

SUNSHINE LAW MEETING
MINUTES OF THE HAWAII STATE ETHICS COMMISSION

STATE OF HAWAII

Date: Thursday, February 18, 2016
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
Susan N. DeGuzman, Chair
David O'Neal, Vice Chair
Ruth D. Tschumy, Commissioner
Melinda Wood, Commissioner
Reynaldo D. Grauly, Commissioner

State Ethics Commissioner 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. Chang, Staff Attorney

In Attendance:
Robyn Chun, Attorney General

CALL TO ORDER

Chair DeGuzman called the meeting to order at approximately 10:05 a.m.

Agenda Item No. I: Minutes: Consideration and Approval of the Minutes of the December 2, 2015, meeting

Executive Director Kondo said that at page 3, paragraph 2 "Derrick Chow" should be "Derrick Ichiyama."

Vice Chair O'Neal moved and Commissioner Grauly seconded the motion to approve December 2, 2015 Sunshine Law minutes, as amended. **The motion carried unanimously** (DeGuzman, O'Neal, Tschumy, Wood and Grauly voting).

Agenda Item No. II: Elections of Officers for 2016

The initial vote for chair, conducted via secret ballot, resulted in a tie between Chair DeGuzman and Commissioner Wood. After a re-vote between Chair DeGuzman and Commissioner Wood, Chair DeGuzman was elected to continue serving as the Commission's Chair for 2016.

The Commission elected Vice Chair O'Neal to continue serving as the Commission's Vice Chair for 2016.

Agenda Item No. III: Executive Director's Report

1. Education/Training Report:

Executive Director Kondo reported that the Oahu Island Burial Council had requested training at their January meeting but that the meeting was cancelled and that staff expected to work with the Burial Council on a new date.

Executive Director Kondo announced that staff had scheduled general ethics training sessions for state employees on March 15, May 26 and September 15. All of the sessions will be at the City's Mission Memorial Auditorium. Executive Director Kondo also said that staff had scheduled lobbyists training in the afternoon on March 15 and that he expects staff to participate in trainings for specific employee groups, at the group's request.

2. Update Regarding 2015 Delinquent Financial Disclosure Filers

Staff Attorney Chang said that staff is in the process of following up with just a few employees who had received the late notices.

3. December 2015 and January 2016: Guidance and Assignment Statistics

Executive Director Kondo reported on the AOD type advice that the Commission had received in December 2015 and January 2016 and the number of assignments opened and closed during that period. He also noted that the numbers remained relatively consistent with prior months.

4. TMT Decision

Executive Director Kondo explained that he had provided the Hawaii Supreme Court's opinion regarding TMT to remind the Commissioners that the Commission's process must not only be fair but it must also appear fair. Executive Director Kondo noted that the Court criticized the BLNR's process, concluding that it did not satisfy the appearance of justice.

5. COGEL Conference

Executive Director Kondo reported that he had attended the COGEL Conference in early December 2015. He said that the conference confirmed to him that the Commission is working in the same direction as other jurisdictions. Executive Director Kondo stated that he intends to consider an internal restructuring to create an enforcement branch.

6. Recruitment of Commissioner Applicants

Executive Director Kondo said that the Judiciary had issued a press release seeking applicants for the Commission. Chair DeGuzman's term expires on June 30, 2016.

Agenda No. IV: 2016 Legislative Sessions/Bills

Executive Director Kondo presented the legislative time table and discussed the legislative deadlines.

Executive Director Kondo summarized a number of bills.

He reported that H.B. No. 2720, which is the bill that includes the Commission's appropriation, had passed out of both bodies and had been transmitted to the Governor for his signature.

Executive Director Kondo stated that S.B. No. 3024 will re-appropriate some of the funds that the legislature had appropriated to the Commission to develop an electronic filing system. Executive Director Kondo said that the bill proposes to take some of the funds to create a task force to review the Lobbyists Law.

Executive Director Kondo stated that there are a number of bills relating to technology transfer at the University of Hawaii. He discussed the status of each of the bills. Executive Director Kondo explained that staff had suggested language which was adopted to limit the application of the exemption from the State Ethics Code to the UH employees who are directly involved in the development and commercialization of technology.

Executive Director Kondo said that he received an e-mail from a deputy attorney general advising that the department had opined in response to a request for Representative Karl Rhoads that it was unconstitutional to exempt employees from the State Ethics Code. However, Executive Director Kondo reported that the deputy attorney general had not responded to his e-mail asking whether the Commission's testimony was inconsistent with the department's opinion. Executive Director Kondo said that he does not want the bill to pass only to be vetoed because the Attorney General's office has concerns about the constitutionality of the bill.

Executive Director Kondo reported there are a number of bills relating to the teacher chaperone travel issue. He stated that the House Committee on Education had amended H.B. No. 1713 to repeal the section of the State Ethics Code that requires the Commission to liberally construe the statute. The Commission's testimony strongly opposes the bill. The Commission had testified that the bills are unnecessary because the Department of Education can simply develop procedures to address the issues raised by the Commission.

Vice Chair O'Neal questioned Executive Director Kondo's responses to a legislator's question about whether the Commission had unanimously agreed on the teacher chaperone travel issue. Discussion was held between Executive Director Kondo and the Commissioners regarding the Commission's Advisory Opinion which was signed by all of the Commissioners.

