DISSENTING OPINION BY RAMIL, J.,
IN WHICH ACOBA, J., JOINS.

The issue in this case is whether Defendant-Appellant Cheyenne Makalii's request for a ride into town constituted a "fee" within the meaning of Hawai'i Revised Statutes (HRS) § 712-1200 (Supp. 2001).[1] Makalii was convicted of petty misdemeanor offense of prostitution under section 712-1200 following a bench trial and was sentenced to pay a fine of $500.00. Makalii filed a timely notice of appeal and now appeals the judgment of the trial court, arguing that the trial court erred by classifying "a ride into town" as a "fee." Makalii alleges that the trial court erred when it interpreted "fee" broadly and loosely to mean anything "of value" so as to include Makalii's request for a ride into town. Because I believe that the trial court erred when it

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[1] Because the case at bar raises a very important issue dealing with the statutory construction of the word "fee," I strongly feel that it is critical for this court to publish this opinion. In Doe v. Doe, ___ Hawai'i ___, 52 P.3d 255, 267 (2002) (Ramil, J., dissenting), I noted that:

> There should be no question that separate opinions are more than simply the losing side of a vote. Publication of dissenting and concurring opinions assures the public that its court of last resort is not acting as a Star-chamber, assists future courts in revisiting issues where error may have been made or the times require further consideration, provides the legal community with a more thorough understanding of the different viewpoints espoused by the justices of the court, and oftentimes provides a basis for legislative response. The majority's current practice demonstrates its belief that a minority of the court is incapable of correctly determining that an opinion has precedential value. The danger of such practice is that the majority that makes the substantive decision always has the power to decide if the dissent will be permitted to express its disagreement with the majority.

52 P.3d at 268 n. 4. Accordingly, I will re-iterate my earlier recommendation that this court adopt Rule 36(b)(2)(C) of the United States Court of Appeals for the First Circuit, which provides that, "When a panel decides a case with a dissent, or with more than one opinion, the opinion or opinions shall be published unless all participating judges decide against publication. In any case decided by the court en banc the opinion or opinions shall be published." (Emphasis added.)

included "a ride into town" within the meaning of a "fee," I respectfully dissent.

Subsection 1 of HRS § 712-1200 provides that "[a] person commits the offense of prostitution if the person engages in, or agrees or offers to engage in, sexual conduct with another person for a fee." The interpretation of a statute, such as section 712-1200, is a question of law reviewable de novo. State v. Arceo, 84 Hawai'i 1, 10, 928 P.2d 843, 852 (1996). In that regard, the court's "foremost obligation is to ascertain and give effect to the intention of the legislature, which is to be obtained primarily from the language contained in the statute itself. [The court] must read statutory language in the context of the entire statute and construe it in a manner consistent with its purpose." State v. Putnam, 93 Hawai'i 362, 367, 3 P.3d 1239, 1244 (quoting Gray v. Administrative Dir. of the Court, 84 Hawai'i 138, 148, 931 P.2d 580, 590 (1997) (citations omitted)).

In addition to examining the language in a statute, "the courts may resort to extrinsic aids in determining the legislative intent. One avenue is the use of legislative history as an interpretive tool." Gray, 84 Hawai'i at 148, 931 P.2d at 590 (quoting State v. Toyomura, 80 Hawai'i 8, 18-19, 904 P.2d 893, 903-04 (1995)). This court has previously stated that:

> [W]e have rejected an approach to statutory [interpretation] which limits us to the words of a statute, no matter how clear they may appear upon perfunctory review. For we recognize "our primary duty [in interpreting statutes] is to ascertain the intention of the legislature and to implement that intention to the fullest degree," and where "there is . . . material evidencing legislative purpose and intent, there is no reason for a court to seek refuge in 'strict

> construction,' 'plain meaning,' or 'the popular sense of the words.'
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> We therefore turn to the history of [the statute] to ascertain whether the legislature might have had another meaning in mind when it adopted the language in question. But "we do so with the recognition that only [a clear] showing of contrary intentions from that data would justify a limitation on the 'plain meaning' of the statutory language."

Kaiama v. Aguilar, 67 Haw. 549, 554, 696 P.2d 839, 842 (1985) (internal citations omitted).

With these principles of statutory construction in mind, we now turn to the language of section 712-1200(1). The word "fee" in that provision is commonly understood in our daily lives to mean money or other property. When one thinks of the word "fee" the most common examples that come to mind are tuition fees, filing fees, or any *tangible* property given in exchange for professional services, admissions, tuition, etc.. Contrary to what Appellee would have us believe, although fee is a *form* of payment, the word "fee" cannot be interpreted to be synonymous with, and as broad as payment, itself. Makalii correctly argues that construing the term "fee" too broadly to mean "anything of value" would lead to absurd results as demonstrated by the hypothetical situations posed by the defendant-appellant in Tisdale v. State, 640 S.W.2d 409 (Texas 1982), which interpreted the term "fee" in the Texas prostitution statute, which was similar to section 712-1200. For example, one cannot reasonably conclude that a woman is guilty of prostitution if she accepts an offer made by a man, whom she just met, to have a romantic dinner by candlelight in his apartment with the obvious inference that the evening should end in his bedroom. See id. To conclude

otherwise would not only be a mockery of modern-day dating and social interactions but, indeed, a distortion of the meaning of "prostitution" and the policies behind the regulations designed to control the commercialization of sex.

Because I believe that the trial court erred in finding Cheyenne Makalii guilty of prostitution in violation HRS § 712-1200, I respectfully dissent.