot go to other state agencies.

Gil
Extension of '95 – '96 will only look at "carry over" areas. They will look at travel expense vouchers.

Clean bill of health (will not look at it for '95 – '96)
Employee benefits –
Retirement plans –

Extensive in 92 – 94
Follow up (carry over) in '95 & '96
Areas of sensitivity is --
probably media driven.

Oz – When are they going to look at individual returns?
They are going to "close" issue by issue – not year by year.

Only open issue is excess compensation issue.

3

9-4-97

This issue went to National Office for tech advice. After - it sat in the National issue for some time they sent it back to the field.

Henry Will the use of intermediate sanctions affect us?
Yes! from 9/95 when the law & was enacted they (IRS) may use the intermediate sanctions.

Sept 16, 1997 - Mark will bring ~~Horwig~~ Sharnfelt - all he did was deal with exempt organization
// Two others in Mark's office - 1 in charge of LAX office and 1 ~~for~~ the head examiner in the National office so we will know they are back up.

4

9-16-97.
Executive Session

Mark McGonahy (sp?) Price Waterhouse
IRS Audit 1993 → 1996
John + Howard – Re: IRS views enforcement
of cases where there is
significant press involvement.
Enforcement Reg + Procedures
Applicable to Tax Exempt Org.
Regulatory Process
The IRS makes decisions
on facts + law.
501c3 – Common Law Concept
– Org – that fits the description
of Charitable Trust + Org.
~~PRIVATE INUREMENT~~
[redacted] . 400,000 – 600,000 ~~TES~~ CHARITABLE ORGANIZATIONS
– Intermediate Sanctions
just enacted. IRS has
this plus ability to disqualify
charitable tax exempt status
Cases Discussed
. Law School Atlanta, Ga.
. DR (TRUSTEES) got more
favorable treatment.
than others.

9-16-97.
EXEC. SESSION

- Jim Baker case - ~~No~~/So. Carolina.
Instead of doing what IRS said — they decided to file bankruptcy.
- Boston University - John Phillip(?)
- Pres. entered into a agreement w/ IRS to retain its Tax Exempt Status.
- IRS does not believe State has effective state trust powers;
IRS knows what the state is doing .... so they will do what it wants to do --
IRS has leverage
2 school of Thoughts
- Do whatever it takes to preserve the assets of the case ... so they settle
- Other school of Thoughts - is zap them & set a precedence.

LL 02737

9-16-97
EXEC. SESSION

Prevailing school of thought?
Depends on the approach the org. takes ... & the attitude the org. takes .... willingness to work together.

Legislative History
Sec 5
501 c 3
was not repealed.

Service has nothing to lose but being harsh...

Charitable Trusts are an endangered species as opposed to a Charitable Corporations

AG's ~~Rep~~ Approach

After Hance read the AG's report - he felt AG looks at things minimally.

6103
6104

- AG has inadequate resources
- They may not have trained investigators
- States want to know what IRS is doing
- IRS is prohibited by law from talking to you about any matter under investigation

9-16-97
EXEC. SESSION

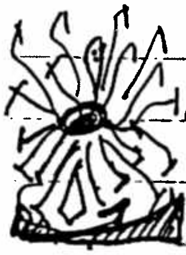
- However - if the State wants to tell the IRS anything about the investigation - they can do so.
- IRS can share after the conclusion providing there is a tax issue (?) and if there is no resolution.
- AG may ask us to waive the agreement to allow them to look at IRS records. "We should say NO!"
- If there is resolution - IRS does not turn over records.
- KSBE should be proactive in dealing w/ the IRS
- IRS looks for opportunities to assert itself.
- ~~If~~ Since AG is looking into things - IRS will also be more aggressive.

9-16-97
EXEC. SESSION

· Practice of IRS is to settle cases rather than litigate
· The more an organization works up-front to give info — the better it will be for that organization.

AG Update

· Subpoena — Personnel Director
all employees; JD's; etc.
· Subpoena —



Oz — Margery — Goya — Kevin — one other
Oz — ~~Crystal~~
· Methane
· Penaluna Property
· Harmon Case

Re: subpoena — Nathan Oz — He's "walking A "thin" line on this so he listens to his Atty"

Motion made by Terry; Second by Henry
Unanimous approval.

Any + all subpoenas rec'd by trustees — any + all S rec'd by employees of this estate go through Nathan

Best interests of this trusts + trustees

Oz said subject to review by his Attorney

9

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12-16-97
EXEC. MTG

Settlement of Lawsuit
AVCO vs. GAGE

Recommendation - To go ahead
& negotiate.

Nathan gave us a copy of
our report to Pat Ginds
report.

Pg 3-4 Does not capture the
full intentions of the
board

Pg 5-6 - Trustees want further
review

Trustees want an audit -
come up with a full report
including a financial
audit & mgt audit

Deposition Exhibit No. 112
Deposition of L. Lindsey
Date 11-9-99

LL 03017

Nathan (cont) 12-16-97.
EXECUTIVE SESSION

- Childers Claim - per 12/16/97 Memo to us!

- Bruce & Colbert working on Stipulations

- IRS AUDIT
  - Service will finish their fact finding ... by ??
  - They will be back in Mid-January

- AG Investigation

The AG is issuing subpoenas in an Administrative Capacity ... she has not

I wrote a note to Jerry stating that "There is no doubt in my mind that she (AG) is after Gov. Tucker ... for whatever reason ... MY OPINION ONLY!

12-16-97
EXEC. SESSION

Jerry - said .. "so what - he's fair game".

- Trust Law is determined by the Probate/Supreme Court

- Venue Issue - Can we move the *investigation to another jurisdiction because we can't get a fair hearing

- Henry - also wants to know if we can change our domicile.

Or

- On the Ishikawa case - let's help pay for the funeral expenses (not KAA - some other fund)

1-15-98

Pule - Henry

Minutes - Deferred to next Tuesday.

(1) TRUSTEES REQUESTED THIS

Special Workshop on Trust Law and Standards

(2) MASTERS' REPORT REQUESTED THIS.

(3) ANNUAL REVIEW

Bruce

Topics Selected by Nathan
In trust law there are nuances -- and its debatable

Trust came from ... Anglo American; came out of an era when children & women were considered incompetent by law. If you went to war - then to keep the estates intact. So the estates were given to entrusted friends to keep the trust intact & return it when they came back

LL 03067

4

KAMEHAMEHA SCHOOLS/
BERNICE PAUAHI BISHOP ESTATE

TRUSTEES RETREAT
July 19 - 22, 1993
Turtle Bay Hilton
Kahuku, Hawaii

FIDUCIARY INVESTMENT STANDARDS

July 19, 1993

Prepared By: Nathan T. K. Aipa
General Counsel
Legal Group

Confidential
Attorney-Client Privilege

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Deposition Exhibit No. 113
Deposition of L. Lindsey
Date 11-9-99

TRS/Fiduciary Investment Standards
Presentation to Trustees 7/19/93 N4940

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TABLE OF CONTENTS

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INTRODUCTION

At the request of the trustees, this presentation will review some of the fundamental fiduciary standards involved with the management of trust assets. These standards have been capsulized in various phrases such as the "prudent man rule" and the "prudent investor rule" which demonstrate the evolution of these fiduciary standards. Professor Edward Halbach has been the leading proponent in redefining the prudent investor rule for trustees, particularly in connection with the current financial and investment environment.

The management by the trustees of trust assets is governed by various authorities which must be viewed in their totality. As such, this presentation is divided into the following sections:

1. Excerpts from the Will and Codicils of Bernice Pauahi Bishop;

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2. Statutory provisions under Hawaii law regarding the governance of trust assets;

3. Principles involving the "prudent man rule;" and

4. Principles and rules involving the "prudent investor rule."

In essence, in the selection of investments with due prudence, trustees must examine and weigh numerous factors about the asset and the trust circumstances with care and skill and with an eye toward an overall level of caution and conservatism appropriate to the trust at the time of the investment. Among the characteristics a trustee should consider in examining a potential investment are the following:

1. Expectations concerning the investment's total return and also the amount and regularity of the income of that return whenever the beneficial interest or purposes supported by the trust are affected by distinctions between trust accounting income and principal;

2. The degree and nature of risks associated with the investment and the diversification needs of the portfolio as a whole;

3. The marketability of the investment, and a relation between its liquidity, timing and certainty of the trust's cash flow or distribution requirements;

4. Transaction costs (including tax costs) and special skills associated with the acquisition, holding, management, and later disposition of the particular investment; and

5. Any special characteristics of the investment that affect its risk-reward tradeoffs and effective return.

Against this backdrop of fiduciary investment standards, the Ten-Year Projection (July 15, 1993) report prepared by the Asset Management Group provides an excellent vehicle to evaluate (1) trust fund fiscal demands, including operating and capital expenses; (2) total returns in terms of capital gains and income; and (3) asset allocation and diversification of investment portfolio to meet such countervailing demands.

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EXCERPTS FROM THE WILL AND CODICILS OF BERNICE PAUAHI BISHOP

I direct my trustees to expend such amount as they may deem best, not to exceed however one-half of the fund which may come into their hands, in the purchase of suitable premises, the erection of school buildings, and in furnishing the same with the necessary and appropriate fixtures furniture and apparatus. I direct my trustees to invest the remainder of my estate in such manner as they may think best, and to expend the annual income in the maintenance of said schools; meaning thereby the salaries of the teachers, the repairing buildings and other incidental expenses; and to devote a portion of each years income to the support and education of orphans, and others in indigent circumstances, giving the preference to Hawaiians of pure or part aboriginal blood; the proportion in which said annual income is to be divided among the various objects above mentioned to be determined solely by my said trustees they to have full discretion.

[Will of Bernice Pauahi Bishop (October 31, 1883) in Wills and Deeds of Trust (3d Ed. 1957) at 18]

I desire my trustees to provide first and chiefly a good education in the common English branches, and also instruction in morals and in such useful knowledge as may tend to make good and industrious men and women; and I desire instruction in the higher branches to be subsidiary to the foregoing objects. For the purposes aforesaid I grant unto my said trustees full power to lease or sell any portion of my real estate, and to reinvest the proceeds and the balance of my estate in real estate, or in such other manner as to my said trustees may seem best.

[Will of Bernice Pauahi Bishop (October 31, 1883) in Wills and Deeds of Trust (3d Ed. 1957) at 18]

I give unto the trustees named in my will the most ample power to sell and dispose of any lands or other portion of my estate, and to exchange lands and otherwise dispose of the same; and to purchase land, and to take leases of land whenever they think it expedient, and generally to make such investments as they consider best . . .

[Codicil No. 1 to the Last Will and Testament of Bernice Pauahi Bishop (October 4, 1884) in Wills and Deeds of Trust (3d Ed. 1957) at 24]

. . . I further direct that my said trustees shall not sell any real estate, cattle ranches, or other property, but to continue and manage the same, unless in their opinion a sale may be necessary for the establishment or maintenance of said schools, or for the best interest of my estate.

[Codicil No. 1 to the Last Will and Testament of Bernice Pauahi Bishop (October 4, 1884) in Wills and Deeds of Trust (3d Ed. 1957) at 24]

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EXCERPTS FROM HAWAII REVISED STATUTES (H.R.S.)

Powers of trustee conferred by trust or by law.

(a) The trustee has all powers conferred upon the trustee by this chapter unless limited in the trust instrument and except as is otherwise provided by law.

(b) An instrument which is not a trust under this chapter may incorporate any part of this chapter by reference.

