



HAWAII
STATE
ETHICS
COMMISSION

State of Hawaii • Bishop Square, 1001 Bishop Street, ASB Tower 970 • Honolulu, Hawaii 96813

NEWS RELEASE

FOR IMMEDIATE RELEASE

December 17, 2009

NO. 2009-4

For Additional Information

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On December 15, 2009, the Hawaii State Ethics Commission and Representative Kymberly Marcos Pine ("Respondent") entered into a Stipulation and Settlement Agreement. A copy of the Stipulation and Settlement Agreement is attached, and has also been posted on the Hawaii State Ethics Commission's Web site, www.hawaii.gov/ethics.

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HAWAII STATE ETHICS COMMISSION

STATE OF HAWAII

HAWAII STATE ETHICS COMMISSION,)	Charge No. 09-Cg-1
)	
Complainant,)	STIPULATION AND SETTLEMENT
)	AGREEMENT
vs.)	
)	
KYMBERLY MARCOS PINE,)	
)	
Respondent.)	

STIPULATION AND SETTLEMENT AGREEMENT

This Stipulation and Settlement Agreement is entered into pursuant to Hawaii Revised Statutes ("HRS") §91-9(d), by and between Kymberly Marcos Pine ("Respondent") and the Hawaii State Ethics Commission ("Commission").

WHEREAS, the Commission, having issued Charge No. 09-Cg-1 ("Charge") against Respondent on January 20, 2009, alleging that Respondent violated HRS §§ 84-13 and 84-13(3), by conducting a campaign activity in a state facility using state resources; and

WHEREAS, the Commission has jurisdiction over Respondent and over the subject matter of the Charge; and

WHEREAS, Respondent, having been notified of the Charge by the Commission pursuant to HRS §84-31(b), and having responded to the Charge in writing; and

WHEREAS, Respondent, having been fully apprised of her right to a hearing pursuant to HRS §84-31(c) and HRS chapter 91, and Respondent, having elected to voluntarily waive her right to a hearing; and

WHEREAS, Respondent, having been fully apprised of her right to consult with an attorney, and Respondent, being represented by counsel in this matter;

NOW, therefore, the parties stipulate to the following facts:

A. Facts

1. Respondent, at all times relevant hereto, was a member of the House of Representatives of the Hawaii State Legislature, representing District 43.

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2. In 2008, Respondent was a candidate for re-election to such office in the General Election scheduled to be held on November 4, 2008.
3. On or about Thursday, October 23, 2008, less than two weeks before the 2008 General Election, Respondent entered onto the campus of the James Campbell High School ("Campbell High School"), located at 91-980 North Road, Ewa Beach, Hawaii, at approximately 1:40 p.m.
4. Campbell High School is a state public school within the Department of Education of the State of Hawaii.
5. While on the Campbell High School campus, Respondent carried with her two campaign signs mounted upon a stick. The first campaign sign was mounted on the top end of the stick. The first sign was rectangular in shape and measured approximately 3 and one-half feet wide by 2 feet high, and bore the words, "Kymberly PINE (R) REPRESENTATIVE." The second campaign sign was mounted on the stick immediately below the first sign. The second sign was also rectangular in shape, though slightly narrower in width and taller in height than the first sign. The second sign bore the words, "Hawaii State Teachers Association RECOMMENDS," and displayed the emblem of the Hawaii State Teachers Association, a labor union for teachers of the Department of Education.
6. Upon her arrival on the Campbell High School campus, Respondent, wearing a flower lei and carrying the campaign signs, entered the classroom of a Campbell High School teacher. The teacher and an educational assistant were present in the classroom when Respondent arrived.
7. While in the classroom, Respondent asked that photographs be taken of herself with Campbell High School teachers.
8. Several teachers who happened to be passing by the classroom were called in to the classroom, and asked to pose for group photographs with Respondent in the classroom.
9. One of the teachers asked a Campbell High School student to take photographs of the group in the classroom. The student used a digital camera that belonged to the school to take the photographs.
10. Respondent posed for a series of four photographs with the group, which consisted of five Campbell High School teachers and an educational assistant. In two of the photographs, Respondent held up the campaign signs that she brought with her to the Campbell High School campus.

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11. The student later downloaded the digital photographs on to a school computer and e-mailed the photographs to Respondent from a state computer.
12. Respondent contends that she came to the Campbell High School campus on or about October 23, 2008, to discuss with a Campbell High School teacher an "educational opportunity" in which Respondent and her political opponent in the November, 2008, election could teach students about the political process. Respondent contends that she brought her campaign signs to be used as a "prop" for this "educational opportunity."
13. Respondent contends that the above-described group photographs were taken "for fun," and that the photographs were not used for any campaign purposes. Respondent also contends that she was not aware that the person who took the photographs was a student, that she did not request that a state-owned camera be used to take the photographs, and that she did not control the use of state computers to store and transmit the photographs.
14. During Respondent's visit to Campbell High School on or about October 23, 2008, Respondent did not have a discussion with anyone at the school about a possible lesson plan involving a demonstration of the political process. Following the taking of the photographs, Respondent left the school campus with her campaign signs.

