

SUNSHINE LAW MEETING
MINUTES OF THE HAWAII STATE ETHICS COMMISSION

State of Hawaii

Date: Wednesday, July 23, 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
Edward L. Broglio, Vice Chair
Susan N. DeGuzman, Commissioner
Ruth D. Tschumy, Commissioner
David O'Neal, Commissioner
Melinda Wood, 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 10:01 a.m. by Vice Chair Broglio.

SUNSHINE LAW SESSION

Agenda Item No. I: Introduction of New Commissioner Melinda Wood

The Commission welcomed Commissioner Melinda Wood and congratulated Commissioner O'Neal on his reappointment to the Commission.

Agenda Item No. II: Election of Officers for 2014

The Commission elected Vice Chair Broglio as Chair and Commissioner O'Neal as Vice Chair for the remainder of 2014.

Agenda Item No. III: Commission Meeting Schedule for 2014

Vice Chair O'Neal asked that the Commission's September meeting be held on September 24, 2014. The Commission agreed and by consensus approved the revised meeting schedule for the remainder of 2014.

Agenda Item No. IV: Minutes: Consideration and Approval of the Minutes of the June 18, 2014 meeting

Vice Chair O'Neal made and Commissioner Tschumy seconded a motion to approve the minutes of the June 18, 2014, Sunshine Law meeting as drafted. The motion carried unanimously (Broglio, O'Neal, DeGuzman, Tschumy, and Wood voting).

Agenda Item No. V: Consideration and Approval of Resolution Recognizing Cassandra J. Leolani Abdul's Contributions to Ethics in Government

The Commission reviewed a proposed resolution in recognition of former Commission Chair Cassandra J. Leolani Abdul's contributions to the State of Hawaii and to ethics in government. Commissioner Tschumy made and Vice Chair O'Neal seconded a motion to approve the resolution. The motion carried unanimously (Broglio, O'Neal, DeGuzman, Tschumy, and Wood voting).

Agenda Item No. VI: Executive Director's Report

1. Update on the Status of Bills Passed by the 2014 Legislature and Enrolled to the Governor:
 - a. Act 224 (S.B. No. 2629, S.D. 1, H.D. 1, Relating to Lobbyists) (7/7/14)
 - b. Act 144 (S.B. No. 2634, S.D. 1, H.D. 2, C.D. 1, Relating to Lobbyists) (6/24/14)
 - c. Act 230 (S.B. No. 2682, S.D. 1, H.D. 2, C.D. 1, Relating to Financial Disclosure Statements) (7/8/14)

Executive Director Kondo discussed the three bills that became law this year.

Act 224 requires lobbyists to report lobbying expenditures 30 days after a special session. Executive Director Kondo said that he will propose that the law be amended

next session to clarify that it only applies to lobbyists who lobby during the special session on special session related matters.

Act 144 requires lobbyists to itemize certain categories of expenditures in their contributions and expenditures reports.

Act 230 adds fifteen boards and commissions, including the State Ethics Commission, to the list of boards and commissions whose members' financial disclosure statements are public records.

2. Discussion with "Good Government" Groups recapping the 2014 Legislative Session

Executive Director Kondo briefly discussed a meeting that he had with representatives from Common Cause, the League of Women Voters, and Senator Ihara's office to review the results of the efforts of the "good government" groups during the 2014 legislative session.

3. Education Schedule

Staff will be conducting two ethics training sessions for University of Hawaii executives and employees on June 24, 2014. Ethics training sessions are also being scheduled for Hilo, Kona, Kauai, and Maui during August 2014. Ethics training sessions for Oahu will be held later this year at the State Capitol Auditorium, the Hawaii Convention Center, and in Kapolei.

Staff is also developing an ethics training program for state board and commission members and board administrators. An ethics course for state attorneys, which has been approved for continuing legal education credit, is also being planned for the fall of 2014.

4. Hawaii State Ethics Commission Financial Report for FY 2013-2014 (Quarter Ending June 30, 2014)

Executive Director Kondo presented the State Ethics Commission Financial Report for FY 2013-2014 (Quarter Ending June 30, 2014).

