

SUNSHINE LAW MEETING
MINUTES OF THE HAWAII STATE ETHICS COMMISSION

State of Hawaii

Date: Wednesday, December 17, 2014

Time: 10:00 a.m.

Place: Hawaii State Ethics Commission Conference Room
American Savings Bank Tower
1001 Bishop Street, Suite 960
Honolulu, Hawaii 96813

Present: State Ethics Commission Members
Edward L. Broglio, Chair
David O'Neal, Vice Chair
Susan N. DeGuzman, Commissioner
Ruth D. Tschumy, Commissioner
Melinda Wood, Commissioner

State Ethics Commission Staff
Leslie H. Kondo, Executive Director
Susan D. Yoza, Associate Director
Nancy C. Neuffer, Staff Attorney
Virginia M. Chock, Staff Attorney
Megan Y. S. Johnson, Staff Attorney
Bonita Y. M. Chang, Staff Attorney

CALL TO ORDER

The meeting was called to order at approximately 10:01 a.m. by Chair Broglio.

SUNSHINE LAW SESSION

Agenda Item No. I: Minutes: Consideration and Approval of the Minutes of the November 19, 2014, Meeting

Commissioner Wood moved and Vice Chair O'Neal seconded a motion to approve the minutes of the November 19, 2014, Sunshine Law meeting. The motion carried unanimously (Broglio, O'Neal, DeGuzman, Tschumy, and Wood voting).

Agenda Item No. II: Executive Session Minutes: Consideration and Approval of the Minutes of the November 19, 2014, Executive Session

Commissioner Tschumy moved and Commissioner DeGuzman seconded a motion to approve the Executive Session minutes of the November 19, 2014, meeting. The motion carried unanimously (Broglio, O'Neal, DeGuzman, Tschumy, and Wood voting).

Chair Broglio announced that the Commission would first consider Agenda Item Nos. VI and VII, after which the Commission would proceed with Agenda Item Nos. III, IV, and V.

Agenda Item No. VI: Fundraising for Private Non-Profit Organizations Using State Resources; Consideration of Staff Recommendation that the Commission Issue Ethics Guidance to the State Administration Regarding the Use of State Resources to Fundraise for Private Charities in State Offices

Staff Attorney Neuffer thanked the public in attendance as well as the members of the informal group that the staff had formed to help vet the issues. Staff Attorney Neuffer provided a brief overview of the staff's review of the appropriateness under the State Ethics Code for the State to use state resources to fundraise for the Aloha United Way ("AUW") Campaign. More specifically, Staff Attorney Neuffer summarized the staff's recommendation that the Commission recommend to the Governor that he consider adopting a combined campaign type of fundraising model to replace the current AUW Campaign as the State's workplace giving campaign.

Chair Broglio acknowledged the receipt of written testimony regarding this agenda item and asked whether there were any members of the public who wished to testify on this matter.

The Commission received oral testimony supporting AUW, the AUW Campaign, and generally, urging the Commission to reject the staff's recommendation from the following individuals: Cindy Adams, President and Chief Executive Officer of AUW; Judy Lind, Executive Director of the Kukui Center; Joanne Kealoha, ILWU Social Worker; Ryan Kusumoto, President and Chief Executive Officer of Parents and Children Together; Nikki Love Kingman, Public Policy Director for HANO; Than Aye, Coordinator of the Pacific Gateway Center, fka the Immigrant Center of Hawaii; Lahela Aiwohi, of the Maui United Way ("MUW") Board of Directors and on behalf of the President and Chief Professional Officer, Laksmi Abraham; Scott Giarman, Executive Director of the Kauai United Way ("KUW"); Norm Baker, AUW's Chief Operating Officer; David Bangert, professor emeritus from the University of Hawaii's Shidler College of Business; Michele Saito, President of DTRIC Insurance, former President of Farmers Hawaii; Dick Rosenblum, Chair of the Board of Directors of AUW; Rochelle Lee Gregson, Chief Executive Officer of the Honolulu Board of Realtors; Alan Shinn, Executive Director for the Coalition for a Drug-Free Hawaii; and Eileen Shinn, REACH International.

Commissioner Tschumy said that A UW's position that the current workplace giving campaign was the state's campaign, with A UW acting as the "back engine," made sense. Chair Broglio said that since the staff's recommendation states that the A UW campaign does not violate the State Ethics Code, he believes that there is no need to change the campaign model and that staff can address complaints such as coercion in the workplace.

