



## KAMEHAMEHA SCHOOLS BERNICE PAUHI BISHOP ESTATE

BOARD OF TRUSTEES

RICHARD S.H. WONG  
CHAIRMAN

O. K. STENDER  
FIRST VICE CHAIR

LOKELANI LINDSEY  
SECOND VICE CHAIR

GERARD A. JERVIS  
SECRETARY

HENRY H. PETERS  
TREASURER

**CONFIDENTIAL**

**VIA HAND DELIVERY**

August 8, 1997

Na Kumu o Kamehameha

Ladies & Gentlemen:

Your letter of August 6, 1997 has been referred to me for a response.

Kamehameha Schools Bishop Estate (KSBE) responds affirmatively to your application to meet in our facilities; provided, however, that if you become a labor organization, this permission will be withdrawn consistent with longstanding policy.

As you may be aware, the issue of management domination and assistance to unions and the establishment of "company unions" has received extensive attention in Congress and at the NLRB in recent years. Many sophisticated employers, including the Reno Hilton, Electromation, and Dupont have tried working with employee communication groups only to find out they were committing what the NLRB considered to be an unfair labor practice. Our desire in handling your request is to comply with the law and to achieve positive communications with our employees and staff without "dealing with" matters in a collective bargaining fashion.

An organization to foster Hawaiian values and strengthen *lokahi* among our KSBE *ohana* can be accorded the privilege to use our facilities on the same basis as other organizations and for the same reason--the perpetuation of Hawaiian values and KSBE's mission.

As an organization that is not now a labor organization, but which is an integral part of our KSBE *ohana* seeking to promote Hawaiian values and solutions to communications problems, you are therefore welcome to arrange to use our facilities for meetings.

Na Kumu o Kamehameha  
August 8, 1997  
Page 2

At this juncture, and based upon your August 6 letter, we are under the impression that Na Kumu has not yet decided to become a labor organization. Should you ever do so, you will have to abide by our policy to withhold the use of our facilities for meetings, as it would be applied to any other unions.

Sincerely,



Nathan T. K. Aipa, General Counsel  
Office of the General Counsel

NTKA:aas

cc: Patrick Yim  
Richard S. H. Wong  
Oswald Stender  
Lokelani Lindsey  
Gerard Jervis  
Henry Peters  
Michael Chun  
Rockne Freitas  
Anthony Ramos  
Kahele Kukea  
Suzanne Ramos

ROBERT BRUCE GRAHAM, JR. 1305-0  
ASHFORD & WRISTON  
Ali'i Place, Suite 1400  
1099 Alakea Street  
Honolulu, HI 96813  
Telephone No. 539-0400

RECEIVED  
15 FEB 24  
YAMAMOTO  
CLERK

Attorney for Petitioners,  
The Trustees under the Will and of  
the Estate of Bernice Pauahi Bishop,  
Deceased

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT  
STATE OF HAWAII

In the Matter of the Estate )  
of ) EQUITY NO. 2048  
BERNICE P. BISHOP, ) PETITION OF THE TRUSTEES FOR  
Deceased. ) INSTRUCTIONS; EXHIBIT "A"

PETITION OF THE TRUSTEES FOR INSTRUCTIONS

TO THE HONORABLE PRESIDING JUDGE OF THE ABOVE-ENTITLED COURT:

Come now Richard Sung Hong Wong, Oswald Kofoad Stender, Marion Mae Lokeiani Lindsey, Gerard Aulama Jarvis and Henry Haalilio Peters, Petitioners herein, and respectfully shows as follows:

1. Petitioners are the duly appointed, qualified and acting Trustees under the Will and of the Estate of Bernice Pauahi Bishop, Deceased ("Ke Ali'i Pauahi") who died at Honolulu, Hawaii on October 16, 1884, and whose Will and two codicils thereto were

5/22/97 Bernice  
Court  
Revised

duly admitted to Probate in the Supreme Court of the Hawaiian Islands on December 2, 1884.

2. Petitioners all are residents of the City and County of Honolulu, State of Hawai'i.

3. Petitioners' post office address is Kamehameha Schools Bernice Pauahi Bishop Estate, P. O. Box 3466, Honolulu, Hawai'i 96801 and Petitioners' business address is Kawaiaha'o Plaza, Suite 200, 567 South King Street, Honolulu, Hawai'i 96813.

4. The Estate of Bernice Pauahi Bishop is a perpetual, charitable trust estate of which there is no vested remainder beneficiary; it exists solely for the benefit of the Kamehameha Schools; there are no unborn, unascertained or minor beneficiaries of the Estate; and there are no other persons interested in the Estate within the meaning of §560:7-201 of the Hawai'i Uniform Probate Code and Rule 126 of the Hawai'i Probate Court Rules other than the Attorney General of the State of Hawai'i, acting as *parens patriae*, who will be given due notice of this Petition.