(H.R.S. 554A-2)

Trustee's standard of care and performance.

Except as otherwise provided by the terms of the trust, the trustee shall observe the standards in dealing with the trust assets that would be observed by a prudent man dealing with the property of another, and if the trustee has special skills or is named trustee on the basis of representations of special skills or expertise, the trustee is under a duty to use those skills.

(H.R.S. 560:7-302)

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OUTLINE OF PRUDENT MAN RULE

The foundation of trust investment law in the first and second Restatements has been the so-called "prudent man rule" of Harvard College v. Amory, 9 Pick. (26 Mass.) 446, 461 (1830). The opinion admonishes trustees "to observe how men of prudence, discretion and intelligence manage their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income, as well as the probable safety of the capital to be invested." Thus, the rule of the Restatement, Second, of Trusts § 227 (1959) directs trustees "to make such investments and only such investments as a prudent man would make of his own property having in view the preservation of the estate and the amount of regularity of the income to be derived." In generally similar language, influenced by the original Restatement, the prudent man rule has been adopted by decision or legislation in most American jurisdictions.

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OUTLINE OF PRUDENT INVESTOR RULE

1. General Standard of Prudent Investment:

The trustee is under a duty to the beneficiaries to invest and manage the funds of the trust as a prudent investor would, in light of the purposes, terms, distribution requirements and other circumstances of the trust.

a. This standard requires the exercise of reasonable care, skill and caution, and is to be applied to investments not in isolation but in the context of the trust portfolio and as a part of an overall investment strategy, which should incorporate risk and return objectives reasonably suitable to the trust.

b. In making and implementing investment decisions, the trustee has a duty to diversify the investments of the trust unless, under the circumstances, it is prudent not to do so.

c. In addition, the trustee must:

i. conform to fundamental fiduciary duties of loyalty and impartiality;

ii. act with prudence in deciding whether and how to delegate authority to others; and

iii. incur only costs that are reasonable in amount and appropriate to the investment responsibilities of the trusteeship.

2. <u>Guidelines Regarding the General Standard of Prudent Investment are as follows</u>:

a. <u>General Requirements of Care and Skill</u>.

i. The duty of care requires the trustee to exercise reasonable effort and diligence in making and monitoring investments for the trust, with attention to the trust's objectives. The trustee has a related duty of care in keeping informed of rights and opportunities associated with those investments.

ii. The trustee must give reasonably careful consideration to both the formulation and the implementation of an appropriate investment strategy, with investments to be selected and reviewed in a manner reasonably appropriate to that strategy.

iii. The duty to exercise both care and skill in investment management may require knowledge and experience greater than that of an individual of ordinary intelligence, depending on the investment strategy to be employed. This does not prevent an ordinarily intelligent person from serving as a trustee. In that role, however, such a person may have to take reasonable steps to obtain sufficient competent advice, guidance and assistance in order to formulate and implement a prudent investment strategy for the particular trust.

b. General Requirement of Caution.

i. In addition to the duty to use care and skill, the trustee must exercise the caution of a prudent investor managing similar funds for similar purposes. In the absence of contrary provisions in the terms of the trust, this requirement of caution requires the trustee to invest with a view both to safety of the capital and to securing a reasonable return.

ii. "Safety" of capital includes not only the objective of protecting the trust property from the risk of loss of nominal value but, ordinarily, also a goal of preserving its real value - that is, seeking to avoid or reduce loss of the trust estate's purchasing power as a result of inflation.

iii. Reasonable "return" refers to total return, including capital appreciation and gain as well as trust accounting income. In balancing the return objectives between flow of income and growth of principal, the emphasis depends not only on the purposes and distribution requirements of the trust but also on its other circumstances and specific terms, such as the beneficiaries' tax positions and whether the trustee has power to invade principal.

iv. All investments, even the nominally excepted short-term U.S. Treasury securities, and all investment strategies involve some risk in the comprehensive sense of possible loss of real, inflation adjusted value. Therefore, the duty of caution does not call for avoidance of risk by trustees but for their prudent management of risk.

(1) Normally, in investing the funds of a trust, the trustee's strategy must make preservation of the trust estate (including its purchasing power) a significant consideration. In most trust situations, the amount and stability of income (again, normally including its purchasing power) must also be given serious consideration.

(2) The general emphasis in the typical trustee's asset management program is on long-term investment. Changes in a company's circumstances, adaptation to trust and capital market developments, fine-tuning

and the like may, of course, justify the selling and buying of properties as an aspect of a prudent plan of asset allocation and diversification.

(3) Although a general requirement of conservatism in investing is normally inferred from the duty to use caution, the degree of conservatism required and thus the degree of risk permitted for a particular trust is ultimately a matter for interpretation and judgment. This requires that a trustee make reasonable efforts to ascertain the purposes of the trust and to understand the types of investments suitable to those purposes in light of all the relevant circumstances.

(4) The objective of prudent risk management imposes on the trustee a duty to diversify trust investments unless, under the circumstances, the objectives of both prudent risk management and impartiality can

be satisfied without doing so, or unless special considerations make it prudent not to diversify in the particular trust situation.

(5) In administering the trust's investment activities, the trustee has power, and may sometimes have a duty, to delegate such functions and in such manner as a prudent investor would delegate under the circumstances. The trustee is not required personally to perform all aspects of the investment function. The trustee must not, however, abdicate the responsibilities of the office and must not delegate unreasonably. Prudent behavior in this matter, as in other aspects of prudent investment management, cannot be reduced to a simple, objective formula.

v. Many factors affect the nature and extent of prudent and therefore permissible delegation. These factors include:

(1) the amount of discretion involved;

(2) the value and character of the property involved;

(3) whether the property is principal or income;

(4) the proximity or remoteness of the subject matter of the trust; and

(5) the character of the act: does it involve professional skill or facilities possessed or not possessed by the trustee himself. (As you know, a trustee is required to use all of his professional skills in fulfilling his responsibility to the trust).

vi. The trustee's authority to delegate is not confined to acts that might reasonably be described as "ministerial." Nor is delegation precluded because the act in question calls for the exercise of considerable judgment or discretion.

3. Investment Provisions of Statute or Trust:

a. In investing the funds of the trust, the trustee (a) has a duty to the beneficiaries to conform to any applicable statutory provisions governing investment by trustees; and (b) has the powers expressly or impliedly granted by the terms of the trust and, has a duty to the beneficiaries to conform to the terms of the trust directing or restricting investments by the trustee.

4. Duty With Respect to Delegation:

A trustee has a duty personally to perform the responsibilities of the trusteeship except as a prudent person might delegate those responsibilities to others. In deciding whether, to whom and in what manner to delegate fiduciary authority in the administration of a trust, and thereafter in supervising agents, the trustee is under a duty to the beneficiaries to exercise fiduciary discretion and to act as a prudent person would act in similar circumstances.

5. The Duties of the Charitable Trustee:

The duties of the trustee of a charitable trust are similar to the duties of the trustee of a private trust.

6. Investments of Charitable Trusts:

In making decisions and taking actions with respect to the investment of trust funds, the trustee of a charitable trust is under a duty similar to that of the trustee of a private trust.

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1992 HAWAII REVISED STATUTES SUPPLEMENT

CHAPTER 554A
UNIFORM TRUSTEES' POWERS ACT

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most recent nomination in a durable power of attorney except for good cause or disqualification. [L 1989, c 270, pt of §1]

[§551D-4] **Power of attorney not revoked until notice.** (a) The death of a principal who has executed a written power of attorney, durable or otherwise, does not revoke or terminate the agency as to the attorney-in-fact or other person, who, without actual knowledge of the death of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds successors in interest of the principal.

(b) The disability or incapacity of a principal who has previously executed a written power of attorney that is not a durable power does not revoke or terminate the agency as to the attorney in fact or other person, who, without actual knowledge of the disability or incapacity of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest. [L 1989, c 270, pt of §1]

[§551D-5] **Proof of continuance of durable and other powers.** As to acts undertaken in good faith reliance thereon, an affidavit executed by the attorney-in-fact under a power of attorney, durable or otherwise, stating that the attorney-in-fact did not have at the time of exercise of the power actual knowledge of the termination of the power by revocation or of the principal's death, disability, or incapacity is conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power of attorney requires execution and delivery of any instrument that is recordable, the affidavit when authenticated for record is likewise recordable. This section does not affect any provision in a power of attorney for its termination by expiration of time or occurrence of an event other than express revocation or a change in the principal's capacity. [L 1989, c 270, pt of §1]

[§551D-6] **Uniformity of application and construction.** This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it. [L 1989, c 270, pt of §1]

Revision Note

"Chapter" substituted for "Act".

[§551D-7] **Short title.** This chapter may be cited as the Uniform Durable Power of Attorney Act. [L 1989, c 270, pt of §1]

Revision Note

"This chapter" substituted for "this Act".

[CHAPTER 554A]
UNIFORM TRUSTEES' POWERS ACT

§554A-5 Power of court to permit deviation or to approve transactions involving conflict of interest. ***

(b) If the duty of the trustee and the trustee's individual interest or the trustee's interest as trustee of another trust, conflict in the exercise of a trust power, the power may be exercised only by court authorization (except as provided in section 554A-3(c)(1), (5), (17), and (23)) upon petition of the trustee. Under this section, personal profit or advantage to an affiliated or subsidiary company or association is personal profit to any corporate trustee. [am L 1987, c 283, §51]

Revision Note

Only the subsection amended is compiled in this Supplement.

§554A-8 Application of chapter. Except as specifically provided in the trust, the provisions of this chapter apply to any trust with a situs in Hawaii, whenever established. [L 1985, c 61, pt of §1; am L 1990, c 64, §1]

[CHAPTER 554B]
UNIFORM CUSTODIAL TRUST ACT

[§554B-1] Definitions. As used in this chapter:

"Adult" means an individual who has attained the age of eighteen years.

"Beneficiary" means an individual for whom property has been delivered to a custodial trustee for the individual's use and benefit under this chapter.

"Court" means the circuit court of the State.

"Custodial trustee" means a person designated as trustee of a custodial trust under this chapter and includes a substitute or successor custodial trustee.

"Custodial trust property" means an interest in property transferred to a custodial trustee under this chapter and the income from and proceeds of that interest.

HAWAII REVISED STATUTES

CHAPTER 554A
UNIFORM TRUSTEES' POWERS ACT

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[CHAPTER 554A]
UNIFORM TRUSTEES' POWERS ACT

Section

[§554A-1] Definitions. As used in this chapter:

"Prudent person" means a trustee whose exercise of trust powers is reasonable and equitable in view of the interests of income or principal beneficiaries, or both, and in view of the manner in which persons of ordinary prudence, diligence, discretion, and judgment would act in the management of their own affairs.

"Trust" means an express trust created by a trust instrument including a will, whereby a trustee has the duty to administer a trust asset for the benefit of a named or otherwise described income or principal beneficiary, or both. "Trust" does not include a resulting or constructive trust, a business trust which provides for certificates to be issued to the beneficiary, an investment trust, a voting trust, a security instrument, a trust created by the judgment or decree of a court, a liquidation trust, or a trust for the primary purpose of paying dividends, interest, interest coupons, salaries, wages, pensions or profits, or employee benefits of any kind, an instrument wherein a person is nominee or escrowee for another, a trust created in deposits in any financial institution, or any other trust the nature of which does not admit of general trust administration.

"Trustee" means an original, added, or successor trustee. [L 1985, c 61, pt of §1]

[§554A-2] Powers of trustee conferred by trust or by law. (a) The trustee has all powers conferred upon the trustee by this chapter unless limited in the trust instrument and except as is otherwise provided by law.