Chair Broglio asked for a motion on the staff's recommendation. No motion was made. Accordingly, the Commission took no action with respect to the staff's recommendation.

The Commission recessed the meeting at approximately 12:05 p.m. and reconvened at approximately 12:17 p.m.

Agenda Item No. VII: Public School Student Fundraising Activities for Private Non-Profit Organizations; Consideration of Whether the State Ethics Code's Fair Treatment Law Prohibits the Department of Education's Use of State Resources for Student Fundraising Activities to Support Private Non-Profit Organizations

Staff Attorney Neuffer provided a brief overview regarding the staff's recommendation regarding the application of the State Ethics Code to the school-sanctioned fundraising activities organized during instructional hours and involving students to benefit private charitable organizations. Staff Attorney Neuffer explained that, after further discussion and consideration, the staff had revised the recommendation that had been provided to the Commission as part of its meeting materials. Staff Attorney Neuffer informed the Commission that the staff believed that the Commission, generally, should defer to the Department of Education's determination as to whether a fundraising activity was consistent with the Department's educational mission and, if so, the Commission should consider the fundraising activity to be for a school "purpose," rather than a private business purpose prohibited by HRS section 84-13(3). Staff Attorney Neuffer also discussed staff's concerns regarding fair treatment in the selection of a charity and potential undue pressure on students to participate.

Chair Broglio opened the floor to public testimony on this agenda item.

The Commission received oral testimony from the following individuals: Mary Fastenau, American Heart Association ("AHA"); Chloe Brown, Director of the AHA regarding AHA's Jump Rope for Heart and Hoop for Hearts programs; Don Weisman, Government Relations Director for the AHA; Jay Tschillard; and Cindy Vaillancourt on behalf of State Representative Lauren Matsumoto.

Chair Broglio asked whether the students needed to pay or bring in solicitations to participate in the Jump Rope for Heart program. Chloe Brown answered that the students are not required to donate, and that materials such as jump ropes are provided to the schools.

Commissioner Wood asked if homeless children face stigmas if they are not able to raise any money and inquired about the procedure to participate in Jump Rope for Hearts. Ms. Brown replied that AHA is non-discriminatory and that students are given a letter to inform the family about the program. Commissioner Tschumy said that in her experience it is the teacher's responsibility to make sure that no student is stigmatized.

RECESS OF PUBLIC MEETING AND CONVENING OF EXECUTIVE SESSION

At approximately 12:47 p.m., Vice Chair O'Neal moved and Commissioner DeGuzman seconded a motion to recess the Sunshine Law meeting and to convene an executive session pursuant to Haw. Rev. Stat. section 92-5(a)(4), to consult with the Commission's attorneys on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities. The motion carried (Broglio, O'Neal, DeGuzman, and Wood voting aye; Tschumy voting nay).

EXECUTIVE SESSION

The Commission met in Executive Session.

RECESS OF EXECUTIVE SESSION AND RETURN TO THE PUBLIC MEETING

At approximately 12:55 p.m., the Commission reconvened the public meeting.

With respect to the use of state resources and facilities, Staff Attorney Neuffer and Executive Director Kondo re-stated the staff's recommendation that the Commission construe HRS section 84-13(3) to allow school-sanctioned fundraising activities by students during the instructional hours and using school resources as long as the DOE has determined that there is a legitimate and reasonable educational purpose associated with those activities, i.e., a state purpose. Staff Attorney Neuffer further stated that with respect to the general fair treatment law under HRS section 84-13, staff recommends that the Commission provide guidance to the DOE to ensure that the DOE follows objective standards for selecting DOE fundraising activities and that there is no undue pressure or coercion on students to participate.

Commissioner Tschumy moved and Commissioner Wood seconded a motion to accept staff's recommendation on this agenda item. The motion carried unanimously (Broglio, O'Neal, DeGuzman, Tschumy, and Wood voting).

