

SUNSHINE LAW MEETING  
MINUTES OF THE HAWAII STATE ETHICS COMMISSION

State of Hawaii

Date: Wednesday, April 16, 2014

Time: 2:00 p.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 2:00 p.m. by Chair Abdul.

**SUNSHINE LAW SESSION**

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

Commissioner Tschumy made and Commissioner O'Neal seconded a motion to approve the minutes of the March 19, 2014, Sunshine Law meeting as drafted. The motion carried unanimously (Abdul, Broglio, DeGuzman, O'Neal, and Tschumy voting).

## Agenda Item No. II: Executive Director's Report

### 1. Training Workshops: Hilo, Kona, Kahului/Wailuku, Lihue, Hawaii Convention Center, Capitol Auditorium, Kapolei, Charter Schools, Judiciary

Executive Director Kondo updated the Commission on staff's plan to schedule general ethics workshops for all state employees at venues at the State Capitol Auditorium, Kapolei, Hawaii Convention Center, and on each neighbor island beginning at the end of May or in early June. Staff received requests for, and will provide ethics training for, the Judiciary and other state employees similar to workshops held last year.

### 2. Prohibited Use of State Resources for Campaign Activities/Campaign-Related Restrictions Applicable to Commissioners

Executive Director Kondo informed the Commission that staff received a complaint about the use of State Capitol conference rooms for political activities. Staff reviewed audio recordings of activities held in State Capitol conference rooms that were reserved for use by legislators. Some of the activities included luncheons for pastors, gatherings where candidates who were not state employees stated their platform and priorities, and meetings where legislators urged people to vote. Staff informed the two legislators, who were identified as using the conference rooms for political activities, of the possibility of ethics violations. Staff also sent letters to the Senate President and the House Speaker as a reminder to legislators not to use state resources, including State Capitol conference rooms, for campaign purposes.

Executive Director Kondo cautioned the Commissioners about their active involvement in political management or campaigns. Executive Director Kondo said it was important that the public's perception of the Commission's impartiality be clear when making its decisions on issues concerning legislators.

### 3. New Commission Website

Executive Director Kondo said the Commission's new website was launched on April 2, 2014. Staff has received good feedback, including Ian Lind's blog on the enhanced ability to search for information.

### 4. Hawaii State Ethics Commission Financial Report FY 2013-2014 (Quarter Ending March 31, 2014)

The Commission was provided the financial report for the third quarter of the fiscal year.

Agenda Item No. III: University of Hawaii Petition for Declaratory Order Re Applicability of Financial Disclosure Filing Requirements to Members of the University of Hawaii Operational and Financial Controls Improvement Advisory Task Group and University of Hawaii Athletic Director Search Committee, GUIDE-13-00224: Consideration of Petition for Declaratory Order Filed by the University of Hawaii

Staff Attorney Neuffer said the University of Hawaii petitioned for a declaratory order on the application of the financial disclosure statute in the State Ethics Code to members of task forces.

Staff Attorney Neuffer asked that the Commission meet in an executive session to discuss legal issues that have arisen with respect to the petition. Executive Director Kondo suggested that the Commission defer this matter until after discussion of the rest of the agenda items. By consensus, the Commission agreed to move discussion of this matter to the end of the Sunshine Law meeting.

Agenda Item No. IV: 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:

1. S.B. No. 2423, S.D. 2, Relating to the Department of Education.
2. S.B. No. 2629, S.D. 1, H.D. 1, Relating to Lobbyists.
3. S.B. No. 2634, S.D. 1, H.D. 2, Relating to Lobbyists.
4. S.B. No. 2682, S.D. 1, H.D. 2, Relating to Financial Disclosure Statements.

Executive Director Kondo said only three bills that were tracked by staff have passed after the second crossover deadline. The first bill, S.B. No. 2629, requires lobbyists and lobbying organizations to file lobbying expenditures reports within 30 days after a special session. The second bill, S.B. No. 2634, includes a definition of lobbying material and requires reporting of categories of specific lobbying expenditures. The third bill, S.B. No. 2682, requires the filing of public financial disclosure statements by members of certain boards and commissions, including the Board of Agriculture, the University of Hawaii's Board of Regents, and the State Ethics Commission. Executive Director Kondo said that bills similar to S.B. No. 2682 were vetoed by two previous governors.

Executive Director Kondo said that all three bills will be heard in conference committees the day after the Commission meeting. Executive Director Kondo said that the legislative session will end on May 1, 2014.

Agenda Item No. V: Legislative Allowances: Consideration as to the Types of Expenditures and Disbursements with Legislative Allowance Funds that are Inconsistent with the State Ethics Code

Staff Attorney Nishimura said staff has been collecting policies from other state departments and from different county agencies on their guidelines for the use of allowances. The guidelines stress that the allowances are expenditures of taxpayer funds; therefore, the expenditures must be reasonable, necessary, and connected with official duties in some manner. Staff provided these guidelines to the Commission for their information.