(b) An instrument which is not a trust under this chapter may incorporate any part of this chapter by reference. [L 1985, c 61, pt of §1]

[§554A-3] Powers of trustees conferred by this chapter. (a) From time of creation of the trust until final distribution of the assets of the trust, a trustee has the power to perform, without court authorization, every act which a prudent person would perform for the purposes of the trust including but not limited to the powers specified in subsection (c).

(b) In the exercise of the trustee's powers including the powers granted by this chapter, a trustee has a duty to act with due regard to the trustee's obligation as a fiduciary, including a duty not to exercise any power under this chapter in such a way as to deprive the trust of an otherwise available tax exemption, deduction, or credit for tax purposes or deprive a donor of a trust asset of a tax exemption, deduction, or credit or operate to impose a tax upon a

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donor or other person as owner of any portion of the trust. "Tax" includes, but is not limited to, any federal, state, or local income, gift, estate, or inheritance tax.

(c) A trustee has the power, subject to subsections (a) and (b):

(1) To collect, hold, and retain trust assets received from a trustor until, in the judgment of the trustee, disposition of the assets should be made;

(2) To receive additions to the assets of the trust;

(3) To continue or participate in the operation of any business or other enterprise, and to effect incorporation, dissolution, or other change in the form of the organization of the business or enterprise;

(4) To invest and reinvest trust assets in accordance with the provisions of the trust or as provided by law;

(5) To deposit trust funds in a bank;

(6) To acquire or dispose of an asset, for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition, change the character of, or abandon a trust asset or any interest therein; and to encumber, mortgage, or pledge a trust asset for a term within or extending beyond the term of the trust, in connection with the exercise of any power vested in the trustee;

(7) To make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings;

(8) To subdivide, develop, or dedicate land to public use; or to make or obtain the vacation of plats and adjust boundaries; or to adjust differences in valuation on exchange or partition by giving or receiving consideration; or to dedicate easements to public use without consideration;

(9) To enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the trust;

(10) To enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(11) To grant an option involving disposition of a trust asset, or to take an option for the acquisition of any asset;

(12) To vote a security, in person or by general or limited proxy;

(13) To pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;

(14) To sell or exercise stock subscription or conversion rights; to consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(15) To hold a security in the name of a nominee or in other form without disclosure of the trust, so that title to the security may pass by delivery, but the trustee is liable for any act of the nominee in connection with the stock so held;

(16) To insure the assets of the trust against damage or loss, and the trustee against liability with respect to third persons;

(17) To borrow money to be repaid from trust assets or otherwise; to advance money for the protection of the trust, and for all expenses, losses, and liabilities sustained in the administration of the trust or

because of the holding or ownership of any trust assets. for which advances with any interest the trustee has a lien on the trust assets as against the beneficiary;

(18) To pay or contest any claim; to settle a claim by or against the trust by compromise, arbitration, or otherwise; and to release, in whole or in part, any claim belonging to the trust to the extent that the claim is uncollectible;

(19) To pay taxes, assessments, compensation of the trustee, and other expenses incurred in the collection, care, administration, and protection of the trust;

(20) To allocate items of income or expense to either trust income or principal, as provided by chapter 557, The Revised Uniform Principal and Income Act, including creation of reserves out of income for depreciation, obsolescence, or amortization, or for depletion in mineral or timber properties;

(21) To pay any sum distributable to a beneficiary under legal disability, without liability to the trustee, by paying the sum to the beneficiary or by paying the sum for the use of the beneficiary either to a legal representative appointed by the court, or if none, to a relative;

(22) To effect distribution of property and money in divided or undivided interests and to adjust resulting differences in valuation;

(23) To employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the trustee, to advise or assist the trustee in performance of the trustee's administrative duties; to act without independent investigation upon their recommendations; and instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary;

(24) To prosecute or defend actions, claims, or proceedings for the protection of trust assets and of the trustee in the performance of trustee duties; and

(25) To execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the trustee. [L 1985, c 61, pt of §1]

[§554A-4] Trustee's office not transferable. The trustee shall not transfer the trustee's office to another or delegate the entire administration of the trust to a cotrustee or another. [L 1985, c 61, pt of §1]

[§554A-5] Power of court to permit deviation or to approve transactions involving conflict of interest. (a) This chapter does not affect the power of a court of competent jurisdiction for cause shown and upon petition of the trustee or affected beneficiary and upon appropriate notice to the affected parties to relieve a trustee from any restrictions on the trustee's power that would otherwise be placed upon the trustee by the trust or by this chapter.

(b) If the duty of the trustee and the trustee's individual interest or the trustee's interest as trustee of another trust, conflict in the exercise of a trust power, the power may be exercised only by court authorization (except as provided in section 554A-3(c)(1), (4), (6), (18), and (24)) upon petition of the trustee. Under this section, personal profit or advantage to an affiliated or subsidiary company or association is personal profit to any corporate trustee. [L 1985, c 61, pt of §1]

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[§554A-6] **Powers exercisable by joint trustees; liability.** (a) Any power vested in three or more trustees may be exercised by a majority, but a trustee who has not joined in exercising a power is not liable to the beneficiaries or to others for the consequences of the exercise; and a dissenting trustee is not liable for the consequences of an act in which the trustee joins at the direction of the majority of the trustees, if the trustee expressed a dissent in writing to any of the cotrustees at or before the time of the joinder.

(b) If two or more trustees are appointed to perform a trust, and if any of them is unable or refuses to accept the appointment, or, having accepted, ceases to be a trustee, the surviving or remaining trustees shall perform the trust and succeed to all the powers, duties, and discretionary authority given to the trustees jointly.

(c) This section does not excuse a cotrustee from liability for failure either to participate in the administration of the trust or to attempt to prevent a breach of trust. [L 1985, c 61, pt of §1]

[§554A-7] **Third persons protected in dealing with trustee.** With respect to a third person dealing with a trustee or assisting a trustee in the conduct of a transaction, the existence of trust powers and their proper exercise by the trustee may be assumed without inquiry. The third person is not bound to inquire whether the trustee has power to act or is properly exercising the power; and a third person, without actual knowledge that the trustee is exceeding the trustee's powers or improperly exercising them, is fully protected in dealing with the trustee as if the trustee possessed and properly exercised the powers the trustee purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the trustee. [L 1985, c 61, pt of §1]

[§554A-8] **Application of chapter.** Except as specifically provided in the trust, the provisions of this chapter apply to any trust established after May 1, 1985. [L 1985, c 61, pt of §1]

Revision Note

"May 1, 1985" substituted for "the effective date of this chapter".

[§554A-9] **Uniformity of interpretation.** This chapter shall be construed to effectuate its general purpose to make uniform the law of those states which enact it. [L 1985, c 61, pt of §1]

[§554A-10] **Short title.** This chapter may be cited as the "Uniform Trustees' Powers Act". [L 1985, c 61, pt of §1]

[§554A-11] **Severability.** If any provisions of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application and to this end the provisions of this chapter are severable. [L 1985, c 61, pt of §1]

CHAPTER 555
EMPLOYEES TRUST

SECTION

M29270

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HAWAII REVISED STATUTES

ARTICLE VII
TRUST ADMINISTRATION

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deceased trustee was the survivor of all other persons named on the account either as trustee or beneficiary. A trust account may be paid, on request and according to its terms, to the beneficiary upon presentation to the financial institution of proof of death showing that the beneficiary or beneficiaries survived all persons named as trustees. [L 1976, c 200, pt of §1; am imp L 1984, c 90, §1]

§560:6-112 **Financial institution protection; discharge.** Payment made pursuant to section 560:6-108, 560:6-109, 560:6-110, or 560:6-111 discharges the financial institution from all claims for amounts so paid whether or not the payment is consistent with the beneficial ownership of the account as between parties, P.O.D. payees, or beneficiaries, or their successors. The protection here given does not extend to payments made after a financial institution has received written notice from any party or has actual knowledge that withdrawals in accordance with the terms of the account should not be permitted. Unless the notice is withdrawn by the person giving it, the successor of any deceased party must concur in any demand for withdrawal if the financial institution is to be protected under this section. No other notice or any other information shown to have been available to a financial institution shall affect its right to the protection provided here. The protection here provided shall have no bearing on the rights of parties in disputes between themselves or their successors concerning the beneficial ownership of funds in, or withdrawn from, multiple-party accounts. [L 1976, c 200, pt of §1]

§560:6-113 **Financial institution protection; set-off.** Without qualifying any other statutory right to set-off or lien and subject to any contractual provision, if a party to a multiple-party account is indebted to a financial institution, the financial institution has a right to set-off against the account in which the party has or had immediately before the party's death a present right of withdrawal. The amount of the account subject to set-off is the deceased party's net contribution to the account, and in the absence of proof of net contributions, to an equal share with all parties having present rights of withdrawal. [L 1976, c 200, pt of §1; am L 1977, c 144, §52; am imp L 1984, c 90, §1]

PART 2. [RESERVED]

§560:6-201 [Reserved]

ARTICLE VII
TRUST ADMINISTRATION

PART 1. TRUST REGISTRATION

§560:7-101 **Duty to register trusts.** The trustee of a trust having its principal place of administration in this State who is required to register the trust under section 560:1-108 shall register the trust in the court in the judicial circuit either of the principal place of administration of the trust, or, in the case of a trust relating only to land, of the place where the land is located. Unless otherwise designated in the trust instrument, the principal place of administration of a trust is the trustee's usual place of business where the records pertaining to the trust are kept, or at the trustee's residence if the trustee has no such place of business. In the case of cotrustees, the principal place of administration, if not otherwise designated in the trust instrument, is (1) the usual place of business of the corporate trustee if there is but one corporate cotrustee, or (2) the usual place of business or residence of the individual trustee who is a professional fiduciary if there is but one such person and no corporate cotrustee, and otherwise (3) the usual place of business or residence of any of the cotrustees as agreed upon by them. The duty to register under this part does not apply to the trustee of a trust if registration would be inconsistent with the retained jurisdiction of a foreign court from which the trustee cannot obtain release. [L 1976, c 200, pt of §1; am L 1977, c 144, §53; am imp L 1984, c 90, §1]

Cross References

Land trusts, see chapter 558.

§560:7-102 **Registration procedures.** Registration shall be accomplished by filing a statement indicating the name and address of the trustee in which it acknowledges the trusteeship. The statement shall indicate whether the trust has been registered elsewhere. The statement shall identify the trust:

(1) In the case of a testamentary trust, by the name of the testator and the date and place of domiciliary probate;

(2) In the case of a written inter vivos trust, by the name of each settlor and the original trustee and the date of the trust instrument.

If a trust has been registered elsewhere, registration in this State is ineffective until the earlier registration is released by order of the court where prior registration occurred, or an instrument executed by the trustee and all beneficiaries, filed with the registration in this State. [L 1976, c 200, pt of §1]

§560:7-103 **Effect of registration.** (a) By registering a trust, or accepting the trusteeship of a registered trust, the trustee submits personally to the jurisdiction of the court in any proceeding under section 560:7-201 of this chapter relating to the trust that may be initiated by any interested person while the trust remains registered. Notice of any proceeding shall be delivered to the trustee in the manner required for the service of process by rule of court or, in the absence of any such rule, by mailing it to the trustee by ordinary first class mail at the trustee's address as listed in the registration or as thereafter reported to the court and to the trustee's address as then known to the petitioner.

