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# New HTA head faces lengthy list of ethics issues raised in audit

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August 30, 2002 12:00 am • By CHRIS COOK - TGI Editor

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When former state transportation director Rex Johnson becomes the new director of the Hawaii Tourism Authority on Tuesday, he will have some tough issues to deal with, including some linked to Kaua'i.

The Hawai'i State Auditor was highly critical of HTA in an an audit released in February that pointed to mismanagement and lack of accountability related to the awarding of contracts.

Kauai Economic Development Board executive Gary Baldwin in particular was the focus of ethics questions posed by state auditor Marion Higa.

Higa wrote that the way state contracts were awarded to KEDB by the HTA while Baldwin was Kauai's HTA representative have opened up ethical questions on all the state visitor promotion agency's contracts.

"There are indications of possible ethics issues involving the authority or one of its board members with regard to the State Code of Ethics' fair treatment, conflict of interest, and notification provisions," Higa writes in a section of the audit that focuses on contracts between the HTA and KEDB including one for the Kauai Quarterback Challenge in 1999. Higa concluded that there are possible ethics violations involving the way either the HTA or KEDB handled the contracts.

Higa concluded that: "The (HTA) board has failed to identify these possible ethics issues and questionable contracts. As a result, the authority's entire contracting process appears tainted and open to question."

In a call to The Garden Island Thursday, Higa said there have been no updates to the audit and the statements she wrote in the audit still stand.

Speaking for KEDB, Dr. Bruce MacDonald, acting president and chief executive officer, said Thursday that since Baldwin is no longer on the HTA board, the conflict question no longer exists.

"That was an audit report for '01, and for '02 he's not a member, so it's not an issue," MacDonald said.

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The auditor's report on the Quarterback Challenge contracts is a small section of a lengthy state audit report released in February that criticizes some of the HTA's operations since its founding in 1998. The agency oversees how state tax dollars are spent in marketing Hawai'i as a visitor destination.

A table included in the audit outlines the problems Higa found in the contracts between KEDB and the HTA. Though Baldwin isn't named in the table, correspondence included in the audit sent from Baldwin's Lihu'e-based attorney Max Graham clearly shows Baldwin is the HTA board member named by Higa.

The table in the audit focuses on the dual roles Baldwin held in being both a board member of the Hawaii Tourism Authority and a KEDB executive simultaneously, at a time when the HTA provided funding for KEDB programs that were approved by the HTA board that Baldwin sat on.

The audit outlines Baldwin's work with the HTA and possible problems.

Higa shows in the table that in 1998, Baldwin was appointed as president and director of KEDB, and in October of that year was appointed by Gov. Ben Cayetano to represent Kaua'i on the Hawaii Tourism Authority board.

In 1999, the audit shows, Baldwin retained his leadership of the KEDB, and in April 1999 the HTA board approved funding for two Kaua'i events with funding going to KEDB. The auditor found no evidence that Baldwin recused himself from the vote on awarding the contracts.

"The board member may have used his board membership to award contracts to his nonprofit organization while he was its president," Higa writes in the audit.

In July 1999 the HTA board approves submitting a proposal to the NFL to hold the Quarterback Challenge on Kaua'i, with again no proof that Baldwin recused himself on the vote of approval, according to the audit.

The audit then shows that in October 1999 a two-year deal is cut between the HTA and the National Football League to host the Quarterback Challenge on Kaua'i, and the HTA then contracts with the KEDB to manage both years of the contract for a total of \$750,000.

In the 1999 transactions, Higa comments, Baldwin may have used his HTA board membership to direct contracts to KEDB, while he was president of KEDB. This may also be a conflict of interest because of Baldwin's dual roles, according to the audit.

Higa also had a problem with no competitive bidding for the state contract between the HTA and KEDB for running the NFL Quarterback Challenge. She cited section 84-15 of the Hawaii Revised Statutes, which deals with notification to the State Ethics Commission of such a transaction when it is for over \$10,000. The audit says a check with the State Ethics Commission shows no notice of HTA's intent to award the contract to KEDB being posted to the agency.

In one of two letters from Baldwin's attorney Max Graham included in the audit, and written on behalf of Baldwin, Graham disputes the auditor's questioning of Baldwin and his dual-role with the HTA and KEDB, and claims statements in the audit appear to implicate Baldwin in alleged violations of the state's ethics code.

Graham contends in the letter that Baldwin didn't receive any HTA funds among his KEDB remunerations, recused himself from HTA voting on the Quarterback Challenge contracts and other KEDB funding matters, and that his votes on the NFL-HTA contract and the HTA budget did not obligate HTA to enter into the NFL Quarterback Challenge contract between HTA and KEDB.

Further, Graham said in a letter to Baldwin dated in early February, "KEDB received no financial benefit from the NFL Quarterback Challenge contracts, and in fact incurred unreimbursable costs



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for both KEDB staff time and office expenses."

Also, Graham said in the letter that "controlling interest" in a business as defined by state law means "sufficient in fact to control," and Baldwin did not have controlling interest in KEDB, so the State Ethics Commission filing, or lack thereof, is a moot point.

On Thursday, Baldwin referred a request for a comment on the issue to Graham and attorney Michael Belles.

Belles said neither the HTA nor Higa responded to Graham's response letter to Higa's audit.

"We had opined on behalf of Gary that there were no conflicts as alleged by the state controller (auditor), and when we provided that response to them, nothing came after that," Belles said.

The auditor included Graham's letter when the audit was released in February.

In a response section of the audit Higa, writing in February, disputes Graham's letter written in defense of Baldwin, stating, "We stand by the facts that we presented."

Graham also disputes the auditor's questions regarding the 2001 NFL Quarterback Challenge contract. His letter contends the contract was dated prior to the event being held on Feb. 8, 2001. Higa states in the response section of the audit that the 2001 NFL Quarterback Challenge contract was signed after the event was held, some 11 days late by KEDB, and about six weeks late by HTA.

In the letter Graham advised Baldwin to provide the State Ethics Commission with an explanation of the issues raised by the state auditor, and ask for clarification on how to proceed in the future when dealing with HTA contracts.

#### Changing roles

Baldwin's role at the KEDB changed year-by-year from 1998 through 2000.

According to federal tax records, in 1998, the Kauai Marketing Group was awarded a contract for \$93,640 by the Kauai Economic Development Board of Directors. The Kauai Marketing Group was formed in 1994 and led by Gary Baldwin and Pam Parker, according to the records of the State Department of Commerce and Consumer Affairs. The records also show that the State of Hawai'i has involuntarily dissolved the Kauai Marketing Group as a Hawaii corporation, because the firm didn't file annual reports for 1999-2001. Parker later became the marketing director for KEDB.

In 1999 Baldwin was paid \$100,000 by KEDB for his role as president and chief executive officer of the non-profit corporation, according to federal tax records.

In 2000 he was again paid \$100,000, but now held the title of Managing Director of the Kauai Tech Center, according to federal tax records.

Baldwin now holds the paid position of director of special projects for KEDB and is scheduled to travel to the Mainland on KEDB business while awaiting developments in the scheduling of his pending trial on four felony theft charges in Maricopa County, Ariz.

Baldwin is no longer a board member of HTA. In a report in The Garden Island published in April Baldwin said he had asked Gov. Ben Cayetano not to re-appoint him to the HTA board due to health concerns.

Staff Writer Paul C. Curtis contributed to this report.

On the Web: [www.hawaii.gov/auditor/Years/2002reports.htm](http://www.hawaii.gov/auditor/Years/2002reports.htm)

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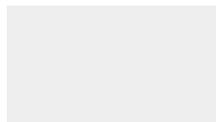
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