

DISSENTING OPINION BY ACOBA, J.

I respectfully dissent with the majority's decision to affirm the first circuit court's September 5, 1997 Order granting the Motion to Dismiss First Amended Complaint filed by defendant Hana Community Health Center (HCHC).

The decision to privatize the Hana Medical Center (HMC), based on the plain language of Act 263, was conditioned upon resolving the status of existing employees. Specifically, Act 263 provided:

- (2) The department of health shall release the [HMC] from the division of community hospitals, effective July 1, 1997, upon the successful completion of the terms of the agreement and resolution of the following issues:
 - (A) The status of the current state employees working at the [HMC] after the transition to the nonprofit organization.

1996 Haw. Sess. L. Act 263, § 2, at 615 (emphases added).

Webster's Third New Int'l Dictionary 2518 (3rd ed. 1961) states that "upon" includes "use[] as a function word to indicate (1) a beginning course of action or an action or condition that is beginning." Hence, the plain language of Act 263 required the "successful completion" of the "resolution" of the "status of the current state employees working at the [HMC]" before beginning privatization. As written, the Act contemplated the resolution was to be completed before the effective date of privatization. Thus, the "resolution" of the employees' status was not merely "directory," as the circuit court held, but a condition precedent to privatization.

On its face the provision is ambiguous as to what was intended by a "resolution" of the "status of the current State employees . . . after the transition[.]" However, according to legislative history, "resolution" included preservation of the affected employees' benefits:

Concerns were expressed about the status of employees after the transition and about the existing ambulance service. The discussion clearly established that committee members want existing benefits of current employees to be preserved. . . . Your Committee notes that page 3 of the bill requires both of these issues to be resolved prior to the release of the Center from the Division of Community Hospitals.

Hse. Stand. Comm. Rep. No 1103-96 in 1996 House Journal, at 1470 (emphasis added).

Accordingly, I would vacate the circuit court's September 5, 1997 Order granting defendant HCHC's Motion to Dismiss First Amended Complaint and remand the case. Genuine issues of material fact existed with regard to the status of the State employees working at HMC after the transition to the nonprofit organization. As indicated by Act 263, it must be established as a condition of privatization that Defendants complied with the intent expressed by the Legislature, i.e., in this case the preservation of existing benefits for the then current employees. Thus, Plaintiffs-Appellants' claim should have survived the Motion to Dismiss.