5. Candidate Disclosure of Financial Interests Filings

Executive Director Kondo noted that this item was not on the Sunshine Law agenda and is offered only for the Commissioners' information. Candidates for state elective office were required to file a Candidate Disclosure of Financial Interests with the Commission by July 18, 2014. Executive Director Kondo said that when candidates file their nomination papers for state office, they are provided with a Candidate's Manual, which includes information regarding the Candidate Disclosure of Financial Interests filing procedure and deadline.

Seventy-three candidates did not file the required disclosure form by the July 18, 2014, deadline. The Commission is required by law to release to the public a list of all candidates who have failed to file a disclosure form and to assess a late filing penalty fee of \$25 against those candidates.

Agenda Item No. VII: Act 230, 2014 Session Laws of Hawaii: Discussion of Interpretation and Application of Act 230

The Commission deferred Agenda Item No. VII and proceeded to Agenda Item No. VIII.

Agenda Item No. VIII: Legislative Allowance (COMPL-13-00370): Consideration of Draft Guidelines on the Use of Legislators' Annual Allowance

Staff presented draft guidelines on the use of legislators' annual allowance for the Commission's consideration. The approved guidelines will be distributed to the leadership of the Senate and House of Representatives, all legislators, state department heads, and the University of Hawaii. The approved guidelines will also be published on the Commission's website.

Vice Chair O'Neal noted that the proposed guidelines provide that there may be circumstances where an expenditure that is listed as being personal in nature may be allowed if an acceptable explanation of the expenditure is provided. Executive Director Kondo added that legislators who wish to use their legislative allowance for expenditures listed in the guidelines as personal in nature should request guidance from ethics staff before using their legislative allowance.

Commissioner DeGuzman moved and Commissioner Wood seconded a motion to approve the issuance of the Guidelines on the Use of Legislators' Annual Allowance as presented. The motion carried unanimously (Broglio, O'Neal, DeGuzman, Tschumy, and Wood voting).

Agenda Item No. IX: State Agency Fundraising (GUIDE-13-00163): Update on the Meetings of the State Agency Fundraising Discussion Group

Staff updated the Commission about the meetings of the State Agency Fundraising Discussion Group. Two meetings were held and additional meetings are being scheduled. Staff anticipates bringing its initial recommendations to the Commission in September 2014.

Agenda Item No. X: William Eric Boyd vs. Hawaii State Ethics Commission, Civil No. 13-1-000115 (Agency Appeal): Update on 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

Staff updated the Commission about the status of the State Ethics Commission's appeal and William Eric Boyd's cross appeal of the Third Circuit Court's decision in this case.

Agenda Item No. XI: Hawaii State Ethics Commission vs. Kenneth Hovanian, Charge Nos. 12-Cg-4 and 12-Cg-7: Update on Proceedings to Collect Payment of Fine

The Department of the Attorney General is pursuing the collection of the fine imposed by the Commission on Kenneth Hovanian for failure to file financial disclosure statements in 2011 and 2012. Staff Attorney Neuffer reported that a petition was filed in circuit court on June 18, 2014, to enforce the Commission's Decision and Order and enter a judgment against Mr. Hovanian in the amount of the fine. A hearing was originally set for July 17, 2014, but was continued to September 18, 2014, because the Department of the Attorney General has been unable to serve Mr. Hovanian.

Agenda Item No. VII: Act 230, 2014 Session Laws of Hawaii: Discussion of Interpretation and Application of Act 230

Chair Broglio asked whether there was any public testimony on this agenda item. Mr. Dan Purcell, a member of the public, testified that he believed it was critical to require that the financial disclosure statements of board and commission members be available to the public. Mr. Purcell also said he recognizes that ethics staff is not able to track the potential conflicts of all board and commission members.

Executive Director Kondo said he met with the Governor and the Governor's policy team on June 16, 2014, to discuss S.B. No. 2682, S.D. 1, H.D. 2, C.D. 1, which would require public access to the financial disclosures of the members of fifteen boards and commissions. The Governor indicated that he intended to veto the bill and provided notice of his intent to veto the bill to the House and Senate leadership. On June 30, 2014, staff received a call from the media indicating that the Governor had decided to allow this bill to become law without his signature. The bill became law as Act 230 on its effective date, July 8, 2014.

