

SUNSHINE LAW MEETING
MINUTES OF THE HAWAII STATE ETHICS COMMISSION

State of Hawaii

Date: Wednesday, June 18, 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 10:02 a.m. by Chair Abdul.

SUNSHINE LAW SESSION

The Commission deferred Agenda Item No. I and proceeded to Agenda Item No. II.

Agenda Item No. II: Executive Director's Report

1. Update on Status of Bills Passed by the 2014 Legislature and Pending Approval by the Governor:
 - a. S.B. No. 2629, S.D. 1, H.D. 1, Relating to Lobbyists.
 - b. S.B. No. 2634, S.D. 1, H.D. 2, C.D. 1, Relating to Lobbyists.
 - c. S.B. No. 2682, S.D. 1, H.D. 2, C.D. 1, Relating to Financial Disclosure Statements.

Executive Director Kondo informed the Commission on the status of the three bills that will amend the State Ethics Code and the Lobbyists Law. The bills passed out of the legislature and were pending action by the Governor. Executive Director Kondo said that he met with Governor Abercrombie and the Governor's policy staff on June 16, 2014, to discuss the three bills, all of which he advised the Governor that the Commission supports.

The first bill, S.B. No. 2629, will require lobbyists and organizations to report lobbying expenditures within 30 days after the adjournment of a special session of the legislature. Executive Director Kondo said that the Governor plans to allow this bill to become law.

The second bill, S.B. No. 2634, will require lobbyists and organizations to itemize certain categories of expenditures that the lobbyists and organizations, currently, are requested to do. Executive Director Kondo said it was his impression that the Governor will sign this bill into law.

The third bill, S.B. No. 2682, will require the financial disclosure statements filed by members of 15 boards and commissions, including the Commission, to be public. Executive Director Kondo said that he spoke with the Governor at length about this bill and that it was his impression that the Governor was inclined to veto the bill.

2. Update on Nominees for the State Ethics Commission to Fill Vacancies Created by Expiring Terms of Chair Cassandra J. Leolani Abdul and Commissioner David O'Neal

Executive Director Kondo said that there was no information regarding the status on the appointments to fill Chair Abdul and Commissioner O'Neal positions.

Agenda Item No. I: Minutes: Consideration and Approval of the Minutes of the May 21, 2014, Meeting

Commissioner DeGuzman noted a minor correction in the second complete paragraph on page 6 of the Sunshine Law meeting minutes. The sentence contained an extra word, "was," and should read, "Commissioner Tschumy said she thought her

vote was solely to amend Declaratory Order 2014-1 as recommended by Commissioner DeGuzman and she did not understand that she was voting to approve the issuance of Declaratory Order 2014-1 as amended.”

The Commission approved the minutes of the May 21, 2014, Sunshine Law meeting as amended. The motion carried unanimously (Abdul, Broglio, DeGuzman, O’Neal and Tschumy voting).

Agenda Item No. III: Legislative Allowance (COMPL-13-00370): Consideration of Staff Recommendations Regarding Application of the State Ethics Code to the Use of Legislative Allowance Funds

Chair Abdul called for public testimony on this issue. Chair Abdul said that the Commission received written letters and testimony from Richard Wada, in his private capacity, the Senate President Donna Mercado Kim, House Speaker Joseph Souki, and Janet Grace.

As a preliminary matter, Staff Attorney Nishimura noted that the House and Senate leadership previously had stated that the legislature would continue to follow the opinion of its attorneys, that the Hawaii State Constitution, Article III, Section 9, establishes the allowance and that the legislature is solely responsible for monitoring the uses of the allowance. Staff Attorney Nishimura said that, upon review of the issues, staff disagrees with the House and Senate leadership’s position that the Commission does not have the authority to consider whether legislators’ use of the allowance is consistent with the State Ethics Code. Staff Attorney Nishimura proceeded to provide a more detailed analysis of staff’s position that the State Ethics Code applies to legislators’ use of the allowance.

Staff Attorney Nishimura explained that the issue came to the attention of the Commission because of complaints from legislators about other legislators’ use of their legislative allowance. Staff Attorney Nishimura said that staff did not intend to recommend that the Commission investigate the legislators who may have misused their allowances, but instead strongly recommended that the Commission provide general guidance to the legislators to help them understand the types of expenditures that are consistent with the fair treatment law in the State Ethics Code.

Staff Attorney Nishimura said that staff provided its recommendation as to how the Commission should apply the State Ethics Code to the legislators’ expenditures using their allowances to the Senate and House leadership on June 5, 2014. On the same date, staff also posted the recommendation on the Commission’s website to allow review and comment by the public.

Staff Attorney Nishimura gave a detailed overview of staff’s recommendation. Staff Attorney Nishimura explained that the allowances are public funds and, for that reason, must be used for purposes that are reasonably related to the legislators’ official duties. She said that the use of the allowance for personal purposes or for expenses

not sufficiently related to legislators' official duties should be prohibited by the fair treatment law of the State Ethics Code.

Staff Attorney Nishimura said that staff grouped expenditures, which appear reasonably related to the legislator's official duties and therefore did not appear to be prohibited by the fair treatment law, into categories: (1) office-related expenses, such as supplies, postage, mailing lists, printing, newsletters, internet and cell phone plans, and newspaper subscriptions; (2) protocol and ceremonial lei and gifts for persons being honored by the legislature; (3) room and facility rental charges for community meetings with the community and constituents on matters relating to the legislature; (4) parking, mileage, and car rental charges relating to the legislators' official duties, but not for monthly parking, bus passes, and mileage for commuting to and from work; (5) conference and registration fees relating to the legislators' official duties; (6) travel costs, including airfare, parking, ground transportation, conference and registration fees, hotel, and meals, relating to the legislators' official duties, unless reimbursed by another source, such as per diem; (7) membership dues and fees for organizations whose primary focus involves state legislatures and governance such as the Council of State Governments and the National Conference of State Legislatures; (8) reasonable expenses for food, beverages and flowers for opening day at the legislature; and (9) reasonable expenses for food and beverages purchased for non-legislative staff at meetings or functions whose purpose is to communicate with the community and constituents on matters relating to the legislature.

