

SUNSHINE LAW MEETING  
MINUTES OF THE HAWAII STATE ETHICS COMMISSION

State of Hawaii

Date: Thursday, January 16, 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  
Cassandra J. Leolani Abdul, Chair  
Edward L. Broglio, Vice Chair  
Susan N. DeGuzman, Commissioner  
Ruth D. Tschumy, Commissioner  
David O'Neal, 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

**CALL TO ORDER**

The meeting was called to order at approximately 10:00 a.m. by Chair Abdul.

**SUNSHINE LAW SESSION**

Agenda Item No. 1: Election of Officers for 2014

By secret ballot, Chair Abdul was re-elected as Chair and Commissioner Broglio was re-elected as Vice Chair.

Agenda Item No. 2: Minutes: Consideration and approval of the minutes of the November 20, 2013, meeting

Commissioner Tschumy moved and Commissioner O'Neal seconded a motion to approve the minutes of the November 20, 2013, Sunshine Law meeting. The motion carried unanimously (Abdul, Broglio, DeGuzman, O'Neal, and Tschumy voting).

Agenda Item No. 3: Executive Director's Report

1. Council on Governmental Ethics Laws (COGEL) 35<sup>th</sup> Annual Conference, December 8-11, 2013, Quebec City, Quebec, Canada

Executive Director Kondo said that he, Chair Abdul, and Staff Attorney Megan Johnson attended the 35<sup>th</sup> Annual COGEL Conference in Quebec City. Staff Attorney Johnson said that the conference was very informative and relevant to the activities of the Hawaii State Ethics Commission. Staff Attorney Johnson noted that she enjoyed the opportunity to network with other COGEL members. Executive Director Kondo said that the 2014 COGEL Conference will be held during the second week of December 2014, in Pittsburgh, Pennsylvania.

Vice Chair Broglio suggested that COGEL include a program on utilizing technology to collect and report required disclosure filings via the Internet.

2. Hawaii State Ethics Commission Financial Report FY 2013-2014 (Quarter Ending December 31, 2013)

Executive Director Kondo presented the Hawaii State Ethics Commission Financial Report FY 2013-2014 (Quarter Ending December 31, 2013) to the Commission. Executive Director Kondo noted that the significant increase in expenditures for consulting services was due to a recent computer server crash.

3. 2014 Legislative Session

Executive Director Kondo said that the 2014 Legislative Session opened on January 15, 2014, and that House Bill No. 1072, requiring members of the University of Hawaii Board of Regents to file public financial disclosures, was scheduled to be heard on January 16, 2014. Executive Director Kondo said that a similar bill was introduced last year, requiring members of boards that are the head of a department (i.e., Board of Land and Natural Resources), and boards that are composed of full-time state employees (i.e., the Public Utilities Commission), as well as the UH Board of Regents, to file public financial disclosure statements. Staff will request that the legislature consider adding the members of these boards to the list of public filers.

Executive Director Kondo said that Commissioners will be notified when the State Ethics Commission's budget hearing is scheduled and that the Commissioners are welcome to attend the hearing.

#### Agenda Item No. 4: Ethics Advisory

Executive Director Kondo explained that the purpose of "ethics advisories" is to widely disseminate guidance to state employees and the public on various ethics-related matters. Ethics advisories discuss well-settled issues or Commission decisions, and are issued by staff without prior notification to or approval from the Commission. Executive Director Kondo asked if the Commission had concerns with the process of issuing ethics advisories.

Chair Abdul said that she had no objection to the issuance of the ethics advisories as long as they pertain to well-settled issues previously considered by the Commission. Commissioner Tschumy asked if ethics advisories should reflect that they are issued by Commission staff since the Commission does not review the ethics advisories prior to publication.

Executive Director Kondo said that the ethics advisories could be sent to Commissioners for review prior to publication. However, if the Commission wants to approve the issuance of an ethics advisory, the advisory must be included on a Sunshine Law agenda. Executive Director Kondo said that if staff has the discretion to issue ethics advisories, they can be forwarded to Commissioners before they are issued and Commissioners may individually discuss the advisories with staff.

Chair Abdul said that as long as the ethics advisories pertain to well-settled issues that the Commission previously discussed, the advisories should be issued in a timely manner in order to be relevant and preclude further issues from coming before the Commission. Chair Abdul said that the Commissioners should be informed that an ethics advisory is being issued. Chair Abdul expressed her concerns with Commissioners individually discussing ethics advisories with staff and revisions being made to advisories based on discussions with the Commissioners.