Agenda Item No. III: Executive Director's Report

1. Education Schedule (Transition Planning: Mandatory, New Legislative Staff, New Administration Staff)

Executive Director Kondo said staff will be conducting two mandatory ethics training sessions for newly elected legislators and certain newly appointed state officials

on January 16, 2015, and January 28, 2015. Executive Director Kondo said staff is considering opening the training sessions to include the legislators' staff or conducting a separate ethics training session for legislators' staff. Executive Director Kondo said that, at the request of Robert Lindsey, Chair of the Board of Trustees of the Office of Hawaiian Affairs, staff will conduct ethics training for the trustees and staff on January 15, 2015. Executive Director Kondo said that he will also be conducting ethics training for the Kauai Region Board of the Hawaii Health Systems Corporation on January 21, 2015.

2. Report Regarding Council on Governmental Ethics Laws (COGEL) Conference

Executive Director Kondo gave a brief report regarding the COGEL conference that he had attended in Pittsburgh, Pennsylvania.

3. Lobbyists Workshop: January 14, 2015

Executive Director Kondo said staff would be conducting a workshop for lobbyists on January 14, 2015, at the Hawaii Convention Center in conjunction with the City and County of Honolulu Ethics Commission.

Agenda Item No. IV: 2015 Commission Meeting Schedule

Associate Director Yoza reviewed the proposed 2015 Commission meeting schedule and indicated that Commission meetings would be held on the third Wednesday of every month to begin at 10:00 a.m., with the exception of the January meeting due to the opening of the 2015 Legislature. Vice Chair O'Neal asked that the January meeting be scheduled to another day. Chair Broglio suggested moving the January meeting to Thursday, January 22, 2015.

Commissioner Tschumy moved and Commissioner DeGuzman seconded a motion to approve the Commission meeting schedule for 2015 as amended. The motion carried unanimously (Broglio, O'Neal, DeGuzman, Tschumy, and Wood voting).

Agenda Item No. V: State Ethics Commission Proposed Budget for Fiscal Year 2015-16; Consideration of the Proposed Budget for Fiscal Year 2015-16

Associate Director Yoza provided a brief overview of the proposed budget for fiscal year 2015-16. Associate Director Yoza indicated that there are no increases to the budget, except for a one-time request for additional monies to hire a consultant to develop a better e-filing system for financial disclosures filings and lobbying filings.

Executive Director Kondo said that the \$75,000 was a gross estimate based on the staff's research and previous estimates to developing a web-based filing system. Executive Director Kondo said he expects PacXa, the Commission current computer consultant, and Hawaii Information Consortium ("HIC"), the State's portal manager, to provide estimates for the work that will be incorporated into the budget request.

Executive Director Kondo said HIC is exploring a temporary fix to improve the current electronic filing system and to make the forms compliant with the Americans with Disabilities Act.

Commissioner Tschumy asked about salary increases. Executive Director Kondo said that staff's salary is budgeted according to increases that the legislature appropriated in 2013 for the 2013-14 and 2014-15 fiscal years, but that the budget request does not include salary increases for the 2015-16 fiscal year. Executive Director Kondo explained that, generally, the legislature will appropriate an amount that is equal to the same percentage salary increase that the Hawaii Government Employees Association ("HGEA") negotiates for its members. Executive Director Kondo said that he is unaware of whether HGEA has negotiated salary increases for the 2015-16 fiscal year.

Commissioner DeGuzman moved and Commissioner Tschumy seconded a motion to approve the proposed budget for fiscal year 2015-16, with the understanding that the one-time appropriation for a consultant to develop an e-filing system may be adjusted. The motion carried unanimously (Broglia, O'Neal, DeGuzman, Tschumy, and Wood voting).

Agenda Item No. VIII: Registration and Reporting Requirements for Lobbyists and Organizations that Engage in Lobbying Activities; Consideration of Staff Recommendation that the Commission Review Its Current Interpretation and Application of Certain Provisions of the State Lobbyists Law, Hawaii Revised Statutes Chapter 97

Associate Director Yoza said that the staff's recommendations to the Commission on this agenda item were posted on the Commission's website for public comment. There was no public testimony on the recommendations. Associate Director Yoza then summarized the nine issues in the recommendations regarding the registration and reporting requirements of the Lobbyists Law: (1) application of the Lobbyists Law to employees of an organization who lobby as part of their job duties; (2) application of the Lobbyists Law to grassroots lobbying; (3) Lobbyists Law exemption for individuals who represent themselves before the legislature; (4) Lobbyists Law exemption for persons with special expertise; (5) reporting expenses for preparing written testimony and exhibits for hearings before the legislature; (6) lobbying reports for special sessions of the legislature; (7) reporting in-kind contributions received for the purpose of lobbying; (8) reporting of expenditures by lobbyists and organizations that hire lobbyists; (9) reporting travel costs incurred for the purpose of lobbying. Associate Director Yoza asked the Commission to approve the staff's recommendations.