Executive Director Kondo said that the Department of the Attorney General initially took the position that the Commission had the authority to determine how Act 230 should be applied. To avoid potential misunderstandings as to how the Commission would apply the new law, staff sent a memorandum dated July 2, 2014, to all affected board members. The memorandum informed board members that, in staff's opinion, the new law required the State Ethics Commission to make public the 2014 financial disclosure

statements of individuals who were members of the affected boards as of July 8, 2014, even if the disclosure statements were filed before July 8, 2014. Affected board and commission members were also given the opportunity to file an amended disclosure statement in order to replace specific dollar amounts on their statements with code letters or to delete address information for income sources for spouses and dependent children.

Staff planned to post on its website the 2014 financial disclosure statements of the affected board members on July 15, after confirming the names of the board members with the Governor's office and the administrators of the affected boards. However, on July 11, 2014, Executive Director Kondo received a letter from Deputy Attorney General Diane Taira advising that the disclosure statements of currently sitting members of the affected boards that were filed on or after July 8, 2014, should be made available for public inspection, but that disclosure statements filed before July 8, 2014, must remain confidential.

On July 14, 2014, Executive Director Kondo and Associate Director Yoza met to discuss this matter with Attorney General David Louie, First Deputy Attorney General Russell Suzuki, and Deputy Attorneys General Charleen Aina and Robyn Chun.

On July 16, 2014, staff received a letter from Attorney General Louie restating the Attorney General's advice that Act 230 must not be applied retroactively to disclosure statements filed by affected board members prior to July 8, 2014. Attorney General Louie offered to discuss this matter further with the Commission.

Commissioner Tschumy and Vice Chair O'Neal requested that their financial disclosures be made public immediately. Executive Director Kondo said that staff would comply with the request of an individual Commissioner to publicly post his or her financial disclosure statement.

Chair Broglio noted that the Department of the Attorney General acts as the attorney for the State Ethics Commission. Chair Broglio recommended that the Commission convene an executive session to consult with its staff attorneys, First Deputy Attorney General Russell Suzuki and Deputy Attorney General Charleen Aina regarding this matter. Chair Broglio said that following the executive session, the Commission will return to public session and discuss this matter further.

RECESS OF SUNSHINE LAW MEETING AND CONVENING OF EXECUTIVE SESSION

At approximately 10:53 a.m., Commissioner DeGuzman made and Commissioner Tschumy 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 (Broglio, O'Neal, DeGuzman, Tschumy, and Wood voting).

EXECUTIVE SESSION

The Commission met in Executive Session.

ADJOURNMENT OF EXECUTIVE SESSION AND RETURN TO THE SUNSHINE LAW MEETING

At approximately 12:08 p.m., the Commission returned to the Sunshine Law meeting.

Vice Chair O'Neal moved and Commissioner DeGuzman seconded a motion that pursuant to the legal advice of the Attorney General regarding Act 230, the Commission shall make public the financial disclosure statements of members of the affected boards and commissions that were filed on or after July 8, 2014, but that financial disclosure statements filed before July 8, 2014, shall remain confidential.

Commissioner Tschumy said that Act 230 did not provide for retroactive public disclosure of the financial disclosure statements of the members of affected boards and commissions. Members of the affected boards who filed prior to July 8, 2014 did so with the expectation that their statements would not be public. Commissioner Tschumy said that for open government purposes, financial disclosure statements should be accessible by the public and that Act 230 will provide for future public access to the financial disclosure statements of the members of the affected boards.

Chair Broglio called for a vote on the motion. The motion carried unanimously (Broglio, O'Neal, DeGuzman, Tschumy, and Wood voting).

ADJOURNMENT

At approximately 12:20 a.m., Commissioner DeGuzman made and Commissioner Tschumy seconded a motion to adjourn the Sunshine Law meeting. The motion carried unanimously (Broglio, O'Neal, DeGuzman, Tschumy, and Wood voting).

The meeting was adjourned at approximately 12:20 p.m.

Minutes approved on September 24, 2014.