

SUNSHINE LAW MEETING
MINUTES OF THE HAWAII STATE ETHICS COMMISSION

State of Hawaii

Date: Wednesday, February 19, 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
Lori S. Nishimura, 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. I: Minutes: Consideration and approval of the minutes of the January 16, 2014, meeting

Staff Attorney Johnson presented revised draft minutes of the January 16, 2014, Sunshine Law meeting that included Associate Director Yoza in the list of Commission staff present during the meeting for the Commission's consideration.

Commissioner DeGuzman moved and Commissioner O'Neal seconded a motion to approve the revised version of the minutes of the January 16, 2014, Sunshine Law meeting. The motion carried unanimously (Abdul, Broglio, DeGuzman, O'Neal, and Tschumy voting).

Agenda Item No. II: Executive Director's Report

1. Training: Mandatory, Kapiolani Community College, Charter Schools

Executive Director Kondo reported that staff conducted two sessions for state officials, including newly appointed Representative Richard Creagan, the Superintendent and Deputy Superintendent of Education, and a number of members of the Board of Education, who are required to attend mandatory ethics training.

Executive Director Kondo also reported that staff will conduct ethics training for Kapiolani Community College faculty and employees in March 2014, and that staff is working with the State Public Charter School Commission to schedule ethics training for charter school employees. Executive Director Kondo said that he expects ethics training for charter school employees to be held in Kona and Hilo on the Big Island, on Kauai and on Oahu.

2. Judicial Council's Recruitment of Applicants for Ethics Commissioners

Executive Director Kondo reported that the Judicial Council is currently seeking applicants to serve on the Ethics Commission. Both Chair Abdul's and Commissioner O'Neal's terms expire on June 30, 2014.

Agenda Item No. III: 2014 Legislative Session, Discussion of pending bills relating to the State Ethics Code, Haw. Rev. Stat. chapter 84, and the Lobbyists Law, Haw. Rev. Stat. chapter 97

Executive Director Kondo summarized the following bills, the Commission's testimony with respect to those bills, and the bills' status:

1. H.B. No. 2650, H.D. 1, Making Appropriations to Provide for the Expenses of the Legislature, the Auditor, the Legislative Reference Bureau, the Ombudsman, and the Ethics Commission.
2. H.B. No. 449, Proposed H.D. 1, Relating to the Code of Ethics.
3. H.B. No. 601, H.D. 1, Relating to Standards of Conduct.
4. H.B. No. 1072, H.D. 1, Relating to the Board of Regents of the University of Hawaii.
5. H.B. No. 2378, H.D. 1, Relating to Training.

6. S.B. No. 2682, Relating to Financial Disclosure Statements.
7. S.B. No. 2959, S.D. 1, Relating to Nepotism.
8. S.B. No. 2423, Relating to the Department of Education.

Regarding H.B. No. 2650, H.D. 1, Executive Director Kondo said that the Senate Committee on Ways and Means heard the bill earlier that morning.

Dan Purcell, a member of the public, stated that the Senate Committee on Ways and Means recommended that the bill be passed, unamended.

Executive Director Kondo discussed statistics regarding the different types of work performed by staff in 2013 that were mentioned in the attachments to the Commission's written testimony. Specifically, Executive Director Kondo explained the various types of duties and issues that staff handles, such as financial disclosure statements, candidates financial disclosure statements, and lobbying reports that are filed with the Commission; the Attorney-of-the-Day (or AOD) advice; complaints, investigations and charges; and training.

Vice Chair Broglio asked if it is possible to perform electronic searches of financial disclosure statements to determine those employees who disclosed an interest in a particular company. Executive Director Kondo said that financial disclosure statements are converted into computer-readable text (OCR'd) but, because some of the financial disclosure statements are handwritten, that he was uncertain whether the search results would be comprehensive. Executive Director Kondo explained that a query more likely would relate to a specific employee who may be alleged to have a conflict of interest and staff can search for and view that specific employee's financial disclosure statement. Executive Director Kondo suggested that determining all of the employees who have an interest in a particular company may not be helpful for purposes of examining whether an employee has a conflict of interest because an important factor is whether the employee took official action directly affecting the company.

