

# UNDERSTANDING THE ASSOCIATION OF HAWAIIAN CIVIC CLUBS RESOLUTION NO. 14-28 IN LIGHT OF THE RULES GOVERNING RESOLUTIONS

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**February 4, 2015**

At its 55<sup>th</sup> Annual Convention at Waikoloa, Hawai'i, in November 2014, the governing body of the Association of Hawaiian Civic Clubs (AHCC) passed a significant resolution that altered its position on the subject of sovereignty. From a former position of self-determination and nation building that assumes sovereignty to be a political question or aspiration, to a position of a continued existence of an already existing sovereign state that has already exercised self-determination and nation building in the nineteenth century, a radical shift has taken place from a policy standpoint.

The former policy position of the AHCC as stated in the 2013 resolution no. 13-35—*Urging the Association of Hawaiian Civic Clubs to Organize, Plan and Execute and/or participate in a Constitutional Convention to realize a Native Hawaiian self-governing entity*, has been effectively replaced by the 2014 resolution no. 14-28—*Acknowledging the continuity of the*

*Hawaiian Kingdom as an independent and sovereign State*. The latter not only cancels the former policy position, but also affirmatively states in the active and not the passive voice that the AHCC acknowledges the continuity of the Hawaiian Kingdom as an independent and sovereign State. The AHCC operates on a majority rule and it is clear that the majority were the ayes and the minority were the noes. Furthermore, there were no resolutions passed at the 2014 annual convention that supported the *Native Hawaiian Roll* or federal recognition.

The two resolutions are irreconcilable and represent findings or points of view that are so different from each other that they cannot be made compatible. The former resolution was operating on the premise that the Hawaiian Kingdom does not exist and therefore *Kau Inoa* and Act 195 that created *Kana'iowalu* have been established for the purpose of participating in a process which Native Hawaiians could exercise *self-determination* under United States

federal law to seek federal recognition as a Native American tribe. Act 195's identification of Native Hawaiians as an indigenous people within the United States, must be read in context with the United States National Security Council's (USNSC) policy on indigenous people. On January 18, 2001, the USNSC announced its view of self-determination for indigenous people to mean *internal self-determination* "and indicates that it does not include a right of independence or permanent sovereignty over natural resources."<sup>1</sup> An indigenous people, by definition, are presumed not to have an already existing independent and sovereign State, but rather exists "within" an already existing independent and sovereign State, *i.e.* United States of America.

By the passing of resolution 14-28, the AHCC has effectively repealed any former policy supporting self-determination and federal recognition because it affirmatively states that the Hawaiian Kingdom continues to exist, and in its recitals of *whereases*, it states that "neither a joint resolution or a statute enacted by the U.S. Congress can have any legal effect beyond the borders of the United States, nor affect the sovereignty of a foreign State." The resolution also states in its *whereases* that "during the Spanish-American War, the United States began the illegal and prolonged occupation of the Hawaiian Kingdom," and "according to international law there is a legal presumption that occupation does not affect the continuity of the sovereignty

of the State even when there is no government claiming to represent the occupied State."

According to Oxford Dictionary, the term "resolution" is defined as "a formal expression of opinion or intention agreed on by a legislative body, committee, or other formal meeting, typically after taking a vote." In Black's Law Dictionary, a resolution is a "formal expression of the opinion or will of an official body or a public assembly, adopted by vote." In Robert's Rules of Order, a resolution is a motion or formal proposition that is offered for adoption by vote of an assembly.

The term "whereas" is used to begin a recital of a past fact, *e.g.* taking into consideration the fact that. In resolutions, it precedes a number of recitals of past facts, which is followed by an explanation for the resolution—"now therefore be it resolved." The recital of facts in a resolution is considered by the governing body to be uncontroverted, which means the facts are not disputed or denied. Robert's Rules of Order refers to the recitals of a resolution collectively as the preamble.

Resolutions are of two types—*factual resolutions* and *persuasive resolutions*. Factual resolutions use verbs such as *honoring*, *remembering*, *congratulate* and *acknowledging*, while persuasive resolutions use verbs such as *requesting*, *recommend* and *urge*. Since a resolution is by definition a "formal expression of opinion or intention" by a governing body, it can also be considered policy, which is defined by Oxford Dictionary as "a course or principle of action adopted" by a governing body. The resolution itself is the evidence of the

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<sup>1</sup> "U.S. National Security Council, *Position on Indigenous Peoples*," January 18, 2001, (visited February 4, 2015)  
<<http://www1.umn.edu/humanrts/usdocs/indigenou.doc.html>>.

adoption, but as to what form that resolution is to be seen is determined by the substance and verbs used.

