Do as I Say, Not as I Do

By Tim Halliday | *01/02/2013*

As the state of Hawaii enters a new era after the passing of the great Sen. Daniel Inouye, tremendous movements are taking place in the political landscape at both the national and local stages.

One of these is the ascendancy of Donna Mercado Kim to the presidency of the state Senate. With this, one would hope that it would bring a new focus on accountability, fiscal responsibility and stronger advocacy for Hawaii's people. However, a close inspection of two key issues, one of which has cost taxpayers somewhere in the vicinity of $1 billion (yes, that is with a "B") and one which has cost taxpayers substantially less, suggests that this would only be wishful thinking. Let's take a closer look.

Act 221

In response to a common sentiment that the state was too heavily dependent on tourism for its livelihood, the Legislature passed Act 178 in 1999 which intended to foment investments in Hawaii by high tech companies. The law offered a 10 percent tax rebate to qualified companies. However, because it was widely viewed that the requirements for the tax credits under Act 178 were too stringent, only 23 claims were made under that law. To try and further stimulate investment, the state passed Acts 297 and 221 a few years later which relaxed some of these requirements and increased the generosity of the credit to 100 percent. This made it the most generous tax credit in the United States at the time. With regard to the less stringent requirements to qualify for the credits, Sumner la Croix, Andrew Kato and James Mak who were all affiliated with the University of Hawaii Research Organization at the time, said, "When combined with the absence of a precise list of what activities qualified, it meant anything that could plausibly be argued to qualify had to be accepted."

These tax credits do not pass even the most generous cost-benefit analysis. Over $1 billion in credits were doled out between 1999 and 2010. Yet, no sane person would even begin to intimate that the state has even a semblance of a "high tech" industry. The primary reason for this failure is that the credits were given out indiscriminately with little regard to how the recipients would benefit the state economy over the long-haul. An excellent example of this was the receipt of $15 million of credits by the makers of the movie Blue Crush which was only a short-term project with nothing vested in the long term health of the state. To this end, the state auditor, Marion Higa, said in July 2012 that, "the State can neither measure nor ensure the effectiveness of the nearly $1 billion in tax credits."

The Legislature was warned about the misuse of the Act 221 tax credits. In testimony in 2004, the director of the Hawaii State Department of Taxation speculated that at least 20 percent of all the credits violated criminal or state laws. What was the Legislature's response? Do nothing, at least until the exigencies of the Great Recession started to take their toll on the state's coffers. Act 221 was allowed to expire in December of 2010.

Across the board, economists in both academia and government do not like targeted tax credits. We view such targeted tax schemes as easily abused. This is particularly true when the government lacks the will or the capacity to properly monitor the recipients and evaluate the benefits of the policy; this was clearly the case with Act 221.

Moreover, there are also non-trivial distributional implications to such policies. Given the absence of any clear benefit from the policy, the $1 billion of forfeited revenue had to be made up in other ways. In effect, this meant a transfer of wealth from hard-working households across the state to large corporations conferring little to no benefit upon the state. In short, aside from opening the floodgates to corruption and misuse, it was not an equitable policy by any measure.

And yet, no one was held accountable. No hearings. No mea culpa.

"The Wonder Blunder"

Now we arrive at the failed fund-raiser at the University of Hawaii in which the university was bilked out of $200,000 by a charlatan claiming to be Stevie Wonder's booking agent. After one tallies up monies being spent cleaning the mess, reasonable estimates place the total cost of the debacle somewhere between $1 million and $2 million. The event exposed poor fiscal oversight at the athletic department of the university which was then headed by Jim Donovan. Justifiably, there was a massive public outcry in response, particularly, after Donovan was not fired by the university, but instead was awarded a plum job in the Manoa Chancellor's office. The university was viewed as incompetent, arrogant and as if it operated with a sense of impunity. Sen. Kim led the charge.

However, pretty much entirely missing from the public discourse, is a critical assessment of the behind-the-scenes machinations that led to this utterly bizarre outcome. Particularly, little if anything has been said in the public sphere concerning their legality. For those who are not familiar, I am referring to a letter that President Greenwood had sent to the Board of Regents on October 2, 2012. The media and the Legislature expressed a healthy dose of self-righteous moral indignation in response Greenwood's demand for $2 million for leaving the university. This was largely viewed as a shake-down. What was given practically no attention was the core purpose of the letter.