(b) To the extent of their interests in the trust, all beneficiaries of a trust properly registered in this State are subject to the jurisdiction of the court of registration for the purposes of proceedings under section 560:7-201, provided notice is given pursuant to section 560:1-401. [L 1976, c 200, pt of §1; am imp L 1984, c 90, §1]

§560:7-104 **Effect of failure to register.** A trustee who fails to register a trust in a proper court as required by this Part, for purposes of any proceedings initiated by a beneficiary of the trust prior to registration, is subject to the personal jurisdiction of any court in which the trust could have been registered. In addition, any trustee who, within thirty days after receipt of a written demand by a settlor or beneficiary of the trust, fails to register a trust as required by this Part is subject to removal and denial of compensation or to surcharge as the court may direct. Except as provided in section 560:1-108, a provision in the terms of the trust purporting to excuse the trustee from the duty to register, or directing that the trust or trustee shall not be subject to the jurisdiction of the court, is ineffective. [L 1976, c 200, pt of §1]

§560:7-105 [Reserved]

§560:7-106 **Release of registration.** Upon the termination and distribution of a registered trust, the trustee shall notify the court in which it is registered of such termination and distribution, whereupon the court may remove the record of the trust from its current registry of trusts. [L 1976, c 200, pt of §1]

PART 2. JURISDICTION OF COURT CONCERNING TRUSTS

§560:7-201 **Court; jurisdiction of trusts.** (a) The court has jurisdiction of proceedings initiated by trustees and interested persons concerning the internal affairs of trusts. Proceedings which may be maintained under this section are those concerning the administration and distribution of trusts, the declaration of rights and the determination of other matters involving trustees and beneficiaries of trusts. These include, but are not limited to, proceedings to:

(1) Appoint or remove a trustee;

(2) Review trustees' fees and to review and settle interim or final accounts;

(3) Ascertain beneficiaries, to determine any question arising in the administration or distribution of any trust including questions of construction of trust instruments, to instruct trustees, and to determine the existence or nonexistence of any immunity, power, privilege, duty or right; and

(4) Release registration of a trust.

(b) Neither registration of a trust nor a proceeding under this section result in continuing supervisory proceedings. The management and distribution of a trust estate, submission of accounts and reports to beneficiaries, payment of trustee's fees and other obligations of a trust, acceptance and change of trusteeship, and other aspects of the administration of a trust shall proceed expeditiously consistent with the terms of the trust, free of judicial intervention and without order, approval or other action of any court, subject to the jurisdiction of the court as invoked by interested persons or as otherwise exercised pursuant to law. [L 1976, c 200, pt of §1]

§560:7-202 **Trust proceedings; venue.** Venue for proceedings involving registered trusts is in the judicial circuit which is the place of registration. Venue for proceedings involving trusts not registered in this State is any place where the trust properly could have been registered, and as otherwise provided by the Hawaii Rules of Civil Procedure. [L 1976, c 200, pt of §1]

§560:7-203 **Trust proceedings; dismissal of matters relating to foreign trusts.** The court will not, over the objection of a party, entertain proceedings concerning the internal affairs of a trust registered or having its principal place of administration in another state, unless (1) all appropriate parties could not be bound by litigation in the courts of the state where the trust is registered or has its principal place of administration or (2) the interests of justice otherwise would seriously be impaired. The court may condition a stay or dismissal of a proceeding under this section on the consent of any party to jurisdiction of the state in which the trust is registered or has its principal place of business, or the court may grant a continuance or enter any other appropriate order. [L 1976, c 200, pt of §1]

§560:7-204 **Court; concurrent jurisdiction of litigation involving trusts and third parties.** The court of the judicial circuit in which the trust is required to be registered has concurrent jurisdiction with other courts of this State of actions and proceedings to determine the existence or nonexistence of trusts created other than by will, of actions by or against creditors or debtors of trusts, and of other actions and proceedings involving trustees and third parties. Venue is determined by the rules generally applicable to civil actions. [L 1976, c 200, pt of §1]

§560:7-205 **Proceedings for review of employment of agents and review of compensation of trustee and employees of trust.** On petition of an interested person, after notice to all interested persons, the court may review the propriety of employment of any person by a trustee including any attorney, auditor, investment advisor or other specialized agent or assistant, the reasonableness of the compensation of any person so employed, the reasonableness of the determination of trust estate value or income made by the trustee for the purpose of computing the fee allowed by sections 607-18 and 607-20, and the reasonableness of any additional compensation for special services under sections 607-18 and 607-20. Any person who has received excessive compensation from a trust may be ordered to make appropriate refunds. [L 1976, c 200, pt of §1]

§560:7-206 **Trust proceedings; initiation by notice; necessary parties.** Proceedings under section 560:7-201 are initiated by filing a petition in the court and giving notice pursuant to section 560:1-401 to interested persons. The court may order notification of additional persons. A decree is valid as to all who are given notice of the proceeding though fewer than all interested persons are notified. [L 1976, c 200, pt of §1]

PART 3. DUTIES AND LIABILITIES OF TRUSTEES

§560:7-301 **General duties not limited.** Except as specifically provided, the general duty of the trustee to administer a trust expeditiously for the benefit of the beneficiaries is not altered by this chapter. [L 1976, c 200, pt of §1]

§560:7-302 **Trustee's standard of care and performance.** Except as otherwise provided by the terms of the trust, the trustee shall observe the standards in dealing with the trust assets that would be observed by a prudent man dealing with the property of another, and if the trustee has special skills or is named trustee on the basis of representations of special skills or expertise, the trustee is under a duty to use those skills. [L 1976, c 200, pt of §1; am imp L 1984, c 90, §1]

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§560:7-303 **Duty to inform and account to beneficiaries.** Subject to the provisions of section 560:1-108, the trustee shall keep the beneficiaries of the trust reasonably informed of the trust and its administration. In addition:

(1) Within thirty days after the trustee's acceptance of the trust, the trustee shall inform in writing the persons currently entitled to benefits from the trust, and if possible, one or more persons who under section 560:1-403 may represent beneficiaries with future interests, of the court in which the trust is registered and of the trustee's name and address.

(2) Upon reasonable request, the trustee shall provide the beneficiary with a copy of the terms of the trust which describe or affect the beneficiary's interest and with information about the assets of the trust and the particulars relating to the administration.

(3) Upon reasonable request, a beneficiary is entitled to a statement of the accounts of the trust annually and on termination of the trust or change of the trustee. [L 1976, c 200, pt of §1; am imp L 1984, c 90, §1]

§560:7-304 **Duty to provide bond.** A trustee need not provide bond to secure performance of his duties unless required by the terms of the trust, reasonably requested by a beneficiary or found by the court to be necessary to protect the interests of the beneficiaries who are not able to protect themselves and whose interests otherwise are not adequately represented. On petition of the trustee or other interested person the court may excuse a requirement of bond, reduce the amount of the bond, release the surety, or permit the substitution of another bond with the same or different sureties. If bond is required, it shall be filed in the court of registration or other appropriate court in amounts and with sureties and liabilities as provided in sections 560:3-604 and 560:3-606 relating to bonds of personal representatives. [L 1976, c 200, pt of §1]

Cross References

Bonds, see §78-20.

§560:7-305 **Trustee's duties; appropriate place of administration; deviation.** A trustee is under a continuing duty to administer the trust at a place appropriate to the purposes of the trust and to its sound, efficient management. If the principal place of administration becomes inappropriate the court may for good cause enter any order furthering efficient administration and the interests of beneficiaries, including, if appropriate, release of registration, removal of the trustee, designation of administration in another state, and appointment of a trustee in another state. Trust provisions relating to the place of administration and to changes in the place of administration or of trustee control unless compliance would be contrary to efficient administration or the purposes of the trust. Views of adult beneficiaries shall be given weight pursuant to section 554-2, in determining the suitability of the trustee and the place of administration. [L 1976, c 200, pt of §1]

§560:7-306 **Personal liability of trustee to third parties.** (a) Unless otherwise provided in the contract, a trustee is personally liable on contracts entered into in the trustee's fiduciary capacity in the course of administration of the trust estate.

(b) A trustee is personally liable for obligations arising from ownership or control of property of the trust estate and for torts committed in the course of administration of the trust estate.

(c) Claims based on contracts entered into by a trustee in the trustee's fiduciary capacity, on obligations arising from ownership or control of the trust estate, or on torts committed in the course of trust administration may be asserted against the trust estate by proceeding against the trustee in the trustee's fiduciary capacity, whether or not the trustee is personally liable therefor.

(d) The question of liability as between the trust estate and the trustee personally may be determined in a proceeding for accounting, surcharge or indemnification or other appropriate proceeding. [L 1976, c 200, pt of §1; am imp L 1984, c 90, §1]

Hawaii Legal Reporter Citations

Trustees' discretion in purchase of real estate. 82-2 HLR 820643.

§560:7-307 **Limitations on proceedings against trustees after final account.** Unless previously barred by adjudication, consent or limitation, any claim against a trustee for breach of trust is barred as to any beneficiary who has received a final account or other statement fully disclosing the matter and showing termination of the trust relationship between the trustee and the beneficiary unless a proceeding to assert the claim is commenced within two years after receipt of the final account or statement. In any event and notwithstanding lack of full disclosure a trustee who has issued a final account or statement received by the beneficiary and has informed the beneficiary of the location and availability of records for beneficiary's examination is protected after three years. A beneficiary is deemed to have received a final account or statement if accorded notice pursuant to section 560:1-401. [L 1976, c 200, pt of §1; am imp L 1984, c 90, §1]

PART 4. POWERS OF TRUSTEES

§560:7-401 **Powers of trustees.** Trustees shall have, in addition to the powers set out in the trust agreement, the powers as provided in chapter 554 and otherwise as provided by law. [L 1976, c 200, pt of §1]

Case Notes

Power in a trustee to sell trust property held to include power to convey property free from preexisting quasi-easement. 57 H. 577, 561 P.2d 1281.

ARTICLE VIII
EFFECTIVE DATE AND REPEALER

§560:8-101 **Time of taking effect; provisions for transition.** (a) This chapter takes effect on July 1, 1976, except that the provisions of Articles II, III and IV and the Hawaii Revised Statutes sections amended or repealed in this Article VIII on account of Articles II, III and IV take effect on July 1, 1977.

(b) Except as provided elsewhere in this chapter, on the effective date of this chapter:

(1) The chapter applies to any wills of decedents dying thereafter;

(2) The chapter applies to any proceedings in court then pending or thereafter commenced regardless of the time of the death of decedent except to the extent that in the opinion of the court the former procedure should be made applicable in a particular case in the

EXHIBIT 5-B

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CONFIDENTIAL
ATTORNEY-CLIENT PRIVILEGE

MEMORANDUM

TO: Trustee Myron B. Thompson
Trustee Oswald K. Stender
Trustee Richard S. H. Wong
Trustee Lokelani Lindsey
Trustee Henry H. Peters
Dr. Michael Chun
Tony Sereno
Gil Tam
Dennis Fern

FROM: Nathan T. K. Aipa, General Counsel N. Aipa

DATE: July 29, 1993

RE: Summary Comments to Fiduciary Investment Standards Presented at the Trustees' Retreat, July 19-22, 1993 at the Turtle Bay Hilton, Kahuku, Hawaii

Pursuant to Trustees' request, we set forth below various summary comments in connection with the presentation to Trustees on fiduciary investment standards at their Trustees' Retreat on July 19, 1993. These summary comments that follow should provide a framework for further refinement of KS/BE's Ten-Year Projections and the management of its asset allocations and investment portfolio.