Staff Attorney Nishimura said that some of the guidelines provide specific information on certain expenditures, such as meals. For example, Maui County's policy states no allowances are to be used for meals, except under limited circumstances, and Hawaii County's policy provides for light refreshments, but with a \$12 limit. Honolulu City and County's policy states that meals must be directly connected with official business related to a specific issue. The Congressional House of Representatives' policy limits the frequency of the use of allowances to purchase meals to twice.

Executive Director Kondo said this matter came to the Commission as a complaint from a legislator regarding other legislators' use of their legislative allowances. Executive Director Kondo said that after the last discussion the Commission had on legislative allowances, staff communicated the concerns about the use of legislative allowances for certain expenditures in a letter to the Senate President and the House Speaker. Staff asked that the legislative leadership provide their input on the permissibility of those expenditures. The Senate President and the House Speaker responded with a letter which stated that the legislative allowance is established by the State Constitution and the legislature is solely responsible for administering its use. Staff does not agree with the Senate President and House Speaker's position. Staff is not questioning the legislative allowance itself, but whether or not the use of the legislative allowances for certain expenditures is appropriate. Staff believes the legislative allowance is not compensation to the legislators to use in whatever manner they deem, but a public allowance established for official business.

Chair Abdul said the letter from the Senate President and House Speaker noted that the legislature would review their current guidelines to see if clarification on the use of legislative allowance is needed. Chair Abdul suggested that the Commission provide input to the legislature in their review of the current guidelines. Commissioner O'Neal felt that the Senate and House leadership should decide on valid official purposes in the use of legislative allowances. Commissioner O'Neal was concerned that if the Commission were to regulate the legislators' legislative allowances, each expenditure would need to be reviewed by the Commission. Chair Abdul agreed that the Commission did not have the resources to monitor the legislators' expenditures, but the Commission could help with the leadership's review of their current guidelines.

Executive Director Kondo recommended that the Commission provide high-level guidance on the categories of expenditures that defined those expenditures that were personal in nature, such as dry cleaning or birthday cakes for staff, and were not related to an official purpose. Executive Director Kondo said the Fair treatment provision prohibits a state legislator or employee from misusing his state position to benefit himself or anyone else. The concern is that legislators are using state funds to pay for items that are not related to an official state purpose. Commissioner O'Neal said an expenditure may seem to be for personal use, but could be related to an official legislative action, such as a legislator sending flowers to the family of a constituent who passed away after the constituent's long-time community work painting over graffiti. Staff Attorney Nishimura said that there would be some categories that would need discussion since there may be a difference between use of a legislative allowance to buy funeral flowers for a staff member, which is generally a personal expense, and buying funeral flowers for a community leader.

Commissioner Tschumy stated the compilation of categories should be directed to the Senate and House leadership. Executive Director Kondo said that staff would provide the Senate and House leadership and the Commission with a recommendation of how staff viewed the use of the legislative allowances. The Senate and House leadership would be able to provide their input to staff's recommendation. The Commission would take into consideration staff's recommendation and the leadership's input to decide on guidance to the Legislature in the review of their internal rules on legislative allowances. Commissioner DeGuzman mentioned that this would be similar to the Commission's procedures on the guidance to the University of Hawaii on their athletic ticket policies.

Agenda Item No. VI: Hawaii State Ethics Commission vs. Kenneth Hovanian, Charge No. 12-Cg-4; Charge No. 12-Cg-7: Status Update Regarding Efforts to Collect Payment of Fine

Associate Director Yoza stated that Kenneth Hovanian was fined \$1,940 by the Commission for failing to file financial disclosure statements in 2011 and 2012, but has not paid the fine as ordered by the Commission. Staff asked the Department of the Attorney General for assistance in collecting payment. The Department's Civil Recoveries Division is handling the matter and sent a demand letter to Mr. Hovanian. He did not respond to the demand letter and the Department is now preparing a complaint against Mr. Hovanian to be filed in District Court.

Agenda Item No. III: University of Hawaii Petition for Declaratory Order Re Applicability of Financial Disclosure Filing Requirements to Members of the University of Hawaii Operational and Financial Controls Improvement Advisory Task Group and University of Hawaii Athletic Director Search Committee, GUIDE-13-00224: Consideration of Petition for Declaratory Order Filed by the University of Hawaii

The Commission resumed its discussion of Agenda Item No. III. Staff Attorney Neuffer introduced Presley Pang from the University of Hawaii General Counsel's Office to answer any questions that the Commission may have. There being no questions at this time for Mr. Pang, Chair Abdul called for a motion to convene an executive session.

**RECESS OF SUNSHINE LAW MEETING AND CONVENING OF EXECUTIVE SESSION**

At approximately 2:40 p.m., Vice Chair Broglio made 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 unanimously (Abdul, Broglio, DeGuzman, O'Neal, and Tschumy voting).

**EXECUTIVE SESSION**

The Commission met in Executive Session.

**ADJOURNMENT OF EXECUTIVE SESSION AND RETURN TO THE SUNSHINE LAW MEETING**

At approximately 2:52 p.m., the Commission returned to the Sunshine Law Meeting.

**ADJOURNMENT**

At approximately 2:52 p.m., Commissioner O'Neal 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 2:52 p.m.

Minutes approved on May 21, 2014.