Vice Chair O'Neal said that the Commission's vote was 3 to 2 and said that he wanted to make the record clear that the vote was 3 to 2. Vice Chair O'Neal said that Executive Director Kondo had told the Commissioners that they must sign the advisory opinion. Executive Director Kondo said that he had not and would not have done so. Executive Director Kondo noted that all of the Commissioners had signed the advisory opinion and that staff was not informed that any of the Commissioners disagreed. Vice Chair O'Neal asked Executive Director Kondo to listen to the recording of the Commission's discussion of the advisory opinion.

Executive Director Kondo stated H.B. No. 182 is still alive, which will amend the penalty section of the Lobbyists Law by removing the word "willfully."

Executive Director Kondo stated that H.B. No. 813 will restore the exception for legislators in the fair treatment law to "legislative function." Executive Director Kondo reported that the bill has been approved by both the House and Senate and will likely be considered in conference.

Discussion held regarding legislators' duties. Executive Director Kondo stated that, if the H.B. No. 813 passes, the phrase "legislative function" is narrower than official duties and the Commission has historically construed the phrase to be consistent with the legislators' immunity in the State Constitution.

Executive Director Kondo stated S.B. No. 2442 which makes Children and Youth Day a state event continues to move forward.

Agenda No. V: Boyd vs. Hawaii Ethics Commission

Executive Director Kondo reported that the Hawaii Supreme Court had granted William Eric Boyd's petition for writ of certiorari and had requested additional briefing on the issue of whether Eric Boyd was a state employee. Discussion held by Executive Director Kondo and the Commission.

Agenda No. VI: Attorney General Opinion Regarding Legislators' "Official Duties"

Executive Director Kondo invited Deputy Attorney General Robyn Chun to the Commission meeting to talk about the Attorney General's opinion in response to the Commission's question about the interpretation of "official duties as a legislator." Executive Director Kondo suggested that the Commission consider convening an executive session to discuss the opinion with Deputy Attorney General Chun.

Commissioner Graulty moved and Commissioner Wood seconded a motion to convene an executive session pursuant to section 92-5(a)(4) to consult with the Commission's attorneys about questions and issues pertaining to Commission's power, duties, privileges, immunities and liabilities. **The motion carried unanimously** (DeGuzman, O'Neal, Tschumy, Wood and Graulty voting).

The Commission recessed the public meeting and moved into an executive session at approximately 11:19 a.m.

The Commission reconvened the public meeting at approximately 11:55 a.m.

Agenda No. VII: Hawaii State Teachers Association's Notice of Appeal to the Circuit Court

Deputy Attorney General Chun reported that HSTA had appealed the Commission's order denying HSTA's petition. Deputy Attorney General Chun discussed the timing of the filings for the appeal.

Discussion held regarding whether to stay HSTA's appeal pending the legislature's consideration of the teacher-chaperone travel bills. Executive Director Kondo said that, in his opinion, it would not be in the Commission's best interest to stay the appeal. He said that he felt that, if the circuit court affirms the Commission's order, it would be a "feather in the Commission's hat," and if the court determined that the Commission erred, the Commission would learn from the court's decision.

Deputy Attorney General Chun stated her belief that the advantage of staying the proceedings was that the Commission wouldn't unnecessarily risk an adverse ruling. Further discussion held. Deputy Attorney General Chun further advised that she believed that there was no harm in proceeding.

Agenda No. VIII Commissioner's Enforcement Procedures

Executive Director Kondo stated Deputy Attorney General Chun was present to discuss the Commission's authority to resolve cases. Executive Director Kondo recommended that the Commission to convene an executive session to discuss the concern raised by Deputy Attorney General Chun.

Commissioner Graulty moved and Vice Chair O'Neal seconded a motion to convene an executive session pursuant to section 92-5(a)(4) to consult with the Commission's attorneys about questions and issues pertaining to Commission's power, duties, privileges, immunities and liabilities. **The motion carried unanimously** (DeGuzman, O'Neal, Tschumy, Wood and Graulty voting).

The Commission recessed the public meeting and moved into an executive session at approximately 12:06 p.m.

The Commission reconvened the public meeting at approximately 12:52 p.m.

Agenda No IX: Interpretation of the Lobbyists Law, HRS Chapter 97

Executive Director Kondo stated that there are numerous challenges in interpreting the Lobbyists Law. Executive Director Kondo recommended that the Commission convene an executive session to discuss interpretation of the statute and the legal issues that may arise with that interpretation.

Commissioner Graulty moved and Commissioner Wood seconded a motion to convene an executive session pursuant to section 92-5(a)(4) to consult with the Commission's attorneys about questions and issues pertaining to Commission's power, duties, privileges, immunities and liabilities. **The motion carried unanimously** (DeGuzman, O'Neal, Tschumy, Wood and Graulty voting).

The Commission recessed the public meeting and moved into an executive session at approximately 1:00 p.m.

The Commission reconvened the public meeting at approximately 1:41 p.m.

Agenda No. X: Adjournment

Commissioner Tschumy moved and Commissioner Grafty seconded a motion to adjourn the Sunshine Law meeting. **The motion carried unanimously** (DeGuzman, O'Neal, Tschumy, Wood and Grafty voting).

The Sunshine Law meeting was adjourned at approximately 1:41 p.m.