1. There should be a clear understanding and establishment of the purpose, terms, and distribution requirements of the trust in terms of operational expenditures and capital expenditures.

2. Refinement and development of an overall investment strategy must be established to meet the projected demands provided in Item 1 above. Issues that need to be addressed in developing this overall investment strategy include:

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a. Developing a clear understanding of the value and scope of the investment portfolio (which presumably will include all Hawaii real estate holdings) because values attributed to each asset class will affect the asset allocation ratios;

b. Revisiting the asset allocation proposals by Cambridge Associates; and

c. Developing an overall total return projection by each asset class for this investment portfolio, in terms of both capital gains and income, that would be commensurate with projected operational and capital expenditures of KS/BE.

3. Upon the review of any potential investment, it is important that the Estate exercise reasonable care, skill and caution in reviewing the potential investment, particularly in terms of how it enhances the total trust investment portfolio pursuant to the established investment strategies.

In reviewing a potential investment, the duty of reasonable care involves due diligence commensurate with the risks and size of such potential investment. The exercise of reasonable skill entails obtaining competent advice both internally and/or externally and obtaining the guidance and assistance needed to make the investment decision. The duty of caution essentially involves an emphasis on preserving the corpus and projecting a reasonable total return both in terms of capital gains and income.

4. Trustees' fiduciary investment duties entail a risk management approach versus a risk avoidance posture. Risk management is achieved primarily through asset allocation and diversification of the investment portfolio. Risk is also measured against the tolerance of the total investment portfolio of the Estate in terms of its asset size and fiscal demands. Finally, risk analysis of the various factors affecting the outcome on investment should be conducted as necessarily appropriate.

5. Although the Trustees have a duty personally to perform the responsibilities of the trusteeship, Trustees may exercise their fiduciary discretion in delegating authority to others as a prudent person would do under similar circumstances.

6. Ongoing prudent management of the investment portfolio is also critical and required of a fiduciary. Management must be geared towards a long-term investment program. Significant changes to KS/BE programs ought to be measured against the investment portfolio and strategies. Capital

market developments must be monitored against the investment portfolio. Management must oversee the investment portfolio in order to ascertain problematic situations and to evaluate the effect on the total investment strategy.

7. Trustees are duty-bound to protect the tax exempt status of KS/BE.

The above seven items are meant to provide some focus in terms of further follow-up pursuant to the prudent investment standards that are being developed in trust law jurisprudence. It should be emphasized that the fiduciary investment standards enunciated herein have been supported by Professor Edward Halbach in the Restatement, Third, on Trusts. Hawaii statutory law is evolving toward these more flexible fiduciary investment standards provided in the Restatement, Third, on Trusts. Pursuant to this trend on trust law, investments are not measured individually but in the context of the total investment portfolio of the trust.

Lastly, the following principles should be reemphasized as follows:

a. Trustees' compliance with fiduciary investment standards are judged as of the time the investment was made and not with the benefit of hindsight or by taking account of developments that occurred after the investment decision;

b. Whether a breach of trust has occurred turns on the prudence of the Trustees' conduct in reviewing and evaluating the investment and managing the investment, not on the eventual results of investment decisions; and

c. The Trustees are not guarantors of the trust investment performance.

This concludes the summary of the fundamental principles involved in the prudent investor standards as discussed at the Trustees' recent retreat. The Legal Group continues to work with the Asset Management Group in refining KS/BE's Ten-Year Projections, thereby incorporating these fiduciary investment standards.

NTKA:ljj

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PRIVILEGED & CONFIDENTIAL
ATTORNEY-CLIENT COMMUNICATION

MEMORANDUM

TO: Trustee Lokelani Lindsey

FROM: Denis Dwyer

RE: Talking Points for Discussions with Senators Pryor and Bumpers

DATE: December 13, 1995

Trustee Wong asked me to provide you with talking points and background information related to the intermediate sanctions proposal. To that end, I have attached the following documents which may be useful in your discussions with Senators Pryor and Bumpers.

- The first document titled "Intermediate Sanctions on Tax-Exempt Organizations" is a document which has been transmitted to Erskine Bowles, Deputy Chief of Staff to the President; the Joint Tax Committee of the U.S. Congress and the Senate Finance Committee. This document outlines modifications to the intermediate

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Deposition Exhibit No. 114
Deposition of L. Lindsey
Date 11-9-99

sanctions provisions we are attempting to obtain on behalf of KSBE.

- The second document, titled "Intermediate Sanctions Suggested Report Language" is the actual report language we are seeking to have included in any revised budget agreement that will include a provision on intermediate sanctions. We have learned that President Clinton's plan to balance the budget in seven years includes a proposal on intermediate sanctions, but no specific language has been drafted or released by the Treasury Department to date. When Governor Waihee and I met with Erskine Bowles at the White House, we assured him that KSBE supports the concept of intermediate sanctions, but believes as a matter of fairness, equity and good tax policy that the modifications in this document are necessary in order to achieve these goals.

TALKING POINTS

You may wish to send the documents titled "Intermediate Sanctions on Tax-Exempt Organizations" and "Intermediate Sanctions Suggested Report Language" to Senators Bumpers and Pryor. As we indicated above, these documents are already circulating among the Treasury, White House, and the Congress. Senator Pryor will be concerned about the substantial discretion that the intermediate sanctions provision will afford the IRS. As a sponsor of legislation known as the "taxpayer's bill of rights" Senator Pryor has striven to assure that the IRS is fair and evenhanded and that their discretion is limited to the scope of the statutes providing authority for them to act. By including the provisions we are seeking, the Congress will provide more specificity to the implementation of the intermediate sanctions proposal.

With respect to the deletion of the footnote which preempts state or local law on the setting of compensation, we are, at this time, seeking complete deletion of the footnote. As a fallback position, we would be prepared to modify the footnote such that state laws or agency actions would be "an indicia of reasonableness" among other factors to be considered.'

It would be exceedingly helpful if Senators Pryor and Bumpers could approach Senator Dole, personally, and let him know that they support efforts to modify the intermediate sanctions provision. Senators Bumpers and Pryor should be aware that Senator Dole has directed his staff to look into this issue. Senator Dole has not agreed to specifically include, or fight for, these modifications as yet. Thus, any support from other Senators to accept these modifications may strengthen Senator Dole's interest in assuring that the modifications are adopted.

Also, it would be crucial if Senators Pryor and Bumpers could contact Mac McLarty, Counsel to the President to encourage the Administration and Treasury to support these modifications. As a member of the Senate Finance Committee, it would also be exceedingly helpful to have Senator Pryor contact Les Samuels, Assistant Secretary of the Treasury for Tax Policy to urge the Administration's support of these modifications.

I hope this information is helpful. Please feel free to call on me should you have any questions.

cc: Nathan Aipa

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INTERMEDIATE SANCTIONS ON TAX-EXEMPT ORGANIZATIONS

The Reconciliation Bill recently passed by the Congress and pending President Clinton's veto or signature imposes penalty excise taxes on those who exercise substantial control over certain 501(c)(3) and 501(c)(4) tax-exempt organizations when their compensation is deemed to be unreasonable by the Internal Revenue Service. The concept of intermediate sanctions is broadly supported by the tax-exempt community and the Reconciliation Bill provisions are well intended. There are, however, two aspects of the bill which need modification to assure that the provisions are fairly and uniformly applied. These modifications are described below:

- Disregard of state law. The Statement of Managers of the Reconciliation Bill contains a footnote which says in effect that the fact that a state or local legislative or agency body may have approved a particular compensation package is not presumed to be reasonable. It is highly unusual that the Congress, without the support of judicial case law, would enact legislation which has the effect of disregarding state statutes. Nine states throughout the United States maintain such statutes, yet there is no legislative or judicial record to suggest that the enforcement of these statutes has not been vigorous or unreasonable. The provision flies in the face of the philosophy of states' rights and Vice President Gore's National Performance Review Initiative to limit federal laws and regulations in matters which do not have truly national impact. A reasonable modification of this provision would be language which allows state laws or agency approval to be an indicia of reasonableness. This would have the effect of allowing the IRS sufficient discretion in evaluating reasonable compensation, but not bound by the dictates of state law.

- Assure uniform applicability of the safe harbor. A safe harbor provision included in the report language accompanying the bill gives the IRS wide discretion in interpreting the presumed reasonableness of compensation within a safe harbor structure. The safe harbor is intended to allow taxpayers to rely upon a rebuttable presumption of reasonableness if they meet certain criteria. In a letter from Treasury Assistant Secretary of Tax Policy Les Samuels to Ways and Means Committee Chairman Archer, the Assistant Secretary stated that the proposal "includes safeguards to prevent intermediate sanctions from unduly interfering with the operation of organizations that are complying with the law." Additional certainty should be provided for taxpayers who establish reasonable procedures for determining compensation. For example, the existing provision does not address compliance by charitable trusts which do not have a board of directors such as found in a corporate structure. Thus, the independent board requirement should be clarified to allow for an "independent body" to approve compensation for non-corporate tax-exempt organizations.

INTERMEDIATE SANCTIONS
SUGGESTED REPORT LANGUAGE

1. **Compensation**

Include in the report language accompanying the intermediate sanctions provision, at the place where the applicable general rules for determining the reasonableness of compensation are discussed, the following language:

> "The standards that apply in determining the reasonableness of compensation for a person performing services for a tax-exempt organization shall be the same as for persons performing the same or similar services for a taxable organization."

AND

2. **Modify Safe Harbor**

Add to the report language that describes the independent board requirement of the safe harbor:

> "or other comparable entity".

AND

3. **Delete Footnote 29**

Delete Footnote 29 of Title 11 of the Statement of Managers to accompany the Conference Report to H.R. 2491, the Balanced Budget Act of 1995 (H. Rept. 104-350, Part 2).

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TELECOPIER COVER PAGE

DATE: December 13, 1995

TO: Trustee Lokelani Lindsey   COMPANY NAME: KSBE

FROM: Denis Dwyer   ORIGINATOR'S TEL. NO.: 202-371-6131

TELECOPIER NO.: 808-536-6895   TOTAL NO. OF PAGES 7 (INCLUDING COVER PAGE)

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4/28/97
Henry
I'm ok w/ this. at the adjusted
75th percentile
level. J

IMAR 1 4 1996I

Lawrence A. Wangler
Principal

Koll Center North - East Tower
2010 Main Street, Suite 1050
Irvine, CA 92714
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Towers Perrin

RECEIVED 7/14/97 from R. Park.

CONFIDENTIAL

March 13, 1996

Mr. Rodney J. Park
Director, Administration Group
Kamehameha Schools Bernice Pauahi Bishop Estate
567 South King Street
Suite 200
Honolulu, Hawaii 96813

Re: Final Report - Trustee Compensation

Dear Rodney:

Enclosed are six copies of our final report on KSBE trustee compensation. The first two pages provide an executive summary. Our methodology is consistent with that presented to you on January 24 and to the Trustees on February 22. In addition to providing a median or 50th percentile competitive reference, we provided a 75th percentile competitive reference.

Trustee compensation between the 50th and 75th percentiles is supportable. Commentary on the various compensation levels follows.

- Unadjusted median ($511,000 per Trustee)

  This represents the starting point of our analysis and is the most defensible. However, it fails to take into account the unique characteristics of KSBE and the multidimensionality of trustee responsibilities.