B. Applicable Law

HRS §84-13 and HRS §84-13(3) state as follows:

§ 84-13 Fair treatment. No legislator or employee shall use or attempt to use the legislator's or employee's official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for oneself or others; including but not limited to the following:

- (1) *Seeking other employment or contract for services for oneself by the use or attempted use of the legislator's or employee's office or position.*
- (2) *Accepting, receiving, or soliciting compensation or other consideration for the performance of the legislator's or employee's official duties or responsibilities except as provided by law.*

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- (3) Using state time, equipment or other facilities for private business purposes.
- (4) *Soliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate or a person or business whom the legislator or employee inspects or supervises in the legislator's or employee's official capacity.*

Nothing herein shall be construed to prohibit a legislator from introducing bills and resolutions, serving on committees or from making statements or taking action in the exercise of the legislator's legislative functions. Every legislator shall file a full and complete public disclosure of the nature and extent of the interest or transaction which the legislator believes may be affected by legislative action.

[Emphasis added.]

C. Agreed Settlement

In resolution of Charge No. 09-Cg-1, the parties stipulate and agree to the following:

1. Respondent used state resources, including state facilities, state employees, and state time, to conduct a campaign activity, in violation of HRS §§84-13 and 84-13(3).
2. Respondent acknowledges that she violated HRS §§84-13 and 84-13(3) in the manner described herein, and agrees to pay to the State of Hawaii the amount of \$1,000.00 (ONE THOUSAND AND 00/100 DOLLARS). This amount shall be paid in ten (10) equal installments of \$100.00 (ONE HUNDRED AND 00/100 DOLLARS); the first \$100.00 installment is due upon Respondent's signing of this Stipulation and Settlement Agreement, and the remaining nine installments shall be due on the 15th day of each successive month thereafter until the entire amount of \$1,000.00 is paid in full; provided, however, that all amounts due and owing shall be paid no later than September 15, 2010. Respondent also agrees that this Stipulation and Settlement shall be made a matter of public record.
3. In consideration for Respondent's acknowledgment of her infractions of HRS chapter 84, Respondent's payment of \$1,000.00 to the State of Hawaii, and Respondent's acknowledgment that this Stipulation and Settlement Agreement

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shall be made public, the Commission will not take any further action regarding Charge No. 09-Cg-1, and deems this matter to be closed; provided, however, that in the event payments are not made as aforesaid, this Stipulation and Settlement Agreement shall be null and void, and Charge No. 09-Cg-1 shall be subject to further proceedings.

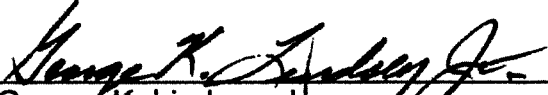
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Dated: Honolulu, Hawaii, December 15, 2009.

APPROVED AS TO FORM AND CONTENT:




Kymberly Marcos Pine, Respondent

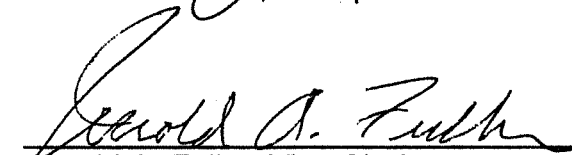


George K. Lindsey, Jr.
Attorney at Law, LLLC, Attorney for Respondent

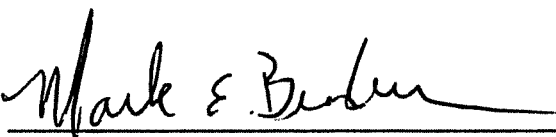
HAWAII STATE ETHICS COMMISSION
Complainant



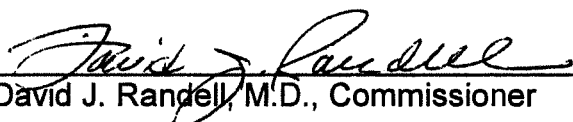
Maria J. Sullivan, Chairperson



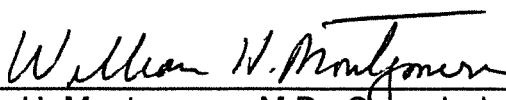
Terrold A. Fuller, Vice Chairperson



Mark E. Brasher, Ph.D., Commissioner



David J. Randell, M.D., Commissioner



William H. Montgomery, M.D., Commissioner