5. The assets of The Estate consist of real, personal and other properties having an estimated value in excess of \$2.0 billion.

6. This Petition is submitted pursuant to Section 560:7-201(a), Hawai'i Revised Statutes, and Rule 126 of the Hawai'i Probate Court Rules. Section 560:7-201(a) provides in relevant part as follows:

*The court has jurisdiction of proceedings initiated by trustees ... concerning the internal affairs of trusts. Proceedings which may be maintained under this section are those concerning ... the declaration of rights and the determination of other matters involving trustees and beneficiaries of trusts.*

Section 560:7-201(a) also provides that this Court has jurisdiction

*... to determine any question arising in the administration ... of any trust ..., to instruct trustees, and to determine the existence or nonexistence of any immunity, power, privilege, duty or right.*

7. By her Will, a true and accurate copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference, Ke Ali'i Pauahi gave, devised and bequeathed her residuary estate unto her Trustees, to hold upon the following trusts, namely:

*to erect and maintain in the Hawaiian Islands two schools, each for boarding and day scholars, one for boys and one for girls, to be known as, and called the Kamehameha Schools.*

8. Also by her Will, Ke Ali'i Pauahi gave particular instructions concerning the erection, care and management of the Kamehameha Schools, as follows:

*I also give unto my said trustees full power to make all such rules and regulations as they may deem necessary for the government of said schools and to regulate the admission of pupils, and the same to alter, amend and publish upon a majority vote of said trustees.*

9. Petitioners have a fiduciary obligation to exercise prudently the collective power given them by the Will, including, without limitation, their power with respect to the government of the Kamehameha Schools.

10. Petitioners are empowered, but not obliged, to delegate aspects of the foregoing power to qualified professional employees retained by them, in which event Petitioners are obliged to exercise collective oversight and ultimate control of any and all such employees.

*Handwritten:* 5/22/97  
*Handwritten:* 048  
*Handwritten:* 111

Petitioners has access to different but sometimes limited sources of information and those sources at times have differing interests and perspectives.

18. Efforts to initiate a process to assemble complete and accurate information have been unsuccessful to date.

19. The 1996-97 school year ends shortly and there is now a brief opportunity to conduct an impartial inquiry and make appropriate decisions before the commencement of the next school year without undue disruption of school programs, and class schedules.

20. The time-sensitive nature of the situation requires the immediate selection of a neutral and impartial third-party fact finder (hereinafter, the "Fact Finder") charged with the obligation to ascertain the material and relevant facts concerning the allegations, rumors and innuendo now affecting management and administration of the Kamehameha Schools and the consequent internal situation arising therefrom (collectively, the "Controversy").

21. In the interests of actual and apparent fairness to all concerned and for the good of the Kamehameha Schools, the Fact Finder must be a person of unquestioned probity whose fairness and integrity will be recognized by all Trustees and their administrators, staff and employees.

22. Petitioners have concluded that Patrick K. S. L. Yim is such a person. Judge Yim is a retired judge of this Court and is familiar with applicable and controlling principles of trust law. He now acts as a commercial mediator and is familiar with the principles of neutral fact-finding and alternative dispute resolution. He would appreciate the sensitive nature of the Controversy and can be expected to be sensitive to the



impact that his inquiry and findings may have upon administrators, staff and employees of the Kamehameha Schools Bernice Pauahi Bishop Estate. As a retired judge and active mediator, he is competent to hear and assess allegations, to synthesize and assemble facts and to respect appropriate confidences and privileges. He has indicated his willingness to serve as the Fact Finder.

23. Petitioners now require the instructions of this Court in the premises.

WHEREFORE, Petitioners pray as follows:

1. That this Honorable Court make and enter its Order fixing a date and time for hearing of this Petition;
2. That this Honorable Court make and enter its Order, Judgment and Decree:
  - a. Authorizing and instructing Petitioners with respect to their proposed delegation to a Fact Finder of the requisite power and authority (i) to conduct an inquiry into the Controversy; (ii) to act as a mediator with full authority to inquire of the Trustees, their administrators, staff and employees concerning the Controversy; (iii) to render to all of the Trustees and the Estate's General Counsel a written report of his findings of material and relevant facts concerning the Controversy; and (iv) to render to all Petitioners privileged advice and counsel with respect to resolution of the Controversy.
  - b. Approving the appointment of Patrick K. S. L. Yim as the Fact Finder, to serve as such without bond, and, if he shall decline the appointment or, having accepted it, thereafter shall be unable or unwilling to continue to serve, retaining jurisdiction to appoint a replacement Fact Finder upon application.