- Adjusted median ($683,000 to $758,000 per Trustee)

  This takes into account the unique characteristics of KSBE and the multidimensionality of trustee responsibilities. We believe that this level of compensation is defensible to "stakeholders" (e.g., people of Hawaiian ancestry, the legislature, the media).

Deposition Exhibit No. 115
Deposition of L. Lindsey
Date 1-9-99

Towers Perrin

- Adjusted 75th percentile ($921,000 to $1,021,000 per Trustee)

  Organizations will target their executive pay at various levels in relation to the "market." In particular, it is not unusual to target incentive compensation at the 50th percentile for achieving goals and at the 75th percentile for significantly exceeding preestablished performance goals. Because Trustee compensation is 100% performance based, it is reasonable for the Trustees to establish their compensation at a level corresponding to the 50th percentile to 75th percentile data consistent with corresponding levels of performance.

  Currently there are a number of organization performance metrics (e.g., college acceptances, return on investment, sales per square foot) that could be used easily to assess organization (and thus Trustee) performance. Linking trustee compensation to preestablished performance "targets" will, in our opinion, reduce substantially the current friction with the "stakeholders" regarding trustee compensation. Conceptually, Sections 607-18 and 20 of Hawaii's revised statutes would represent the compensation "funding formula." Distribution of monies from the created pool pursuant to the funding formula would be linked to achievement of key performance goals. In essence, this has been occurring informally. We believe that formalizing this arrangement would significantly enhance the defensibility of trustee compensation.

We also prepared an exhibit that shows three levels of trustee compensation using various assumptions for weighting of the Trustees' responsibilities. This exhibit was prepared at the request of the Trustees and **does not** represent a Towers Perrin recommendation. As part of our analysis we have investigated the concept of weighting to account for position responsibilities and concluded that it does not apply here for the following reasons:

- Organizations incur costs of governance that reflect in the aggregate quite similar roles and responsibilities. These roles and responsibilities must be fulfilled for an organization to be successful over the long term (e.g., an organization cannot be successful with only half of a CFO). Weighting produces this outcome.

- Although a few organizations have two CEOs, such a configuration tends to be transitional in nature. In addition, an organization with two CEOs typically does not also have a COO. Weighting results in more than one CEO.

- Our adjustment methodology already takes into account the multidimensionality of the Trustees' roles and responsibilities. In essence, the adjustment methodology itself takes into account how the Trustees spend their time.

Towers Perrin

Please let me know if the Trustees would like to schedule a meeting to review our findings in more detail. We are prepared to make a formal presentation of our findings and to discuss the methodology in greater detail. We remain prepared to discuss our findings with KSBE "stakeholders" at your request.

Sincerely,

Lawrence A. Wangler

Enclosures

cc: Mr. Michael Davis, Principal Towers Perrin - Minneapolis

KAMEHAMEHA SCHOOLS/BERNICE PAUAHI BISHOP ESTATE

LEGAL GROUP
P.O. BOX 3466 HONOLULU, HAWAI'I 96801
TELEPHONE (808) 523-6341 FAX (808) 537-1229

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MEMORANDUM

TO: Trustee Myron B. Thompson
Trustee Oswald K. Stender
Trustee Richard S. H. Wong
Trustee Lokelani Lindsey
Trustee Henry H. Peters
Michael Chun, President, Education Group
A. P. Sereno, General Manager, Asset Management Group
Gilbert Tam, Director, Administration Group

FROM: Nathan T. K. Aipa, General Counsel

DATE: November 16, 1993

RE: Arms-Length Relationships with KS/BE Corporate Affiliates

As a follow-up to the arms-length discussion held at the Trustees Retreat on July 19, 1993 at Turtle Bay Hilton, we have provided herein a summary of recommendations regarding such arms-length relationships between KS/BE and its corporate affiliates. Once Trustees have reviewed these recommendations, we will then develop necessary action plans to implement the final decisions of the Trustees made in connection with these recommendations.

In order to further highlight the potential risks involved with breaches of the arms-length relationship, we have also included excerpts from the complaint brought by the Department of Commence and Consumer Affairs, State of Hawaii, against Hawaiian Electric Industries for the debts of its insurance subsidiary, Hawaiian Insurance Group. These excerpts demonstrate the potential allegations that may be brought by a party against a parent which would then need to bear the burden of expending substantial time and resources to defend against such allegations.

Deposition Exhibit No. 116
Deposition of L. Lindsey
Date 1-9-99

As such, it behooves KS/BE to review these issues from time to time and to improve, when appropriate, the dynamics between KS/BE and its corporate subsidiaries. Needless to say, as the complexities of KS/BE and its corporate affiliates increase, we need to diligently maintain the necessary corporate formalities in order to better protect the corporate veil of our subsidiaries.

NTKA:ljj

cc: Mark McConaghy, Price Waterhouse

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WilsonJones Quick Reference Index System

Note: This section presented to Trustees on July 19, 1993 at Trustees Retreat held at the Turtle Bay Hilton, Kahuku, Hawaii (July 19-22, 1993)

INTRODUCTION

The purpose of this brief outline is to set forth some basic guidelines for determining whether the parent entity of a corporate subsidiary has disregarded the arms-length relationship with such subsidiary thereby causing the parent to incur vicarious liability or adverse tax consequences.

The corporate organization under the Trustees of the Estate of Bernice Pauahi Bishop has grown substantially, and will probably continue to grow in the not too distant future. See the organization chart under Tab 5 with a listing of current directors and officers. As the complexity of this corporate organization increases, it is very important that the trustees, directors, and officers understand the fundamental elements in maintaining the arms-length relationship between parent and subsidiary.

As such, the outline is presented as follows:

1. It specifies the basic elements that would be considered in determining whether or not a parent entity may be held liable for the actions of a subsidiary by piercing the subsidiary's corporate veil;

2. It outlines the potential danger to KS/BE's tax exempt status in the event corporate formalities are disregarded; and

3. It presents general guidelines regarding the tax liability of a parent in the event the corporate form of a subsidiary is disregarded or a transaction between a parent and subsidiary involves more form over substance.

PIERCING THE CORPORATE VEIL

1. This part sets forth guidelines under which KS/BE, as a parent trust, may be held liable for the acts of its corporate subsidiary. The fundamental question is whether the true relationship of subsidiary to parent is one of agent, instrument, or alter ego, rather than independent entity. If parent and subsidiary are so closely connected or intertwined so that they do not merit separate treatment, the corporate veil will be pierced and the parent will be found accountable for the acts of its subsidiary.

2. The courts will examine certain factors in determining whether to "pierce the corporate veil" of a subsidiary and thereby hold the shareholders or parent entity liable. However, there is neither a definitive list of factors to be considered, nor is there any established rule as to how many of these factors must exist before the courts will "pierce the corporate veil." Generally, however, the more of the following factors that exist, the greater the likelihood that the courts will "pierce the corporate veil" and hold the parent liable for the acts of its subsidiary:

   a. The parent owns all or most of the capital stock of the subsidiary;

b. The parent and the subsidiary have common directors;

c. The subsidiary is entirely or mostly dependent on the parent for financing;

d. The subsidiary is grossly undercapitalized;

e. The parent pays the salaries and other expenses of the subsidiary;

f. The subsidiary receives or conducts no business other than that provided to it by the parent;

g. In the records of the parent, the subsidiary is sometimes referred to as a department or division of the parent, or the subsidiary's business or financial responsibility is referred to as that of the parent;

h. The parent uses the property of the subsidiary as its own;

i. The directors and officers of the subsidiary do not act independently, but take orders and directions from the parent; and

j. The subsidiary does not observe basic corporate formalities, such as keeping separate books and records and holding separate board and shareholder meetings.

TAX EXEMPT STATUS

1. Loss of Tax Exempt Status. Legal/Tax authorities concur that a tax exempt parent may lose its tax exempt status if it does not maintain an arms length relationship with its taxable subsidiary. See, Orange County Agricultural Society vs. Commissioner of Internal Revenue Service, 893 F.2d 529 (CA2, 1990).

   a. Although there is a lack of statutory, regulatory or case law which has addressed this issue, there is a clear discussion of the point contained in GCM 39326, an internal memorandum of the Internal Revenue Service, issued August 31, 1984. In GCM 39326, the memorandum opinion framed the issue as follows:

> "Section 501(a) provides an exemption from taxation for organizations described in section 501(c)(3) . . . An organization is not operated exclusively for an exempt purpose if more than an insubstantial part of its activities are in furtherance of a nonexempt purpose . . . The central question in this case is whether the commercial activities of [the taxable subsidiary] can be considered to be the activities

of [the tax exempt parent] for purposes of determining [the parent's] qualification for exemption under section 501(c)(3) . . . For federal income tax purposes, a parent corporation and its subsidiary are separate taxable entities . . .

However, where the parent corporation so controls the affairs of the subsidiary that it is merely an instrumentality of the parent, the corporate entity of the subsidiary may be disregarded . . . [But] an attempt to attribute the activities of a subsidiary to the parent should be made only where . . . it can be proven that the subsidiary is an arm, agent or integral part of the parent."

b. GCM 39326 indicated that the following factors may reflect the lack of an arms length relationship and thereby jeopardize the tax exempt status of the parent:

i. The subsidiary is not formed for a bona fide business purpose;

ii. The majority of the Board members of the subsidiary consists of directors, officers or employees of the parent;

iii. The Chief Executive Officer of the subsidiary has a position with the parent;

iv. The parent participates in the management of the subsidiary; i.e., the business planning and day-to-day operations of the subsidiary are carried on by the parent; and

v. Transactions between parent and subsidiary are not conducted on an arms length basis.

TAX LIABILITY: DISREGARDING THE CORPORATE FORM

1. Corporations are generally treated as separate taxable entities. If the corporation either engages in business, or its organization is equivalent to business activity, its existence generally is recognized. If not, shareholder is taxed directly on corporation's income.

   a. A corporation is generally treated as a separate taxable entity, even though it has only one shareholder, and that shareholder is an individual, corporation, or partnership. That means its earnings and expenses will be attributed to it alone, even if from transactions with shareholders or enterprises controlled by their stockholder.

   b. To be a separate entity for tax purposes, a corporation must engage in some industrial, commercial or other business activity besides avoiding taxation. The Supreme Court has ruled that as long as the formation of the corporation has a purpose, which is the equivalent of a business activity or is followed by the carrying on of business, the corporation should not be set aside as a sham.

i. As a practical matter, the more a corporation is used as a tax avoidance device, the less likely it is to be respected, although such an outcome may be couched in terms of not finding sufficient business purpose and activity.

ii. Even though a corporation is validly formed, its income may be attributed to its owners under the assignment of income doctrine or under the Service's statutory power to allocate income and deductions among taxpayers if the corporation is under the practical control of another party or is a personal service corporation.

2. In general, the same principles that determine whether a corporation should be disregarded apply to determine whether a subsidiary's corporate existence should be disregarded. As with corporations generally, care must be taken to distinguish cases that involve the issue of whether a particular transaction should be ignored as a sham, and cases in which the issue is whether an otherwise viable corporate entity itself should be ignored. For example, a sale by a parent to a subsidiary may be treated as a sham transaction, even when the subsidiary is fully respected for other tax purposes.

Transactions between brother-sister corporations can also be disregarded. Thus, losses have been disallowed on the sale of property which a corporation has purchased from a sister corporation at an excessive price.

