



PO Box 600
Kaaawa, Hawaii 96730

808-955-1819
ian@ilind.net

April 10, 2008

Dan Mollway
Executive Director
State Ethics Commission
PO Box 616
Honolulu, HI 96809

Dear Dan,

I am writing to call the Commission's attention to the apparent failure of Hawaii Superferry Inc. to comply with the public disclosure requirements of Chapter 97-3(c) HRS during the period covering calendar year 2007, and potentially during 2006 as well.

Hawaii Superferry Inc. has reported amounts paid to its registered lobbyists during 2007. No other expenditures were reported during the calendar year.

However, via published reports and by personal experience, it is clear that Hawaii Superferry Inc. and its agents have engaged in substantial additional activities that meet the definition of lobbying and should have been reported to the commission and disclosed to the public.

These activities were part of the company's lobbying during the regular and special legislative sessions of 2007, and included the attempt to mobilize public opinion to support their special interest legislation. The activities included repeated and public solicitations in which members of the general public and a smaller group of opinion leaders were urged to contact legislators on the company's behalf.

Section 97-1(7) defines "lobbying" as follows:

"Lobbying" means communicating directly **or through an agent, or soliciting others to communicate, with any official in the legislative or executive branch, for the purpose of attempting to influence legislative or administrative action or a ballot issue.**" [emphasis added]

Expenditures for indirect or grassroots lobbying, in which an interest group or its agents seek to mobilize their constituency to affect legislation, appear to be reportable under this definition. In addition, reportable expenditures include costs of the preparation and distribution of lobbying materials, media advertising, telephone and other forms of communication, postage, consultants fees not reported as fees paid to registered lobbyists, and entertainment.

Item #1: The Hawaii Tribune-Herald reported (4/23/2007) that Hawaii Superferry mailed 110,000 letters to island residents with petitions urging legislators to support the company (Exhibit 1).

See: Copy of Petition which asks elected officials to support the Superferry. (Exhibit 2)
Letters sent with petitions, one for each island (Exhibit 3).

The costs of preparing, printing, and mailing, then gathering, compiling, and utilizing these petitions were used to advocate the legislation that favored the Superferry.

In public testimony during the 2007 special legislative session, Superferry President John Garibaldi used the petitions very directly in supporting the legislation. (Exhibit 4)

According to the Tribune Herald story, the letters and petitions were prepared, mailed, and processed by the public relations firm, McNeil Wilson Communications. Any and all payments to McNeil Wilson related to these petitions, their preparation, distribution, collection, processing, and use in communications directly with legislators would appear to be lobbying expenditures which have not been reported and disclosed.

Item #2: Hawaii Superferry has created and maintained an alter-ego known as "Friends of Hawaii Superferry" with a central mission of putting public pressure on members of the state legislature to support the company's position on pending legislation. "Friends of Hawaii Superferry" maintained its own web site, promoted the petitions referred to in #1 above, and organized "advisory committees" on each island which in fact were used as vehicles for lobbying.

The main page of the "Friends of Hawaii Superferry" web site featured letters from the company's advisory committees to residents of each island and contains the following solicitation.

How You Can Help

We support Hawaii Superferry and urge our elected officials to support it as well.

You may add my name to a petition that will be sent to elected officials urging them to end the political games and move forward with launching Hawaii Superferry in July.

The costs of developing, maintaining, updating, and planning the Friends of Hawaii Superferry web site, including fees paid to the public relations firm of McNeil Wilson Communications or other contractors, as well as expenditures for activities of the Friends group that support or relate to its lobbying functions are expenditures which should have been reported to the State Ethics Commission and disclosed to the public.

Item #3: Hawaii Superferry Inc distributed information packets to members of the legislature in advance of the 2007 special session, including compact disks containing information on Superferry plans to address environmental concerns and invasive species. The materials were delivered in a folder along with both new and old printed materials. The costs of this and other lobbying materials have not been disclosed by the company.

Item #4: Hawaii Superferry President John Garibaldi took part in substantial lobbying activities prior to and during the 2007 special legislative session, as reported by news media. However, the prorated value of Garibaldi's time spent lobbying has not been disclosed by the company.

If the commission has questions concerning these matters, you can reach me at 955-1819 or via e-mail at ian@ilind.net.

Thank you for your attention.

Sincerely,

Ian Lind