Section 560:7-201(a) also provides that this Court has jurisdiction

*... to determine any question arising in the administration ... of any trust ..., to instruct trustees, and to determine the existence or nonexistence of any immunity, power, privilege, duty or right.*

7. By her Will, a true and accurate copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference, Ke Ali'i Pauahi gave, devised and bequeathed her residuary estate unto her Trustees, to hold upon the following trusts, namely:

*to erect and maintain in the Hawaiian Islands two schools, each for boarding and day scholars, one for boys and one for girls, to be known as, and called the Kamehameha Schools.*

8. Also by her Will, Ke Ali'i Pauahi gave particular instructions concerning the erection, care and management of the Kamehameha Schools, as follows:

*I also give unto my said trustees full power to make all such rules and regulations as they may deem necessary for the government of said schools and to regulate the admission of pupils, and the same to alter, amend and publish upon a majority vote of said trustees.*

9. Petitioners have a fiduciary obligation to exercise prudently the collective power given them by the Will, including, without limitation, their power with respect to the government of the Kamehameha Schools.

10. Petitioners are empowered, but not obliged, to delegate aspects of the foregoing power to qualified professional employees retained by them, in which event Petitioners are obliged to exercise collective oversight and ultimate control of any and all such employees.



11. There now exists a serious internal situation arising from various allegations concerning the management and administration of the Kamehameha Schools

12. The administration of the Kamehameha Schools is a function reserved to the Trustees that cannot be entirely delegated by them to their employees, including, without limitation, the incumbent president of the Kamehameha Schools. Among other things, it is alleged that such functions as have been delegated are not being effectively exercised. It is alleged by others that the administration of the Kamehameha Schools has been improperly usurped without requisite approval, action or authority of the Trustees.

13. These allegations and others have given rise to a situation which affects the efficient government of the Kamehameha Schools, the reputations of Trustees, administrators and teachers, the morale and education of students, the retention of teachers and administrators and the general administration of the Estate.

14. Petitioners are without sufficient personal knowledge or information to form a belief as to the accuracy of the foregoing allegations.

15. It is vitally important to the welfare of the Kamehameha Schools Bernice Pauahi Bishop Estate that these allegations be resolved promptly by Petitioners.

16. Effective fact finding and collective decision making require that the Trustees have access to all of the material and relevant facts and a reasonable opportunity to review and discuss those facts.

17. Complete and accurate information concerning the material and relevant facts is not available to Petitioners. What information does exist is so contradictory and inconclusive that collective decision making is substantially impaired. Each of the

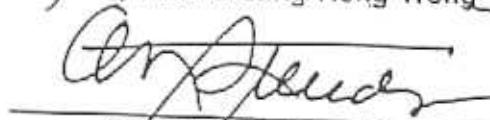
c. Authorizing Petitioners to pay the reasonable fees and expenses of the Fact Finder out of the Estate.

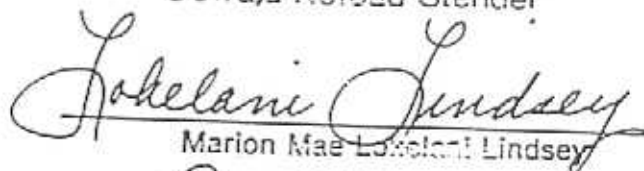
3. That this Honorable Court grant such other and further relief as to it shall seem just and equitable in the premises.


Each of the undersigned persons understands that this Petition is deemed to include an oath, affirmation or statement to the effect that its representations are true as far as each of the undersigned persons knows or is informed, and that penalties for perjury may follow deliberate falsification.

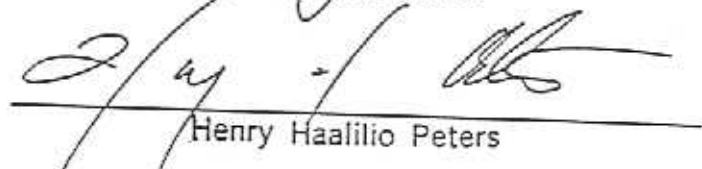
DATED: Honolulu, Hawai'i, this 14th day of May, 1997.

  
Richard Sung Hong Wong

  
Oswald Kofoad Stender

  
Marion Mae Loxolani Lindsey

  
Gerardi A. Lewis Jarvis

  
Henry Haalilio Peters

Hawai'i Probate Rule 5(b) Certification:  
Robert Bruce Graham, Jr.  
Attorney for Petitioners

