

August 21, 1996

The Honorable Benjamin J. Cayetano  
Governor of Hawai'i  
State Capitol  
Honolulu, Hawai'i 96813

The Honorable Ronald T. Y. Moon  
Chairperson, Judicial Council  
State of Hawai'i  
P. O. Box 2560  
Honolulu, Hawai'i 96804

Dear Governor Cayetano and Chairperson Moon:

Re: Selection of Panel of Nominees for the Campaign Spending Commission

This is in response to the Honorable Chairperson Moon's inquiry whether section 11-192, Hawaii Revised Statutes (HRS), as amended by Act 10, Special Session Laws of Hawaii 1995, pertaining to the Campaign Spending Commission, would require the Judicial Council to:

1. Select a completely new panel of nominees for the Campaign Spending Commission immediately, thereby effectively abolishing the current, lawfully selected panels; or
2. Await the selection of new nominees for the panels until after the number of current eligible nominees falls below five.

We understand that the terms of the current Campaign Spending Commission members are staggered and that the term of one of the commissioners expired on June 30, 1996.

We believe that HRS section 11-192, as amended by Act 10, 1995 Haw. Spec. Sess. Laws 666, requires the Judicial Council to select a completely new panel of nominees for the Campaign Spending Commission. Section 11-192, as amended, does not contain a saving clause or a grandfather provision that relates to the retention of nominees for the commission, or of commissioners, who were selected pursuant to the superseded statutory provisions. ([top](#))

Section 11-192, HRS, was amended by Act 10 during the special session of 1995 of the Eighteenth State Legislature. Rule 44 of the Rules of the Senate and rule 33.2 of the Rules of the House of Representatives of the Eighteenth Legislature of the State of Hawai'i both require that "[e]very bill introduced or reported out of any committee, which amends an existing section or subsection of the Hawaii Revised Statutes or Session Laws of Hawaii, shall set forth the section or subsection in full, and the matter to be deleted shall be enclosed in brackets and any new matter added to the section or subsection shall be underscored." Section 2(3) of Act 10, 1995 Haw. Spec. Sess. Laws 666, 672-73, amended section 11-192, an existing section of the HRS, and set forth the section with bracketed and underscored material as follows:

11-192 Campaign spending commission. There is established a campaign spending commission[, consisting of five members appointed by the governor as follows:

The judicial council shall select a panel of ten persons, consisting of five persons from the membership of each of the two political parties for which the greatest number of voters cast party ballots in the last preceding primary election. From this panel the governor shall appoint two members from each political party and a chairman]. The commission shall consist of five members of the general public, appointed by the governor from a list of ten nominees submitted by the judicial council. The judicial council may solicit applications for the list of nominees through community organizations and advertisements in any newspaper

of general circulation. Any vacancies in the commission shall be filled by the governor with a member from the [panel] list of nominees or by reappointment of a [member] commissioner whose term has expired, subject to the limit on length of service imposed by section 26-34[; provided the replacement member is from the same political party as the member being replaced; and provided further that the party is then one of the two political parties as determined above; otherwise, the replacement member shall be from one of the parties not represented on the commission]. ([top](#))

The judicial council shall meet and expeditiously select additional persons for the [panel] list of nominees whenever the number of the eligible [panel members] nominees falls below five[, or whenever a political party, being one of the two parties for which the greatest number of voters cast party ballots in the last primary election, is not represented. In either event, the judicial council shall select additional panel members so that there will be five from each of the two parties. A person shall no longer remain eligible to be on the panel when the person is not from one of the two parties for which the greater number of voters cast party ballots in the last preceding primary election. The requirement of being from the same party is not applicable to the replacement chairman]. ([top](#))

Notwithstanding section 26-34, these appointments shall not be subject to senatorial confirmation. The term of the [members] commissioners shall be four years, except that the terms of the initial [members] commissioners shall be two years for two [members,] commissioners, three years for two other [members,] commissioners and four years for the chairman, as determined by the governor.

The [members of the commission] commissioners shall serve without compensation but they shall be reimbursed for reasonable expenses, including travel expenses, incurred in the discharge of their duties. For [administrative] special purposes, the commission shall temporarily be [under] administratively attached to the office of the lieutenant governor[.] until June 30, 2003.

Therefore, the 1995 special legislative session amendments to section 11-192 alter the composition of the Campaign Spending Commission by:

1. Deleting the former requirement that the ten nominees for the commission, selected by the Judicial Council, consist of five persons from the membership of each of the two political parties for which the greatest number of voters cast party ballots in the last preceding primary election; and
2. Deleting the former requirement that the five commissioners, appointed by the governor, consist of two members from each political party and a chairperson. ([top](#))

In a departure from its pre-amendment version, it appears that section 11-192, in effect, would permit the Judicial Council to select all ten nominees for the Campaign Spending Commission from the membership of one of the two political parties for which the greatest number of voters cast party ballots in the last preceding primary election. Similarly, we believe that section 11-192, as amended, would allow the Governor to appoint all five commissioners from the same political party.

In *State v. Bunn*, 50 Haw. 351, 356-57, 440 P.2d 528, 533 (1968), the Supreme Court of Hawai'i restated the rule set forth by *In re Walker*, 9 Haw. 171, 176-77 (1893), that the enactment of a later statute covering the entire subject matter of an earlier statute and intended as its substitute operates as a repeal of the earlier statute. Under this rule, the earlier statute is treated as being completely replaced by the later statute, and any provision of the earlier statute which is repeated in the later statute is deemed to be a new enactment and not a continuation of the former provision. ([top](#))

Act 10 of the Special Session of 1995 prescribes a completely new composition of the Campaign Spending Commission, effective July 1, 1995. Accordingly, Act 10 repeals the pre-amendment criteria pertaining to the selection and composition of the commission, and abolishes the selection of prior nominees to the commission based upon political party representation.<sup>1</sup>

To provide for continuation of the existing composition of the commission, the Legislature could have inserted saving clauses, "which are calculated to prevent hardship by saving accrued rights and interests from the operation of a new rule, commonly called 'grandfather clauses,' [and] are construed favorably to their benign purposes." 2A Norman J. Singer, Sutherland Statutory Construction 47.12 (5th ed. rev. 1992) (footnote omitted.) However, section 11-192, as amended, does not contain a saving clause or a grandfather provision that relates to the retention of nominees for the commission, or the retention of commissioners, who were selected pursuant to the superseded statutory provisions. Additionally, HRS chapter 11 does not contain a general saving clause. ([top](#))

Consequently, we believe that, since the previous membership composition of the Campaign Spending Commission has been repealed by Act 10 of the Special Session Laws of Hawaii 1995, then HRS section 11-192, as amended, compels the Judicial Council to select a completely new panel of nominees for the Campaign Spending Commission in accordance with the amended criteria.

Should you have any questions, please feel free to contact us.

Very truly yours,

Lynette Mah Matsushima  
Deputy Attorney General

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<sup>1</sup> The panel of nominees for the Campaign Spending Commission should have been reconstituted on or about July 1, 1995, the effective date of Act 10. However, the subsequent acts of the commissioners were nevertheless the valid acts of de facto commissioners. In re Application of Sherretz, 40 Haw. 366, 379 (1953). ([return to document](#)) ([top](#))