Commissioner Broglio said that ethics advisories based on the law and well-settled matters should be issued by staff, and all other matters should be brought before the Commission for discussion. Commissioner Tschumy said that ethics advisories issued regarding matters not previously discussed with Commissioners should reflect that the advisories are being issued by Commission staff.

Commissioner O'Neal asked if issuing an ethics advisory is the only option for preventing further ethics violations or if staff can issue guidance directly to the parties involved in a particular matter. Commissioner O'Neal preferred to have more advance notice regarding the issuance of ethics advisories so that he may understand the issues being addressed in the advisories.

Chair Abdul said that Executive Director Kondo is the spokesperson for the Commission and that staff has been very careful to speak out only on well-settled issues. If the Commission disagrees with staff's guidance, it is possible for the Commission to retract or amend the guidance.

Executive Director Kondo said he addressed the Macy's Believe Promotion issues with the specific school and Department Of Education staff involved, as well as the Make-A-Wish Foundation's wish child's mother. However, staff believed that a broader notification regarding the Macy's Believe Promotion should be disseminated via an ethics advisory. Executive Director Kondo said that as long as there is no timing issue, he will send ethics advisories to Commissioners prior to issuance.

Chair Abdul said that language contained in the ethics advisories state that they are based on the law and Commission precedent and it is clear that it is not staff issuing advice on their own. Commissioners Broglio, DeGuzman and O'Neal agreed. Commissioner DeGuzman said that staff provides guidance on ethics matters and the public must be able to rely on that guidance.

Commissioner Broglio requested that ethics advisories, to the extent possible, be sent to the Commissioners prior to issuance. Commissioner Tschumy said she would prefer the ethics advisories be issued "on behalf of the Commission" if the advisories concern matters not previously addressed by the Commission.

Chair Abdul said that in the matter of the Macy's Believe Promotion, the particular organization (Macy's) may not have been previously addressed by the Commission, but the underlying issue was previously addressed by the Commission, and the particular organization at issue does not change the advice rendered by the Commission.

Chair Abdul said that it is the consensus of the Commission that ethics advisories should continue to reflect that they are the advice of the Commission. Staff will send copies of ethics advisories to Commissioners, to the extent possible, prior to issuance. Chair Abdul cautioned Commissioners against speaking for the Commission on matters that are not settled by precedent and stated that questions regarding specific issues should be referred to Executive Director Kondo.

Executive Director Kondo said that it is his understanding that the Commission will support the advice issued by staff on their behalf, even if individual Commissioners may disagree with staff's advice. In the future, if the Commission disagrees with the advice issued by staff, staff will subsequently render advice pursuant to the Commission's direction. Executive Director Kondo said that it is the advice of the Commission being rendered and staff speaks on behalf of the Commission. Executive Director Kondo said that staff will continue to issue ethics advisories regarding matters they feel are well-settled and the wording of the advisories will not be changed. Executive Director Kondo said that staff will, to the extent possible, send copies of ethics advisories to Commissioners prior to issuance.

Agenda Item No. 5: Legislative Allowances

Executive Director Kondo requested this matter be deferred to the February 19, 2014, meeting.

Agenda Item No. 6: William Eric Boyd vs. Hawaii State Ethics Commission, Civil No. 13-1-0115 (Agency Appeal)

Commissioner Tschumy recused herself from this agenda item and left the meeting at approximately 10:44 a.m.

Executive Director Kondo reported that Third Circuit Court Judge Greg K. Nakamura issued the final judgment in William Eric Boyd vs. Hawaii State Ethics Commission. Executive Director Kondo reported that the Department of the Attorney General filed a Notice of Appeal in this matter on behalf of the Commission to the Intermediate Court of Appeals on January 14, 2014, and that Mr. Boyd may file a Notice of Cross-Appeal.

Executive Director Kondo reviewed a letter from Deputy Attorney General Robyn Chun to Mr. Boyd's attorney, Ted Hong, Esq., regarding payment for the portion of the Commission's fine that was affirmed by the Third Circuit Court (\$4,500) and said that Mr. Boyd requested a payment plan. Chair Abdul said the Commission did not have any issues with Mr. Boyd's proposed payment plan.

Commissioner Tschumy returned to the Commission meeting at approximately 10:48 a.m.

**ADJOURNMENT**

At approximately 10:48 a.m., Commissioner DeGuzman made and Vice Chair Broglio seconded a motion to adjourn the Sunshine Law meeting. The motion carried unanimously (Abdul, Broglio, DeGuzman, O'Neal, and Tschumy voting).

The meeting was adjourned at approximately 10:48 a.m.

Minutes approved on February 19, 2014.