



MISC. COMM. NO. 4

The Senate

STATE CAPITOL
HONOLULU, HAWAII 96813

May 15, 2015

Honorable Ronald D. Kouchi
Senate President
State Capitol, Room 210
Honolulu, HI 96813

Dear President Kouchi:

Re: Senate Special Committee re Misc. Comm. No. 5.

By this letter, your Special Committee reports its initial findings and recommendations for further action regarding Miscellaneous Communication No. 5.¹

BACKGROUND²

On or about November 2, 2014, Mr. Richard Baker submitted a complaint to the Office of the City Clerk for the City and County of Honolulu challenging the residency and voter registration of Senator Brickwood Galuteria in the 12th Senatorial District. In his complaint, Mr. Baker acknowledged that Senator Galuteria is listed as a registered voter residing in the 12th Senatorial District at 876 Curtis Street, Apt. 2408, Royal Capitol Plaza in Honolulu, Hawaii (the "Curtis Street address"). It is further acknowledged that the Curtis Street address is listed as Senator Galuteria's mailing address in the 2014 General Election Registry of State Certified Candidates.

The City Clerk conducted an investigation of Mr. Baker's challenge and, by letter dated February 2, 2015, issued its findings and ruling pursuant to section 11-25, Hawaii Revised Statutes. In that letter, the City Clerk specifically states that "it is the City Clerk's finding and determination that Mr. Brickwood M. Galuteria and Ms. Abigail L. Galuteria have sufficiently rebutted the presumption of residency at the Pakui Street Address created under Haw. Admin. R. § 3-172-25. Accordingly, based on the foregoing, the City Clerk

¹ Since this matter is currently pending on appeal before the Board of Registration, your Special Committee may desire to submit a final report via a letter once your Special Committee adjourns after a decision and order is made by the Board of Registration.

² The background is taken from the contents of Miscellaneous Communication No. 5, materials submitted by counsel for Senator Galuteria, additional material submitted by Mr. Baker, and materials submitted by the Deputy Corporation Counsel representing the Honolulu Board of Registration.

concludes that Mr. Brickwood M. and Ms. Abigail L. Galuteria's voter registration residence is the Curtis Street Address as noted in their voter registration record."

It is relevant to note that the City Clerk's February 2, 2015, letter of findings and ruling correctly acknowledges that "[t]his voter registration residence challenge before the City Clerk does not concern the qualifications of Mr. Galuteria to hold elective office as a State Senator. It only involves whether his voter registration form identified his actual residence address"³ (emphasis added). Relative to this statement by the City Clerk, Mr. Baker submitted a letter to the then Senate President forwarding the complaint filed with the City Clerk and advising that he has been informed that the challenge to Senator Galuteria's voter registration and claimed residence should properly have been submitted to the Senate President. Mr. Baker's letter dated February 3, 2015, was logged by the Senate as Miscellaneous Communication No. 5 ("Misc. Comm. No. 5").

In response to Misc. Comm. No. 5, by memorandum dated March 27, 2015, the then Senate President issued a memorandum establishing this Special Committee to Consider Misc. Comm. No. 5, appointing Senators Gilbert Kahele, Ronald Kouchi, Jill Tokuda, Sam Slom, and myself. The memorandum specified that "[t]he Special Committee shall be responsible for reviewing Miscellaneous Communication No. 5, and any other information or evidence that is germane to determining whether there are sufficient facts to warrant any further action with regard to Miscellaneous Communication No. 5."

In furtherance of its duties and responsibilities, your Special Committee held three hearings,⁴ adopted rules, reviewed information and evidence submitted to the Senate by Mr. Baker and Senator Galuteria, and conducted independent examination. As a result of its review of the information and evidence currently before it, your Committee hereby submits its findings and recommendations in response to Misc. Comm. No. 5.

FINDINGS

In consideration of the information and evidence before it, your Special Committee finds that there is insufficient information and evidence to warrant a finding that Senator Galuteria has not been legally elected and qualified to represent the 12th Senatorial district.

The finding of the Special Committee is, among other things, based on its consideration of the following:

- There is insufficient information and evidence to conclude that Senator Galuteria is not a qualified voter of the 12th Senatorial District;

³ Haw. St. Const., Art. III, §12.

⁴ Your Committee held public hearings on Misc. Comm. No. 5 on April 23, 27, and 30, 2015. No public testimony was taken at any of the Committee's meetings.

- There is little merit to the argument that the Galuterias' multi-generational living arrangement at the Curtis Street address "defies logic";
- There is no relevance to the allegations that Senator Galuteria owns other properties;
- There is no evidence to indicate that Senator Galuteria intended to abandon the Curtis Street address;
- The allegation regarding Senator Galuteria claiming an owner occupant real estate tax exemption on other property has been made moot by Senator Galuteria legally resolving that property tax matter;
- The Senate Committee on Credentials filed its report, which the Senate adopted, on January 21, 2015, stating that it examined the Certificate of Election and found Senator Galuteria to have been legally elected and fully qualified to sit as a member of the Senate representing the 12th Senatorial District, and Senator Galuteria was thereafter duly sworn in by the Chief Justice; and
- The City Clerk ruled that Senator Galuteria's address for purposes of voter registration is the Curtis Street address.

RECOMMENDATIONS

Based on the evidence presented and foregoing findings, your Special Committee recommends the following:

- No further action be taken in response to Misc. Comm. No. 5 at this time;
- In light of the pending appeal of the findings of the City Clerk to the Board of Registration, that the Special Committee remain seated and not be discharged until the Special Committee can consider the result of the Board's hearing on May 26, 2015, on a motion to dismiss that proceeding; and
- As a result of the recent Senate reorganization, that Senate President Kouchi remove himself as a member of the Special Committee and appoint a replacement from the members of the Senate.

Sincerely,



Senator Gilbert S.C. Keith-Agaran
Chair, Senate Special Committee