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Star-Bulletin reporter sues county over access to documents

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October 29, 2004 12:00 am • By Tom Finnegan - The Garden Island

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A reporter for a Honolulu newspaper filed suit in Fifth Circuit Court against the county yesterday for what he said was the "closed government" policies of Kaua'i County.

Anthony Sommer, the Kaua'i-based reporter for the Honolulu Star Bulletin, said he had requested information from the Kaua'i County Clerk, Peter Nakamura, regarding the minutes of a County Council Executive Session held in October, 2003.

Over a year later, Sommer said, he has yet to receive the documents.

"It has nothing to do with a news story," Sommer said yesterday. "The Sunshine Law isn't just for reporters. It's for anyone who wants to go a meeting or receive information."

Sommer's request stems from his belief that the County Council violated Sunshine Laws by making public policy in an Executive Session that is closed to the public.

"I believe a compromise was reached in the" Executive Session, Sommer said. Politicians just can't call Executive Sessions to "light cigars and do some horse trading."

The lawsuit stems from a 2003 County Council meeting where the sale of Kaua'i Electric to the Kaua'i Island Utilities Cooperative (KIUC) was discussed.



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According to Sommer, who was at the meeting, members of the County Council and former Mayor Maryanne Kusaka were in disagreement on the sale of the company, and KIUC's subsequent regulatory approval before the State Public Utilities Commission (PUC).

At the conclusion of the meeting, the mayor, county councilmembers, and hired attorney William Milks met in Executive Session "to consult with the board's attorney on questions and issues related to the board's powers, duties, privileges and immunities and liabilities," according to the lawsuit.

The council and the mayor, without any more public discussion, presented a "single County position for Mr. Milks to take before the PUC regarding the sale of Kauai Electric" the next day, the lawsuit claims.

Sommer believes that some of the topics discussed during the Executive Session should have been open to the public.

"They were debating public policy, not" consulting with their lawyer, Sommer said. "Negotiating public policy should be done in public."

"The general rule is every record is public" with exceptions, said Leslie H. Kondo, Director of the state Office of Information Practices. "The agency in question had the burden to establish that exception."

There are eight reasons why an Executive Session might take place, Kondo, said, the most common of which are personnel discussions and receiving advice from attorneys.

Since "the sale is now long since decided," Sommer wrote to Nakamura in September, 2003, "there can be no reason to keep the minutes confidential."

"State law requires making (executive session) minutes public 30 days after the meeting unless it would 'defeat the lawful purpose of the executive session,'" Sommer wrote Nakamura, according to the lawsuit's Exhibit A.

After not receiving an official response from Nakamura, Sommer filed for the documents through the OIP.

OIP did not receive a response from the county, according to a January, 2004, letter from the state to the county included in the lawsuit.

Since they did not receive a response, OIP found in favor of Sommer and "the County Clerk must provide the requested record to Mr. Sommer immediately," the letter continued.

"In any other place they'd just point you to the filing cabinet," Sommer said. "Here, it's a tug of war."

"The County Attorney's Office comes up with all types of cockamamie reasons for not turning over



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public record," said Sommer.

The County Attorney in this case, which eventually sent a letter to Sommer's lawyer, Daniel Hempey, in May, months after the OIP's decision, said that the "approval of the sale of certain assets of Citizens Communications Company, Kauai Electric Division" is still pending. Therefore, they will not release the information.

"The result is the County Clerk will defy you because they don't think you'll take it further," Sommer said. "Well, I'm taking it further."

Tom Finnegan, staff writer, can be reached at 245-3681 (ext. 252)

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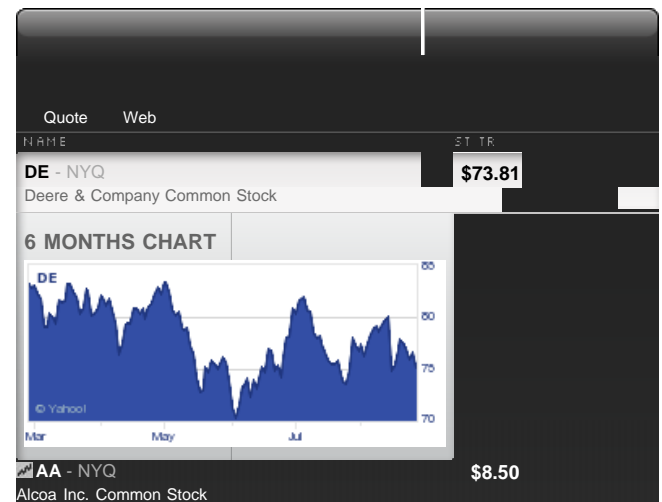
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