3. Corporate transactions may be recharacterized to reallocate income or deny deductions or credits. Doctrines of sham transactions, substance over form, step transaction, business purpose and assignment of income are all used to allow recharacterization by the Service to prevent tax avoidance or evasion or distortion of income.

   a. General judicial doctrines may recharacterize who is taxable or who receives the tax benefits of a particular transaction. Although these doctrines govern all taxpayers, some are applied with special frequency to corporate transactions. Although presented separately below, these rules frequently overlap or are applied on an aggregate basis to justify the recasting of a transaction, thereby blurring their precise significance.

   b. The sham transaction doctrine applies where an economically insubstantial transaction is entered into solely to gain a tax advantage. The Tax Court has stated that a transaction is a sham and will be ignored if the taxpayer is motivated by no business purpose other than obtaining tax benefits in entering the transaction, and that the transaction has no economic substance because no reasonable possibility of a profit exists.

c. Under the substance over form doctrine, the substance of a transaction controls its tax law characterization regardless of the form in which it is cast. A common example entails determining whether a payment of interest to a shareholder is really a payment of a dividend.

d. The step transaction doctrine fuses a series of transactions into just two, the first and the last, disregarding the intervening steps, and assigning the tax law outcome in accordance with those two basic steps, proving they can be integrated under an appropriate legal standard.

e. A transaction is given effect under the business purpose doctrine only if it is motivated by business, rather than tax avoidance reasons. The business purpose doctrine has been applied to limit numerous tax-deferred or tax-deductible transactions.

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SAMPLE: PIERCING THE CORPORATE VEIL CLAIM

In order to emphasize the potential risk involved in violating the arms-length relationships between a parent and its subsidiaries, I have taken excerpts from the complaints brought by the State of Hawaii, Department of Commerce and Consumer Affairs (DCCA) against Hawaiian Electric Industries (HEI) for the debts of its subsidiary Hawaiian Insurance Group (HIG). You will obviously note the clear similarities in the claims made against HEI and the factors and elements enumerated earlier in Part I of this report. Count I of the Complaint brought by the DCCA against HEI regarding piercing the corporate veil allegations basically read as follows:

1. HIG and its subsidiaries were not held out to the general public as an enterprise separate from HEI. HEI clearly wanted the general public to associate all of its enterprises with HEI.

2. There is substantial evidence that HEI, through its officers and directors, controlled HIG. The policies of HIG were not directed primarily to its own interests, but rather to those of the HEI family of companies. HEI treated its various enterprises as divisions of the same entity as opposed to separate corporations that have separate, distinct and sometimes conflicting interests.

3. HIG shared common directors, officers, and employees with HEI.

4. HEI contributed capital and controlled the capital structure of HIG.

5. HIG possessed inadequate capital before, on, and after September 11, 1993, because of capital reserve and other decisions made by directors and officers of HEI.

6. HEI financed certain of HIG's business expenses, including, but not limited to, employee salaries and compensation.

7. HEI described, advertised, and held out HIG as a department and division of HEI.

8. HEI represented that HIG's business and/or financial responsibilities would be fully supported by HEI.

9. The HIG directors and officers did not act independently in HIG's interest, but took orders from HEI and acted in HEI's interest.

10. HIG shared with HEI common business departments, facilities, equipment, and other resources, and was required to submit regular progress reports to HEI, together with all of HEI's other non-regulated companies.

11. HIG entered into contracts and other bilateral arrangements with HEI that favored HEI's interest over HIG's interest.

12. Directors and officers of HEI are directly responsible for the activities that form the basis of the allegations brought forth in this Complaint.

13. HEI exercised substantial control over HIG's employment practices, including but not limited to hiring, compensation, promotions, transfer, and termination of HIG's employees.

14. HIG used certain professional and financial services that were also used by HEI.

15. Because HEI actually controlled HIG and disregarded HIG's corporate form, HEI is liable for any of HIG's deficit, liable for all of HIG's debts to any creditors, and others, and liable for any monies paid by HIG to HEI for any reason.

Whether or not the above allegations made in the Complaint against HEI are true or not, HEI must now expend substantial resources to defend against the allegations brought by the DCCA in order to avoid vicarious liability because it purportedly breached the corporate veil which is available in a bona fide arms-length relationship between a parent and corporate subsidiary.

Over the past several months, we have examined the day-to-day interactions between KS/BE and its corporate affiliates. Suffice it to say that while there is a general sensitivity to the arms-length issue, more can be done to protect the integrity of the corporate veil of each corporate subsidiary. As such, Part 3 summarizes various recommendations and options regarding KS/BE's arms-length relationship with its corporate subsidiaries.

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WilsonJones. *Quick Reference Index System*

SUMMARY OF RECOMMENDATIONS REGARDING THE ARMS-LENGTH RELATIONSHIP BETWEEN KS/BE (INCLUDING ITS TRUSTEES, OFFICERS AND DIRECTORS) AND ITS CORPORATE AFFILIATES

1. Formalize channels and methods of communication between KS/BE and its corporate affiliates and with outside parties.

- Written communications should be on appropriate letterhead and addressed to the proper parties, including pertinent position titles. Royal Hawaiian Shopping Center (RHSC) should report on its own letterhead recommended actions with regards to tenants in properties managed by RHSC. RHSC or any other subsidiary should not use KS/BE letterhead for reporting to Trustees. Proposed actions regarding commercial properties managed by RHSC should be through the General Manager, Asset Management Group, who would then report to Trustees.

- In investments in which RHSC is the direct investor, primary communications regarding the status of the investment, financial reporting, future developments of the investment, and so forth, should be directed to RHSC with the necessary copies to KS/BE.

- In situations where a subsidiary is involved in litigation, bankruptcy, or negotiations with third parties, it must be made abundantly clear to the third party that the subsidiary itself is in control of the negotiations and litigation and not KS/BE.

2. <u>Identify and delineate the roles of KS/BE and its corporate subsidiary when participating jointly in a multi-level transaction or project.</u>

- Often times, KS/BE's investments are multi-leveled with financing being provided by KS/BE and equity investment by a subsidiary. Essentially, the record should reflect that proper due diligence had been conducted by KS/BE in providing financing to the transaction and a subsidiary in providing equity monies. The equity investment should be in line with the investment philosophies of the subsidiary.

- The financing provided by KS/BE should be competitive with the market.

- Investments transferred to a subsidiary should be consistent with the operational goals and objectives of the subsidiary.

3. <u>Subsidiaries should be adequately capitalized to carry out its business objectives as provided in the articles of incorporation.</u>

- At times, the operating capital demands of a subsidiary should not be financed by the parent on a piece-meal basis. This process breaches the financial independence of a subsidiary. To the extent that subsidiary third-party debts are secured by KS/BE, the debtor subsidiary should properly compensate KS/BE in undertaking such risk.

4. <u>Establish a cost-sharing procedure for support services rendered by KS/BE staff to a subsidiary.</u>

- Most of the service departments and divisions within KS/BE have provided and continue to provide such services to the subsidiaries. These services include legal advice and consultation, engineering services, appraisal services, computer services, personnel and labor-related services, and some times communications/media services, and public relations services. To the extent that a cost-sharing arrangement is developed, staff at KS/BE must be trained to keep time sheets in order to properly account for any cost-sharing.

- An alternative to cost-sharing would be to treat services to the subsidiary as a capital contribution.

5. <u>The current directors and officers of each KS/BE subsidiary needs to be reviewed in its totality in order to maintain the integrity of an arms-length relationship among the corporate affiliates.</u>

   - Basically, the directors and officers of a subsidiary should not be dominated by persons who are Trustees or officers and directors of KS/BE.

6. <u>Establish meaningful consulting agreements for management services rendered by staff of KS/BE for subsidiary matters.</u>

   - To the extent that KS/BE staff is called upon to offer assistance in the management of subsidiary projects and transactions, KS/BE should be reimbursed costs incurred by such employee working on non-KS/BE matters. In the event, however, that management of subsidiary transactions consumes substantial time of a KS/BE employee, then transfer of such management employee might be considered.

- The employment practices of each subsidiary should not be controlled or managed by KS/BE or its personnel department. Any indication of control or management by the parent of a subsidiary's employment practices would be pivotal in the determination of an arms-length relationship.

7. Establish a subsidiary compensation policy for directors and officers of subsidiaries.

- To the extent that subsidiaries are operating entities, its directors and officers acting on behalf of such subsidiary should be compensated appropriately by the subsidiary in order to demonstrate the separateness between a subsidiary and KS/BE.

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BISHOP ESTATE ORGANIZATIONAL LISTING

KS/BE'S BOARD OF TRUSTEES

Myron Bennett Thompson	Chairman
Oswald Kofoad Stender	1st Vice Chairman
Richard Sung Hong Wong	2nd Vice Chairman
Marion Mae Lokelani Lindsey	Secretary
Henry Haalilio Peters	Treasurer

****

ENTITY WHOLLY-OWNED BY BISHOP ESTATE

PAUAHI HOLDINGS CORPORATION

Date of Incorporation: May 31, 1991 (Hawaii corporation)

Directors:

Henry H. Peters	Chairman
Wallace K. Tirrell	
Richard Sau Hung Wong (RHSCI)	

Officers:

Richard Sau Hung Wong (RHSCI)	President
Wallace K. Tirrell	Vice President
Glenn H. Hara	Secretary/Treasurer

ENTITIES WHOLLY-OWNED BY PAUAHI HOLDINGS CORPORATION

ROYAL HAWAIIAN SHOPPING CENTER, INC. - fka HELUMOA LAND CO., INC.
Date of Incorporation: July 30, 1975 (Hawaii corporation)

Directors:

Henry H. Peters	Chairman
Matsuo Takabuki	
Richard Sau Hung Wong (RHSCI)	

Officers:

Richard Sau Hung Wong (RHSCI)	President
Louis A. Kau	Executive Vice President
Glenn H. Hara	Vice President of Finance
Anthony Sereno	Vice President
Phyllis T. Cuskaden	Corporate Secretary

KAMEHAMEHA INVESTMENT CORPORATION
Date of Incorporation: February 18, 1966 (Hawaii corporation)

Directors:

Oswald K. Stender	Chairman
Matsuo Takabuki	
George Henrickson	
Rev. Henry Boshard	
Wallace K. Tirrell	

Officers:

Wallace K. Tirrell	President
Anthony Sereno	Vice President
Robert Herkes	Vice President
Joseph Spencer III	Corp. 2nd Vice President
Edith P. S. Won	Corp. Secretary
George Henrickson	Treasurer

LAKE MANASSAS CORPORATION
Date of Incorporation: December 9, 1992 (Virginia corporation)

Directors:

Myron B. Thompson	Chairman
Richard S. H. Wong (RHSCI)	
Bruce Nakaoka	

Officer:

Bruce Nakaoka	President
Maryellen D. Arinaga	Vice President

TREYBURN GP, INC.
Date of Incorporation: August 31, 1993 (a North Carolina corporation)

Directors:

Henry H. Peters
Richard Sau Hung Wong (RHSCI)

Officers:

Bruce M. Nakaoka	President/Treasurer
Maryellen D. Arinaga	Vice President/Secretary

ENTITY WHOLLY-OWNED BY KAMEHAMEHA INVESTMENT CORPORATION

KEAUHOU COMMUNITY SERVICES, INC.

Date of Incorporation: October 18, 1991 (Hawaii corporation)

Directors:

Wallace K. Tirrell	Chairman
John Moore	

Officers:

Wallace K. Tirrell	President
Joseph K. Spencer III	Vice President/Secretary
John W. Rocha	Treasurer

ENTITIES WHOLLY-OWNED BY ROYAL HAWAIIAN

KUKUI, INC.

