

February 17, 2015

Rep. Karl Rhoads
Chairperson
Special Committee to Consider MC No. 1003
House of Representatives
Hawai'i State Capitol
Honolulu, HI 96813

Dear Mr. Rhoads,

Please allow this to be the Voters' supplement to their February 10, 2015 letter. This more precisely answers important questions asked by Committee members at the February 13, 2015 committee hearing. It also includes argument regarding Mr. Say's alleged intent to renovate his Palolo property and an objection to the irregular procedure used by the Committee.

The Voters wish to clarify that the story involving the Speaker and Mr. Say was not used to discredit Mr. Say other than to demonstrate that his permanent, fixed habitation is in Pauoa. That evidence was introduced for two purposes. One purpose is to show 2247 Star Road is, in fact, his home and the other is that the Speaker of the House knows and has known of this fact for twenty years.

I. Can the House consider evidence from before the current term?

Yes. Evidence is “something (including testimony, documents and tangible objects) that tend to prove or disprove the existence of an alleged fact.” Black's Law Dictionary 9th 635 “Evidence, broadly defined, is the means from which an inference may logically be drawn as to the existence of

a fact; that which makes evident or plain. Evidence is the demonstration of a fact; it signifies that which demonstrates, makes clear or ascertains the truth of the very fact or point in issue, either on the one side or on the other.” 31A C.J.S. Evidence 3 at 67-68(1996)

The House may only consider the qualifications of present members under Article III, Section 12 which gives the House the “power to punish such member by censure or, upon a two-thirds vote of all the members to which such house is entitled, by suspension or expulsion of such member.” The scope is limited because the object of the power is to “members,” that is present members. But there is no limitation on the evidence the House may consider regarding the qualifications of present members. If the qualifications of a present member involves evidence regarding a fact that occurred before the current term, there is no legal basis for the House to refuse to consider such evidence. The qualification to serve itself starts before the current term, for example.

A finding of fact which necessarily puts into question the legal right of a past member or a present member who was previously a member does not foreclose the House from considering the evidence and also does not invalidate the acts of such a member.

“[A] de facto official is one who by some color of right is in possession of an office, and for the time being performs his or her duties with public acquiescence, though having no right in fact. The de facto officer doctrine gives legal effect to the public acts of de facto officers and precludes challenges to government action on the ground that the officials who took the action were improperly in office.... Courts have consistently held that actions taken by de facto officeholders are valid and enforceable.” *Sierra Club v. Castle & Cooke Homes Hawai‘i, Inc.*, 132 Haw. 184, 320 P.3d 849 (2013) (internal citations and quotations omitted)

II. Do the Petitioners have the burden of proof?

Yes, initially. Burden of proof “means the obligation of a party to establish by evidence a requisite degree of belief concerning a relevant fact in the mind of the trier of fact.” Rule 302, Haw. R. Evid. Rule 4 of the Special Committee charges the committee to “investigate” which is to “carry out a systematic or formal inquiry to discover and examine the facts of an incident, allegation, etc., so as to establish the truth.” Neither the Committee nor the Speaker have indicated what the burden of proof is or any obligations on the parties. Because the Committee has been established in an inquisitorial format and there has been no standards regarding the relevant facts, the admissibility of evidence or the degree of proof, Petitioners believe the initial burden of proof for Petitioners is to demonstrate probable cause, that is facts and circumstances which are sufficient in themselves to warrant a person of reasonable caution, to believe that Mr. Say is not qualified. Cf. *State v. Cambra*, 109 Haw. 84, 123 P.3d 679 (2005)

III. Can intent or another's state of mind be proven?

Yes. Intent is a requisite element of every crime charged in the State of Hawai'i. Section 702-206, HRS. A confession is typically the only direct evidence to prove specific intent. However, if confessions were necessary in order to obtain convictions, no one would ever be convicted of a crime.

Intent is usually proved by circumstantial evidence. Section 702-206(a)-(c), HRS. It is common to infer a person's intent from their actions. It is possible to do something even though the actor did not desire the consequences of his actions. “Circumstantial evidence is competent evidence[.]” *State v. Torres*, 122 Haw. 2, 222 P.3d 409 (Haw. App., 2009)

Mr. Say cites to Section 11-13, HRS, for the proposition that he can be separated from his family and not lose his residency. But each of the rules in Section 11-13, HRS to help aid in determining residency allow these separation if there is some actual purpose for the separation: business dealings, work, service in the U.S. armed forces, attending an institution of learning, being institutionalized are all legitimate reasons for separation which do not cause one to lose their residency otherwise. But Mr. Say attempts to use these provisions for the opposite purpose. Business and work do not separate Mr. Say from his family but actually unite him with his family.

Mr. Say's public statements regarding why he lives with his family in Pauoa are strong evidence that his fixed habitation is with his family in Pauoa. He lives with them in Pauoa because his family and work are there. The only reason that supports his claimed "intent to return" to Palolo is that it is necessary to maintain his qualification to serve in the House and nothing more. He has never given any other reason for him claiming his Palolo residency. This is exactly the same abuse of the residency "intention" that the Hawai'i Supreme Court rejected in *Dupree v. Hiraga*, 121 Haw 297, 323 (2009) when interpreting Section 11-13, HRS. When Mr. Say leaves his home at 2247 Star Road, it is to 2247 Star Road where he intends to return. How do we know that? Because that is where he always returns. He does not live separated from his family because of his work. He has no work at the Palolo house. He has no family at the Palolo house. Campaigning in another district from one's home does not confer legal residency. All of the circumstantial evidence available other than Mr. Say's self-serving statements support the strong inference that Mr. Say has permanently fixed his habitation to 2247 Star Road and that is where he intends to return every time he is absent.

IV. "Renovations"

City records indicate that the last permit application received for the Palolo house property involved the repair of dry-rot to the car port in 2002. There is no evidence other than more self-

serving declarations regarding Mr. Say's alleged intentions for renovations. The plan for renovations is just the next in a long series of stories Mr. Say invokes to distract from the fact that he lives with his family at 2247 Star Road.

V. Other Matters

Voters object in writing regarding the irregular procedure used by this Committee to the benefit of Mr. Say. The Chairperson required the Voters and Mr. Say to provide written submissions by February 10, 2015. Voters complied with this request but as Mr. Say's letter indicated, it was submitted on February 11, 2015.

Finally, because the Speaker provided this Committee with virtually no standards upon which it is to investigate this matter, formalistic invocations of artificial technicalities to foreclose consideration of relevant and probative evidence will only prove that the Committee is unwilling or unable to reasonably investigate this matter with due diligence and credibility. There is no legal or moral reason for this Committee to narrow the scope of its inquiry to avoid consideration of compelling evidence demonstrating Mr. Say lacks the qualifications to serve.

Please do not hesitate to contact me if you have any questions.

Very truly yours,
LAW OFFICE OF LANCE D COLLINS

A handwritten signature in black ink, appearing to read "Lance D. Collins". The signature is fluid and cursive, with a large initial "L" and a distinct "D" at the end.

LANCE D COLLINS
Attorney for the Voters



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 408722	408722	Sep 30, 1997	33038098-	Completed	TOMIHARA - EL
 A2002-03-0944	532750	Mar 22, 2002	33038023	Permit application closed	(BP #532750) [TMK: 33038023] M/M CALVIN SAY ADD STORAGE & REPAIR EXSITING CARPORT (REMOVE DRYROT & REPLACE WITH NEW, REROOF,REPLACE PLUMBING FIXTURES)

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