In the letter, Greenwood documented in detail and with evidence three instances in which Gov. Abercrombie threatened Greenwood with congressional hearings if she did not reinstate Donovan as the athletic director. Of note is a voice message left for Greenwood on August 16, 2012 in which the governor said:

> ...because I assure you, if this issue is not resolved, decisively, on Wednesday, by Thursday, you're going to be in the thick of a Senate investigation and all that that entails. I don't think that's a good outcome.

In addition, he stated:

> I reiterate to you my, my ah projection is, I can't say for certain but what I told you was going to happen, what I thought would happen, has happened and I, again, what I think is going to happen, if this suggestion is not acted on is that by Wednesday evening or whenever that Regents meeting end, if there is not a satisfactory and decisive conclusion that there will be a full-fledged effort by the Legislature or members of the Legislature to bring it to a conclusion themselves.

My assessment is that to preserve the autonomy of the university, Greenwood did not grant the governor his wish. Enter the governor's hatchet woman: Donna Kim.

Greenwood's missive underscores many issues that have been omitted from the public dialogue. First, the decision not to fire Donovan was, most likely, largely a consequence of the governor not Greenwood. Ironically, it appears as if the university wanted to hold Donovan accountable. Second and this is largely not appreciated at all in the Legislature or by the media, the governor's actions may have been illegal for two reasons. First, the constitution of the State of Hawaii stipulates that the university is to remain autonomous from the state government. Dictating personnel decisions to President Greenwood most likely would have violated this. Second, Greenwood's contract with the university also guarantees autonomy from local government. It is also illegal to violate the terms of a contract. No earnest discussion of these potential violations of the law was put forth by the local media. Claims that Greenwood was a whistleblower were summarily dismissed with the same sanctimonious tone that characterized much of the reaction to the whole event. Third, it is not clear why the governor would insist on reinstating someone who clearly did not do his job properly, but it does raise the specter of cronyism on the part of the state government. Finally, a key condition for the university to maintain its accreditation is that it remains free from political interference from political entities. This is true of most if not all state-funded universities in the United States. The governor's actions compromised this.

So, where are we at and where do we go?

Perhaps, Sen. Kim was correct to hold hearings in the wake of the failed concert. After all, a large sum of money was lost and the UH administration did appear "feckless" to quote one UH faculty member. However, I do have several questions for her. First, given that key members of the state government, including the governor, may have broken the law, why did she not take them to task as well? Should not they have also been part of the investigation? It would seem that this should have been the case if accountability and transparency were the primary aims of the hearings. Second, when the state loses sums of money that are far greater than what was lost in the Wonder Blunder, why is there not a commensurate level of scrutiny on the part of the Legislature? As discussed above, Act 221 is case-in-point. The state lost about $1 billion and most commentators attribute this to improper oversight on behalf of the Legislature. Nothing was done while the state was hemorrhaging copious amounts of money; no one was held accountable for the policy failure. Clearly, the Legislature does not hold itself to the same standards to which it holds others.

It is also important to emphasize that as the media was propagating the notion that the university is horribly managed (largely in the sports pages), a lot has been going well at the university. Unfortunately, at least from a public relations perspective, the things that have gone well have largely been on the academic side of the university — mauka of Dole Street. As President Greenwood said in an open letter to the UH community, enrollment at the university has increased by 10,000 since 2005 and graduation rates are also up. In addition, the university brought in $489 million of extra-mural funding last year which ranks UH in the top 10 percent of all colleges and universities nationwide. The university also recently opened a new center for cancer research that was completed under budget. This past month, UH received a $9.2 million gift to fund among other things research in astronomy and oceanography and to facilitate culinary training. But I guess that this does not make up for a disappointing showing by the Warriors this season.

As we push forward into the new millennium, I would appreciate that the state government and the university renew their partnership so that we can further improve life for the people of Hawaii and the university. Clearly, these two goals are not at loggerheads; rather they are complimentary. Our state economy is dangerously dependent on two volatile industries: tourism and military spending. With the passing of Daniel Inouye and on-going budgetary problems in the federal government, the latter will be particularly challenged. If we are to diversify our economy so that we can wean ourselves off of this perilous dependence, the university will have to play a key role as we train our future workforce and conduct research that can be used to spawn new industries. Many state universities in the United States such as the University of Texas, University of California at San Diego and the University of Washington have been major engines of economic growth in their respective locales. The University of Hawaii could also play such a role. We just need your support.

Donna Mercado Kim has not responded to a request clarifying her position on Act 221. I welcome a clarification of her position on the failed measure as well as responses to the questions posed above in these pages.

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