

RECEIVED
NEIGHBORHOOD COMM
CITY AND COUNTY OF HONOLULU

BEFORE THE NEIGHBORHOOD COMMISSION
CITY AND COUNTY OF HONOLULU

2010 SEP -7 PM 3:31

In the Matter of the)
Complaint of)
LINDA URE,)
Complainant,)
Against CHARLES PRENTISS, Member of)
Kailua Neighborhood Board No. 31,)
Respondent.)
_____)

Complaint #0908-31-08

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND DECISION AND ORDER

FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND DECISION AND ORDER

This Complaint came on for hearing at a Special Meeting of the Neighborhood Commission held on August 23, 2010, at 7:00 p.m., in Honolulu Hale, Council Committee Room, 2nd Floor, City and County of Honolulu, 530 South King Street, Honolulu, Hawaii 96813.

Complainant LINDA URE ("Complainant"), *pro se*, appeared on her own behalf. Respondent CHARLES PRENTISS ("Respondent"), *pro se*, appeared on his own behalf. Debbi Glanstein ("Glanstein") testified on behalf of Complainant.

The Complaint, the Response, and all exhibits provided by the parties were made a part of the record without objection.

Complainant alleged in her August 24, 2009 complaint that Respondent violated Sections 2-14-101 and 2-14-124 of the 2008 Neighborhood Plan ("the Plan") by administering the oath of office to a newly elected Board member and announcing that the newly elected Board member would be chair of a committee before the member was duly sworn in.

The Commission heard the testimony presented by the parties and witnesses and reviewed the exhibits and other papers submitted, discussed the matter, finds as follows:

FINDINGS OF FACT

1. The Complaint was filed on August 24, 2009, pursuant to the provisions of Section 2-18-201(a)(3) of the Plan.
2. At all times relevant herein, Complainant was a member of Kailua Neighborhood Board No. 31.
3. At all times relevant herein, Respondent was the Board Chair.
4. On September 7, 2009, the Respondent requested for an extension of time to respond to the complaint. The extension was granted. Thereafter, the Respondent filed a timely response to the Complaint on November 6, 2009.
5. Section 2-14-101 of the Plan states that each elected and appointed member must subscribe to an oath of office prior to entering upon the duties of their office.
6. Section 2-14-124 of the Plan requires that a Board committee chair be a member of the Board.
7. Section 2-13-108 of the Plan defines a Board member as a resident of the neighborhood district and/or subdistrict, who is at least 18 years of age, and who is duly elected or appointed.
8. On August 5, 2010, in accordance with Hawaii Revised Statutes ("HRS") Sections 91-9 and 91-9.5, notice of the hearing was provided to the parties via certified mail, return receipt requested.
9. On July 14, 2009, the Kailua Neighborhood Board held a special meeting.
10. Prior to the start of the meeting, Glanstein told newly elected Board member Donna Wong ("Wong") that she had not yet taken the oath of office.
11. Respondent felt that tension had been created by Glanstein's statement and the manner in which she said it. In order to relieve the tension, Respondent jokingly offered to administer the oath of office to Wong. He had her raise her right hand and repeat the oath after him. He stated that he was duly qualified to administer the oath because of his previous service as an air force officer.
12. Some Board members objected to the administering of the oath.
13. However, while Respondent administered the oath, he and other Board members were laughing.
14. Wong remained at the special meeting when it started.

15. Complainant alleges that Wong participated in the meeting and cast a vote on various matters during the meeting.

16. Wong was later administered the oath of office by a duly authorized member of the Neighborhood Commission Office.

17. Respondent admits that he is not authorized to administer the oath of office.

18. At the meeting, Respondent announced the names of those who he had appointed as chairs and members of various Board committees.

19. Wong was announced as the chair of the Planning, Zoning and Environment committee.

20. On July 20, 2009, the day before the first committee meeting, Wong was administered the oath of office.

CONCLUSIONS OF LAW

1. The Complaint was filed in accordance with the provisions of Section 2-18-201 of the Plan.

2. The parties were properly noticed pursuant to HRS Sections 91-9 and 91-9.5.

3. This hearing was properly conducted in accordance with HRS Chapter 91 and Section 2-18-203 of the Plan.

4. This matter is properly before the Commission pursuant to Section 2-18-203 of the Plan and the Commission has the authority to review a Board and/or Board member's action(s) and issue sanctions in accordance with Sections 2-18-203 and 2-18-204 of the Plan.

5. Pursuant to HRS Section 91-10(5), the Complainant has the burden of proof including the burden of producing evidence as well as the burden of persuasion by a preponderance of the evidence.

6. The Commission finds that Respondent did not violate section 2-14-101 of the Plan, as no evidence was presented that Respondent failed to take the required oath of office and the evidence demonstrates that his "administration" of the oath of office was done as a joke and to defuse an otherwise tense situation.

7. Complainant has not provided sufficient information to support her contention that Wong actively participated in the special meeting as a member of the Board. However, the Commission notes that if Wong had participated in the meeting, it would have been inappropriate since she was not properly sworn-in.

8. With respect to Section 2-14-124, the Commission finds that the Chair's appointment of Wong as a committee chair did not violate the Plan. Section 2-13-108 specifically defines a Board member as a person who is duly elected or appointed. Section 2-14-101 requires an elected or appointed member to subscribe to the oath of office prior to assuming their duties of office or conducting Board business.

9. The Commission finds that when the sections are read in conjunction, it is apparent that a person can be an elected "board member" yet not assume the duties of office until the oath is taken.

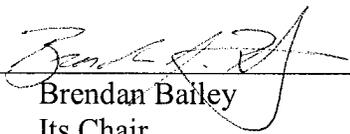
10. The Commission further finds that in the instant case, Wong was a duly elected Board member at the time of her appointment as committee chair and therefore the appointment was appropriate. The Complainant has not provided sufficient evidence to demonstrate otherwise. Thus, the Commission finds that Respondent did not violate Section 2-14-124 of the Plan.

DECISION AND ORDER

Based upon the foregoing, the Complaint filed by LINDA URE, on August 24, 2009, is hereby DENIED.

DATED: Honolulu, Hawaii, **SEP 07 2010** _____.

NEIGHBORHOOD COMMISSION

By  _____
Brendan Bailey
Its Chair