Regarding S.B. No. 2423, Executive Director Kondo stated that he believed the bill was in response to the Commission's Ethics Advisory 2013-06 regarding the Macy's Believe Promotion. Executive Director Kondo explained that, at the Senate Committee on Education's hearing on the bill, Senator Michelle Kidani questioned whether the Commission had reviewed the ethics advisory regarding the Macy's Believe Promotion prior to it being issued by staff. Senators Kidani and Jill Tokuda expressed their expectation that the Commission would review the testimony submitted in support of the bill at the Commission's February 19, 2014, meeting. Executive Director Kondo further recounted the concerns that Senators Kidani and Tokuda expressed about the ethics advisory foreclosing schools from important experiences in community service. Executive Director Kondo described the numerous Department of Education fundraising issues that have been brought to staff's attention and said that the fair treatment law was unambiguous in prohibiting a state employee from using state time and resources for non-state business purposes, which by definition includes non-profit organizations.

Executive Director Kondo explained the concerns that staff had with the bill and cited hypothetical examples of situations that would be allowed under the bill.

Vice Chair Broglio suggested that perhaps the legislature would be open to participating in a committee or task force on this issue rather than passing the bill.

Commissioner Tschumy said she thought the public did not understand the guidance issued in connection with the Macy's Believe Promotion. Commissioner Tschumy also agreed that the participation of children in charitable fundraising efforts could be a positive experience. Commissioner Tschumy was concerned that the guidance issued in connection with the Macy's Believe Promotion might be a case of "winning a battle but losing the war."

Executive Director Kondo explained that the State Ethics Code applies to all state employees, including Department of Education employees, and that the Commission cannot carve out exceptions. Executive Director Kondo stated that the Commission's responsibility is to administer the State Ethics Code and the legislature's responsibility is to create exceptions, if such exceptions are important.

Executive Director Kondo expressed his concerns about carving out exemptions from the Ethics Code, as this bill does. Executive Director Kondo also mentioned that staff received feedback after the ethics advisory regarding the Macy's Believe Promotion was issued from parents who felt that fundraising activities at their children's schools were becoming excessive. Executive Director Kondo also pointed out that there are non-profit organizations which some people find objectionable and that under the bill, fundraising for these non-profit organizations would also be permitted.

Commissioner O'Neal questioned whether the bill was a policy decision for the legislature, and because the Commission is responsible only for applying laws passed by the legislature, he suggested not supporting or opposing it. Executive Director Kondo expressed his concern with that approach and suggested that it was the Commission's responsibility to submit testimony when it has concerns about a bill or when a bill may be contrary to the broader purpose of the State Ethics Law.

Chair Abdul stated that her concerns involve unintended consequences the bill might create. Chair Abdul was concerned that the exemption for schools might have unintended effects, just as the exemption for task force members resulted in unintended results with respect to the fair treatment provision of the State Ethics Code.

Agenda Item No. IV: Legislative Allowances, Consideration as to the types of expenditures and disbursements with legislative allowance funds that are inconsistent with the State Ethics Code

Executive Director Kondo explained that staff received a complaint from a legislator about another legislator's use of legislative allowance funds. As a result of

that complaint and a subsequent complaint from another legislator, staff requested and reviewed lists of the annual legislative allowance disbursements from the clerks of the House and Senate.

Executive Director Kondo explained that staff examined the provision in the State Constitution establishing the annual legislative allowance, the state statute pertaining to an allowance for legislators, and the administrative policy manuals of both the House and the Senate; and, after that review, staff believed that the fair treatment provision of the State Ethics Code applied to the legislators' use of the allowance. Specifically, Executive Director Kondo suggested that an expenditure must reasonably relate to a legislator's official duties, and, with that assumption, staff had examined the general description of the disbursements.

Executive Director Kondo explained that staff had created categories or "buckets" to describe the different types of expenditures -- office expenses, opening day expenses, membership dues and personal expenses -- and had grouped the specific expenditures in the appropriate bucket. Executive Director Kondo expressed his belief that the expenses related to office supplies and equipment appeared appropriate; however, some of the other expenses such as to fly a constituent to opening day, a retirement or birthday gift, or dry cleaning seemed to be questionable.