Staff Attorney Nishimura said that staff had concerns regarding the use of the allowance for: (1) food and beverages relating to personal events or social occasions to show appreciation, including birthday, farewell and retirement parties; (2) political or charitable contributions; (3) expenses which appear to be personal in nature, such as dry cleaning, monthly parking and bus passes, and mileage for commuting to and from work; and (4) retirement gifts, staff appreciation gifts, tickets for recreational or entertainment events, bereavement gifts or flowers, gifts to welcome new legislators, and gift cards for state retirees, other legislators or for charities.

Associate Director Yoza noted that the allowance is not intended to be a subsidy to the legislators or to supplement their salaries; rather, the allowance is intended to be used in the legislators' performance of their official duties. Associate Director Yoza said that the Commission's recommendation should propose that the use of the allowance has to be reasonably related to the legislators' official duties.

Commissioner Tschumy said that the Commission's usual procedure for complaints received by the Commission would be to address the specific complaints, and she said that she believes the Commission should do so regarding the complaints about the use of the legislative allowance. Executive Director Kondo explained that, because a number of other legislators have similar issues with the use of the legislative allowance, staff felt that the better approach would be to address the situation globally through the issuance of general guidance to promote awareness of the issues and, in the future, if legislators misused their allowances, to address the issue directly with those legislators.

Executive Director Kondo said that this approach is similar to the gifts guidance previously issued by the Commission.

Commissioner Tschumy asked if the Commission was the appropriate body to issue guidance or would the House and Senate leadership be more appropriate. Executive Director Kondo said that Richard Wada suggested that the Commission did not have the authority to give guidelines; however, it was staff's legal opinion that the Commission has the authority to ensure that the use of the allowance funds is consistent with the fair treatment law of the State Ethics Code.

Commissioner O'Neal said that the Commission should not be policing this issue. Commissioner O'Neal said that the fair treatment law allowed legislators to use their legislative allowance, so long as the expenses related to their legislative duties, and that staff did not ask the legislators for the official legislative action that justified the purchase with the legislative allowance. He felt that the legislators would have a fairly reasonable explanation for the expenses with regard to their official duties. Executive Director Kondo said, in drafting the recommendation, staff made reasonable assumptions regarding certain of the expenditures. Executive Director Kondo said, if staff were to investigate a specific legislator who may have misused the allowance, then staff would review the details of the expenditures.

Commissioner O'Neal also asked if the Commission should define what constitutes official legislative action, or if that should be left to the legislature. Executive Director Kondo said that it was the Commission who should define legislative action or official duties.

Vice Chair Broglio said the main point is that the legislators are using public state funds and these funds should be used only when carrying out their official legislative duties.

Commissioner O'Neal said that guidelines already exist in the Senate and House Administrative Manuals and that so long as the expenses using the legislative allowance are for an official legislative action, the expenses are approved by the House or Senate Clerks. Commissioner Tschumy agreed with Commissioner O'Neal.

Commissioner DeGuzman made and Vice Chair Broglio seconded a motion to approve the staff's recommendation to issue guidelines on the legislators' use of the legislative allowance. The motion carried (Abdul, Broglio and DeGuzman voting aye; O'Neal and Tschumy voting nay).

Agenda Item No. IV: State Agency Fundraising: Update on the Formation of an Advisory Group and Anticipated Timeline for the Commission's Consideration

Staff Attorney Johnson informed the Commission on the status of the formation of an advisory group to discuss state agency fundraising. The advisory group's first meeting will be held on June 23, 2014, and staff anticipates holding two additional

meetings of the advisory group before presenting recommendations to the Commission. Staff Attorney Johnson and Staff Attorney Neuffer provided a timeline for the presentation of the advisory group's recommendations to the Commission. Executive Director Kondo commented that the advisory group was comprised of insightful individuals holding high-level positions in their fields of expertise.

Agenda Item No. V: William Eric Boyd vs. Hawaii State Ethics Commission, Civil No. 13-1-000115 (Agency Appeal): Discussion of the State Ethics Commission's Appeal and William Eric Boyd's Cross Appeal of the Third Circuit Court's Decision and Order Affirming in Part and Reversing in Part Hawaii State Ethics Commission's Findings of Fact, Conclusions of Law, and Decision and Order

Commissioner Tschumy left the meeting at approximately 11:18 a.m.

Staff Attorney Neuffer said that Mr. Boyd's Opening Brief in the matter of the Commission's Appeal and Mr. Boyd's Cross Appeal of the Third Circuit Court's Decision was filed on April 28, 2014. The Commission received a 30-day extension to respond to Mr. Boyd's Opening Brief. Staff Attorney Neuffer said that the Commission's Opening Brief was filed with the Court on May 28, 2014.

Commissioner Tschumy returned to the meeting at approximately 11:20 a.m.

Agenda Item No. VI: Executive Session Minutes: Consideration and Approval of the Minutes of the May 21, 2014, Executive Session

The Commission approved the minutes of the May 21, 2014, Executive Session. The motion carried unanimously (Abdul, Broglio, DeGuzman, O'Neal and Tschumy voting).

ADJOURNMENT

At approximately 11:22 a.m., Vice Chair Broglio made and Commissioner O'Neal 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 11:22 a.m.

Minutes approved on July 23, 2014.