Vice Chair O'Neal suggested that the Commission defer the approval of the staff's recommendation until the Commission discussed a related matter in Agenda Item No. X.

Agenda Item No. IX: Reconsideration of Current Interpretation of Hawaii Revised Statutes Sections 84-14(d), 84-18(b), and 84-18(c)

Staff Attorney Chock said that the staff's recommendation to the Commission on this agenda item was posted on the Commission's website for public comment. Staff Attorney Chock provided a brief overview of HRS sections 84-14(d), 84-18(b), and 84-18(c), which prohibit legislators, employees, former legislators, and former employees from assisting and/or representing any person or business for compensation on certain matters before their own state agencies or former agencies or on the same matters in which they participated in their state capacities.

Staff Attorney Chock stated that the Commission currently interprets the phrase "any person or business" to not include the legislator, employee, former legislator, former employee; and construes the phrase to generally mean only a third party. Staff's recommendation is to revise the current interpretation of the law by determining that "any person or business" also includes the legislator, employee, former legislator, or former employee.

Staff Attorney Chock stated that the staff recommends that any revised interpretation be applied prospectively, and that the Commission take no action with respect to any current or existing situations that may be inconsistent with any revised construction. Executive Director Kondo suggested that the Commission also could delay enforcement of the revised interpretation until, for instance, July 1, 2015, to allow employees to learn of the revised interpretation and conform their conduct.

Vice Chair O'Neal asked how many employees would be affected by the revised interpretation. Staff Attorney Chock said that, generally, any agency which historically has routinely contracted with its own employees would be affected by the revised interpretation. Executive Director Kondo and Associate Director Yoza provided several specific examples for the Commission.

Presley Pang, Associate General Counsel from the University of Hawaii ("UH"), testified in opposition to the proposed revised interpretation recommended by the staff. Mr. Pang asked the Commission to either defer its decision on the staff's recommendation or suspend its decision as to the application to the UH and the Research Corporation of the University of Hawaii ("RCUH"). Mr. Pang indicated that UH may ask the legislature to provide clarification of the law or an exemption for UH and RCUH or, in the alternative, could seek relief from the courts. Mr. Pang indicated that the revised interpretation would have a far-reaching effect on many researchers that have contracts.

The Commission recessed the meeting at approximately 2:50 p.m. and reconvened the meeting at approximately 2:58 p.m.

RECESS OF PUBLIC MEETING AND CONVENING OF EXECUTIVE SESSION

At approximately 2:58 p.m., Commissioner DeGuzman moved and Commissioner Wood seconded a motion to recess the public meeting and to convene an executive session pursuant to Haw. Rev. Stat. section 92-5(a)(4), to consult with the Commission's attorneys on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities. The motion carried (Broglia, O'Neal, DeGuzman, and Wood voting aye; Tschumy voting nay).

EXECUTIVE SESSION

The Commission met in Executive Session.

ADJOURNMENT OF EXECUTIVE SESSION AND RETURN TO THE PUBLIC MEETING

At approximately 3:23 p.m., the Commission returned to the public meeting.

Commissioner Wood moved and Commissioner DeGuzman seconded a motion to: (1) revise the interpretation of the phrase, "any person or business," in HRS sections 84-14(d), 84-18(b), and 84-18(c) to also include the legislator, employee, former legislator, former employee and any business; (2) enforce the revised interpretation effective July 1, 2015; and (3) not enforce the revised interpretation retroactively to current or existing situations.

The Commission discussed the matter further.

Commissioner Tschumy called for the vote, and the motion did not carry (Broglia and DeGuzman voting aye; O'Neal and Tschumy voting nay; Wood abstaining).