Date of Incorporation: March 23, 1992 (Texas corporation)

Directors:

Oswald K. Stender
Louis A. Kau
Glenn H. Hara
Matsuo Takabuki

Officers:

Louis A. Kau	President
Nathan T. K. Aipa	Vice President & General Counsel
Glenn H. Hara	Secretary/Treasurer

ACCESSORY PLACE INC.

Date of Incorporation: February 4, 1993 (a Delaware corporation)

Directors:

Mark Hoffman
Jonathan Rosen
Mitchell D. Gilbert
Raymond H. Wechsler
Matsuo Takabuki

Officers:

Mark Hoffman	President & Chief Executive Officer
Kevin Shahan	Vice President-Finance, Secretary and Treasurer
Peter Indiveri	Comptroller and Assistant Secretary
Gail Armistead	Vice President-Accessories
Fran Szukics	Vice President-Stores

VCI, INC.

Date of Incorporation: June 18, 1993 (a Hawaii corporation)

Directors:

Henry H. Peters
Richard Sau Hung Wong (RHSCI)
Phyllis T. Cuskaden

Officers:

Richard Sau Hung Wong (RHSCI)	President
Phyllis T. Cuskaden	Vice President
Glenn H. Hara	Secretary

ENTITIES WHOLLY-OWNED BY ROYAL HAWAIIAN
(cont'd.)

HANFORD'S INC. - - - → HANFORD'S CREATIONS, INC.

HANFORD'S INC.
Date of Acquisition: June 4, 1992
(North Carolina corporation)

Director:
Eric K. Martinson

Officers:

Paul Norman	President
Eric K. Martinson	Vice President
H. Berry Petty	Secretary/Treasurer

HANFORD'S CREATIONS, INC.
Date of Incorporation: April 8, 1993
(North Carolina corporation)

Directors:

Marion Mae Lokelani Lindsey	Chairman
Paul Norman	
Richard Sau Hung Wong (RHSCI)	

Officers:

Paul Norman	President
Eric K. Martinson	Vice President
H. Berry Petty	Secretary/Treasurer

NATIONWIDE INDUSTRIES, INC. - → SNAP PRODUCTS, INC.

NATIONWIDE INDUSTRIES, INC.
Date of Acquisition: June 4, 1992
(Pennsylvania corporation)

Directors:
Eric K. Martinson
Paul Norman
Richard Sau Hung Wong (RHSCI)

Officers:

Eric K. Martinson	Executive Vice President
Sam McInnis	Vice President of Sales
Jeff Ketchledge	Vice President of Operations
Suzanne K. Johnson	Vice President of Finance

SNAP PRODUCTS, INC.
Date of Incorporation: April 8, 1993
(North Carolina corporation)

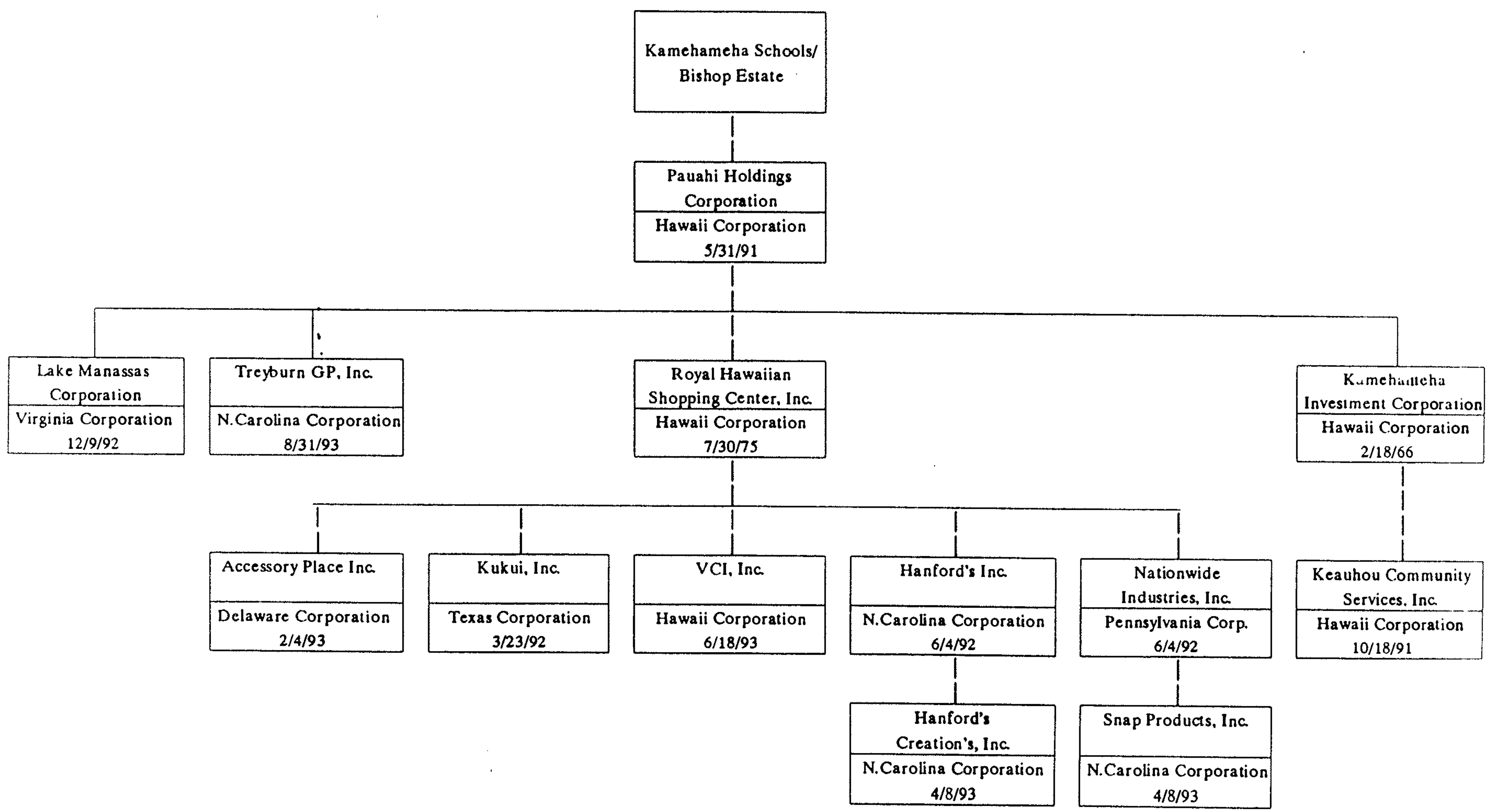
Directors:

Richard Sung Hong Wong	Chairman
Paul Norman	
Richard Sau Hung Wong (RHSCI)	

Officers:

Eric K. Martinson	Executive Vice President
Sam McInnis	Vice President of Sales
Jeff Ketchledge	Vice President of Operations
Suzanne K. Johnson	Vice President of Finance

Kamehameha Schools/Bishop Estate Subsidiaries



Revised 11/15/93

KAMEHAMEHA SCHOOLS
BISHOP ESTATE

Board of Trustees

Myron Bennett Thompson, Chairman
Oswald Kofoad Stender, First Vice Chairman
Richard Sung Hong Wong, Second Vice Chairman
Marion Mae Lokelani Lindsey, Secretary
Henry Haalilio Peters, Treasurer

PAUAHI HOLDINGS
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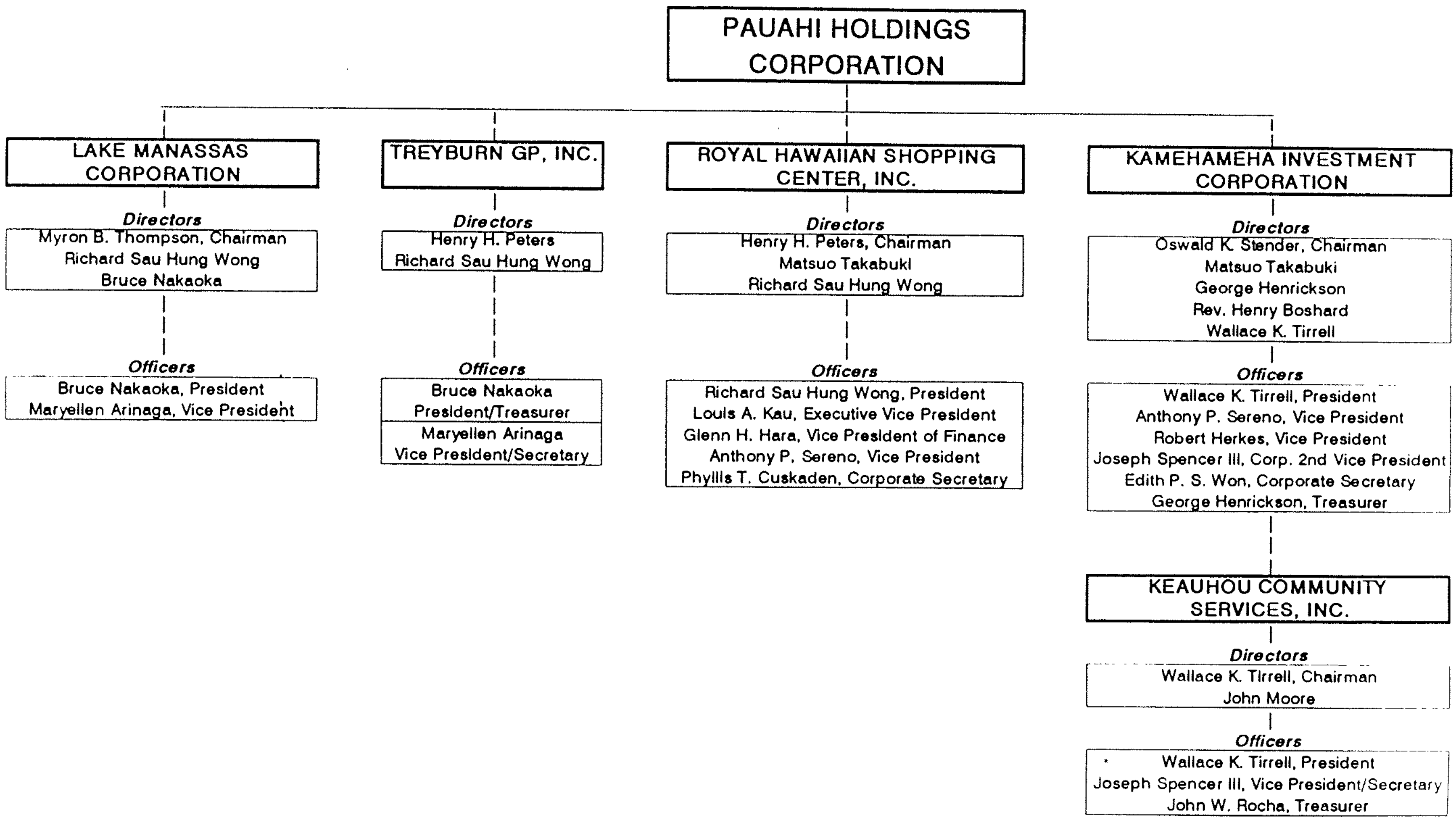
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John W. Rocha, Treasurer

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Fran Szukics, Vice President–Stores

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Directors

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Glenn H. Hara
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Eric K. Martinson, Vice President
H. Berry Petty, Secretary/Treasurer

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Paul Norman
Richard Sau Hung Wong

Officers

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Eric K. Martinson, Vice President
H. Berry Petty, Secretary/Treasurer

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