There are two types of *factual resolutions*. There are those resolutions that merely recite facts and do not call to action, which are considered *policy resolutions*, and those types of resolutions that call for something to be done called *performance resolutions*. A *performance resolution* that acknowledges something is also a *policy resolution*. Oxford Dictionary defines the term “acknowledge,” as to “accept or admit the existence or truth of.” It is a verb used in *performance resolutions* that not only takes a policy position but also calls to action by the assembly that adopts it—the AHCC shall “accept or admit” the existence of the Hawaiian Kingdom as a sovereign and independent State.

*Persuasive resolutions* merely express intent for a specific action to take place in the future. It is neither a *policy resolution* nor a *performance resolution*. An example of a *persuasive resolution* is resolution no. 14-35—*Urges all members of Hawaiian Civic Clubs, Hawaiian Organizations, including the Office of Hawaiian Affairs, and the larger Hawai‘i community to honor and respect the strong political stance of our Kupuna who signed their names to the petition protesting annexation of Hawai‘i to the United States in 1897*. Resolution no. 13-35 is not a *factual resolution*, but rather a *persuasive resolution* because it urges the AHCC to Organize, Plan and Execute and/or participate in a Constitutional Convention to realize a Native Hawaiian self-governing entity. Resolution no. 14-28, however, is not only a *factual*

*resolution*, but also a *policy resolution* that reflects the position of the 2014 Convention.

When the majority has passed a resolution, which in this case is resolution 14-28, the minority cannot ignore it and must accept it as the new policy of the Association. One of the primary purposes of the Association is to “advocate positions endorsed by the Association at its annual Convention.”<sup>2</sup> The duties of the Board of Directors, however, can only “take appropriate actions and positions unanticipated by and not in conflict with actions taken by the annual Convention.”<sup>3</sup> In other words, the Association’s Board of Directors cannot take a position that is contrary to the position “taken by the annual Convention.” The term annual Convention is written in the singular and not the plural in the By-laws so it means the last Convention of the AHCC, since positions and policies of the AHCC change over time and are memorialized in the resolutions that pass the majority vote in the annual Conventions.

According to Article XI (1) of the AHCC’s Constitution, “the conduct of the business of the Association shall be guided by the provisions of its Constitution and By-laws and when applicable, the most recently revised version of Robert’s Rules of Order.” The AHCC’s President and Board of Directors only have the power that the AHCC’s Constitution and By-laws assign to them.

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<sup>2</sup> Article II (1) (b), AHCC Constitution as amended 2011.

<sup>3</sup> Article III (1) (g), AHCC By-laws as amended 2011.

The AHCC's Constitution and By-laws do not provide any authority for the Board of Directors to bypass the position taken by the delegates at the 2014 Convention. According to the AHCC's Constitution, they must every year "advocate positions endorsed by the Association at its annual Convention," and not the Convention of previous years that could theoretically span as far back as the first convention in 1959.

The reasoning behind this constraint and limitation of advocacy by the Association centers on the fact that resolutions are "a formal expression of opinion or intention." Being that an opinion is based upon information and understanding, it will change or evolve over time. In other words, each annual convention is a reflection of the delegates understanding and knowledge of a particular subject or topic that is under consideration to be voted upon by the delegates in plenary session. What was known and understood at the 2013 Convention did in fact change at the 2014 Convention because delegates acquired additional information and understanding, which is memorialized in resolution 14-28 that received a majority vote of the delegates.

Without this constraint of limiting advocacy for resolutions from the most recent annual Convention, Association Officer(s), Council Officer(s), member Club(s), or Club Member(s) could arbitrarily select resolutions from the past fifty-five annual Conventions to advocate. What was understood at the 1<sup>st</sup> annual Convention in 1959 is radically different from what the delegates understood at the Convention in 2014.

For any Association Officer(s), Council Officer(s), member Club(s), or Club Member(s) to advocate a resolution other than the last annual Convention, in this case the 55<sup>th</sup> annual Convention of 2014, would be in violation of Article II (1) (b) of the AHCC's Constitution and Article III (1) (g) of the AHCC's By-laws. Both Council Officer(s) and member Club(s) have the duty "to support the purpose and objectives of the Association" as stated in Article VII (1) (a) and Article VIII (1) (a) of the AHCC's By-laws, respectively. Even Club Member(s) "must commit to supporting the mission, goals, and objectives of the Association," as stated in Article IX (2) (a) of the AHCC's By-laws.

As such, the conduct or action would be considered *ultra vires*<sup>4</sup> and should be considered null and void because the Council Officer(s), member Club(s) or Club Member(s) had no authority in the first place to take such action or conduct in accordance with the AHCC's Constitution and By-laws. Black's Law Dictionary states that an act "is *ultra vires* when [a] corporation is without authority to perform it under any circumstances or for any purpose. By doctrine of *ultra vires* a contract made by a corporation beyond the scope of its corporate powers is unlawful."

Lastly, Article IV (2) of the AHCC's Constitution provides, "No officer or member club of this Association shall use the Association as a means of furthering the political aspirations of any person."

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<sup>4</sup> Black's Law Dictionary defines *ultra vires* as an "act performed without any authority to act on subject."