Executive Director Kondo reported that, on February 18, 2014, he received a letter from Senate President Donna Mercado Kim and House Speaker Joseph Souki requesting an opportunity to respond to the Commission's concerns about their members' use of the annual allowance at the Commission's March 2014 meeting. Executive Director Kondo provided the Commission with copies of Senate President Donna Mercado Kim and House Speaker Joseph Souki's February 18, 2014, letter.

To allow the legislative leadership an opportunity to offer their position, Executive Director Kondo suggested that the Commission start its discussion of the agenda item and continue its consideration of the issue at the Commission's March 2014 meeting. Executive Director Kondo explained that staff was recommending that the Commission take no enforcement action against any legislator relating to the legislator's past expenditures but, rather, that the Commission consider issuing general guidance regarding the application of the State Ethics Code to the allowance and, perhaps, identify certain general types of expenditures for which it may be inappropriate to use the allowance. Executive Director Kondo also noted that, for some of the expenditures, a legislator might be able to use his or her campaign funds.

Vice Chair Broglio suggested that staff and the Commission could work collaboratively with the legislature to review the issue, creating a "task force" or some other group. Commissioner DeGuzman agreed with Vice Chair Broglio's suggestion. Chair Abdul said that Vice Chair Broglio's suggestion would be a long-term project, better done after the legislative session.

Commissioner Tschumy suggested that staff address the complaint that staff received about certain legislators' use of their allowances and limit any Commission action to addressing any questionable expenditures by those legislators. Executive Director Kondo said that his concern with that approach was, based on the information from the House and Senate, staff was aware of other legislators who were reimbursed for similar expenditures, including some that raised greater concerns. Executive Director Kondo explained that, in his opinion, offering general guidance would be fairer and more effective.

Brian Yamane, a member of House Speaker Joseph Souki's staff, responded to questions from Commissioners about the intent of the allowance, House leadership's position with respect to whether its members were using the allowance appropriately, whether requests for disbursements from the allowance accounts are denied, and general operational matters.

Commissioner Tschumy renewed her suggestion that the staff resolve the complaint first. Commissioner Tschumy suggested broadening the scope of the Commission's review of the disbursements using the annual allowances and issuing general guidance only if concerns about expenditures remained after resolution of the complaint.

Chair Abdul pointed out that at this stage there is only a complaint. If an investigation is commenced then the Commission's review becomes confidential. As a result, the complainant and others will not be able to obtain information about the Commission's position with respect to the allowance. Chair Abdul suggested that the general guidance would be more effective in educating legislators than proceeding on the complaint.

Commissioner O'Neal suggested that the Commission send a letter to the House and Senate leadership stating that the Commission had received a complaint about certain members' use of the allowance and asking leadership to look at the issue. Executive Director Kondo said that he did not think asking leadership to investigate its members' use of the allowance would be effective since the leadership had already approved these types of expenses, presumably because leadership believed that the expenditures were appropriate.

Chair Abdul agreed that general guidance would be a better approach so that the Commission would not get bogged down in the details of each expenditure. Commissioner O'Neal stated that he thought a reminder rather than an advisory or a statement of concerns should be issued since an advisory or statement of concerns indicates that the Commission had investigated the expenditures using the allowances.

Chair Abdul said that the Commission needed to advise legislators what type of expenditures were permissible and that expenditures which appeared personal in nature raised concerns. House and Senate leadership could then offer comments at the Commission's March 2014 meeting.

Commissioner Tschumy said that the Commission received a complaint and, in the process of reviewing the complaint, broader concerns were raised. Commissioner Tschumy noted her position that the Commission cannot ignore the complaint that it had received.

Chair Abdul asked if there was consensus that a letter be sent to the House and Senate that the Commission had concerns about legislative allowance expenditures and that the Commission would continue its discussions regarding these concerns. The Commission, by consensus, agreed that staff should communicate with the House and Senate leadership to inform them that the Commission had concerns about certain types of expenditures and invite them to offer comments as part of the Commission's March 2014 meeting.

ADJOURNMENT

At approximately 12:10 p.m., Commissioner O'Neal made and Commissioner DeGuzman 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 12:10 p.m.

Minutes approved on March 19, 2014.