Agenda Item No. X: Act 224, 2014 Session Laws of Hawaii: Enforcement of Lobbyist Reporting Requirement 30 Days After 2014 Special Session of the State Senate; Consideration of Staff Recommendation that the Commission Take No Administrative Action Against Lobbyists and Organizations for Failure to File Expenditure Reports within 30 days of 2014 Special Session Convened by the State Senate to Consider and Consent to the Appointment of Judicial Nominees

Executive Director Kondo said staff received a handful of lobbyist reports after the special session regarding confirmation of judicial nominees. The vast majority of lobbyists and organizations, however, did not file lobbyist reports, most likely because they did not lobby during the special session and were not aware that the new law required them to file a report.

Commissioner DeGuzman moved and Commissioner Tschumy seconded a motion to take no administrative action against lobbyists and organizations for failure to file expenditures reports within 30 days of the 2014 special session regarding the confirmation of judicial nominees. The motion carried unanimously (Broglio, O'Neal, DeGuzman, Tschumy, and Wood voting).

The Commission returned to Agenda Item No. VIII, which motion was deferred until after the discussion on Agenda Item No. X.

Agenda Item No. VIII: Registration and Reporting Requirements for Lobbyists and Organizations that Engage in Lobbying Activities; Consideration of Staff Recommendation that the Commission Review Its Current Interpretation and Application of Certain Provisions of the State Lobbyists Law, Hawaii Revised Statutes Chapter 97

Commissioner DeGuzman moved and Commissioner Tschumy seconded a motion to approve staff's recommendations with respect to the application of the Lobbyists Law to the issues that were discussed. The motion carried unanimously (Broglio, O'Neal, DeGuzman, Tschumy, and Wood voting).

Agenda Item No. XI: Complaint by Tom and Christine Russi Regarding Executive Director; Consideration of Complaint Regarding Executive Director's Direction to Tom and Christine Russi that All Communication with the Hawaii State Ethics Commission Be Directed to Him

Commissioner DeGuzman disclosed that she had prior experience with Tom and Christine Russi during her tenure at the Chief Justice's office at the Supreme Court and believed that she could be fair in her decision making.

Executive Director Kondo said that a letter addressed to the Commissioners was received from Tom and Christine Russi, complaining about his request to the Russis that all communication with the Commission be directed to him. In October 2014, Executive Director Kondo had notified Mr. and Mrs. Russi that all of their communications with the office was to be directed to him, unless it concerned a complaint against him. Any complaint by Mr. and Mrs. Russi against the Executive Director would be handled by Associate Director Yoza. Executive Director Kondo said that Tom and Christine Russi have sent numerous emails and other communication regarding their complaint to Associate Director Yoza, as well as to Chair Broglio and the Commissioners.

Vice Chair O'Neal asked if staff had any ongoing investigations regarding the individuals that Mr. and Mrs. Russi were complaining about in their email. Executive Director Kondo said that Mr. and Mrs. Russi's email states they would be filing charges with the Commission against five individuals, one of whom was him. The single attachment to their email, however, concerns only one of the five individuals.

Chair Broglio asked what prompted Mr. and Mrs. Russi's first email. Executive Director Kondo said that Mr. and Mrs. Russi have contacted the staff and other state offices with many issues involving employees throughout the State. Executive Director Kondo said that rather than having other staff deal with Mr. and Mrs. Russi, he, as the administrator of the Commission's office, would handle all communication with Mr. and Mrs. Russi.

Chair Broglio felt that it would be appropriate for the Executive Director or the Associate Director to acknowledge receipt of Mr. and Mrs. Russi's letter, which has already been accomplished. Commissioner Tschumy said that Mr. and Mrs. Russi's complaint should be handled in the same manner as any other complaint received and handled by the staff. Commissioner DeGuzman said that Mr. and Mrs. Russi should communicate with Associate Director Yoza only after their complaint against the Executive Director had been properly lodged.

Executive Director Kondo asked if the Commissioners would allow him to respond to Mr. and Mrs. Russi on their behalf. The Commission agreed by consensus that Executive Director Kondo would acknowledge in writing to Mr. and Mrs. Russi that the Commissioners received their letter addressed to Chair Broglio and the Commissioners.

ADJOURNMENT

At approximately 4:13 p.m., Commissioner DeGuzman moved and Vice Chair O'Neal seconded a motion to adjourn the Sunshine Law meeting. The motion carried unanimously (Broglio, O'Neal, DeGuzman, Tschumy, and Wood voting).

The meeting was adjourned at approximately 4:13 p.m.

Minutes approved on January 22, 2015.