

SUNSHINE LAW MEETING
MINUTES OF THE HAWAII STATE ETHICS COMMISSION

State of Hawaii

Date: Wednesday, May 27, 2015

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, Chair
David O'Neal, Vice Chair
Susan N. DeGuzman, Commissioner
Ruth D. Tschumy, 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
Bonita Y. M. Chang, Staff Attorney

Department of the Attorney General
Robyn Chun, Deputy Attorney General
Nelson Nabeta, Deputy Attorney General

CALL TO ORDER

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

Agenda Item No. I: Minutes: Consideration and Approval of the Minutes of the April 15, 2015, Meeting

Commissioner Tschumy moved and Vice Chair O'Neal seconded a motion to approve the minutes of the April 15, 2015, Sunshine Law meeting. The motion carried unanimously (Broglio, O'Neal, DeGuzman, Tschumy, and Wood voting).

Agenda Item No. II: Minutes: Consideration and Approval of the Minutes of the April 15, 2015, Executive Session regarding Evaluation of Executive Director's Job Performance

Commissioner DeGuzman moved and Vice Chair O'Neal seconded a motion to approve the minutes of the April 15, 2015, Executive Session regarding Evaluation of Executive Director's Job Performance. The motion carried unanimously (Broglio, O'Neal, DeGuzman, Tschumy, and Wood voting).

Agenda Item No. III: Minutes: Consideration and Approval of the Minutes of the April 15, 2015, Executive Session regarding Evaluation of Executive Director: Permitted Interaction Group Report Regarding 360° Evaluation

Commissioner DeGuzman moved and Vice Chair O'Neal seconded a motion to approve the minutes of the April 15, 2015, Executive Session regarding Evaluation of Executive Director: Permitted Interaction Group Report Regarding 360° Evaluation. The motion carried unanimously (Broglio, O'Neal, DeGuzman, Tschumy, and Wood voting).

Agenda Item No. IV: Letter dated April 27, 2015, from Joseph Souki, Speaker of the House of Representatives, to Edward Broglio, Chair, Hawaii State Ethics Commission

Chair Broglio stated that the Commission received written testimony on this agenda item from Donna Ambrose, Larry Geller, and Warren Iwasa. Chair Broglio asked if anyone else wished to submit public testimony on this agenda item.

Dan Purcell testified that money can be a corrupting influence in government and that he has been happy with the direction taken by the Commission's Executive Director.

Associate Director Yoza stated that Speaker Souki's letter expressed concerns about interpretations of the State Ethics Code over the last several years by the Commission's staff. Associate Director Yoza said the Commission has a constitutional mandate to administer the State Ethics Code and is required by law to liberally construe the State Ethics Code to promote high standards of ethical conduct in state government. Associate Director Yoza discussed how staff interprets and applies the ethics laws and stated that where appropriate, staff seeks input from state agencies and other interested parties. Associate Director Yoza said that staff makes every effort to inform state officials about how the laws are interpreted and to provide ethics guidance to state officials.

Associate Director Yoza also stated that Speaker Souki's letter included statements about the gifts law which are not consistent with the statutory language and the Commission can address this in its written response to the Speaker.

Associate Director Yoza recommended the Commission's consideration of a draft response letter to Speaker Souki, which included revisions suggested by Commissioner DeGuzman.

Commissioner DeGuzman moved and Commissioner Wood seconded a motion to approve the letter to Speaker Souki, as amended by Commissioner DeGuzman. The motion carried unanimously (Broglio, O'Neal, DeGuzman, Tschumy, and Wood voting).

Agenda Item No. X: Free Trips to Teachers Who Chaperone Student Educational Tours

At the request of Staff Attorney Chock, the Commission proceeded to Agenda Item No. X, to receive testimony from Department of Education ("DOE") Superintendent Kathryn Matayoshi and Castle/Kahuku Complex Area Superintendent Lea Albert.

Superintendent Matayoshi provided a brief overview of her written testimony submitted to the Commission earlier in the morning.

Superintendent Matayoshi expressed concerns that guidance was requested from the Ethics Commission over a year ago regarding a planned student trip, and that, over nine months later, the Commission responded by requesting responses to extensive questions related to the trip.

Superintendent Matayoshi said that, as the DOE sought clarification and clear guidance from the Ethics Commission, the Board of Education ("BOE") also met to review its own related policies regarding field trips, student travel, and employee accountability. Superintendent Matayoshi said that the BOE continues to support travel for students and that the BOE and the DOE are prepared to work with the Ethics Commission to put in place policies that address any ethics concerns, while also ensuring that students have the opportunity to benefit from educational experiences that take place outside the classroom.

Superintendent Matayoshi said that the DOE is most concerned about the impact the Commission's review of student trips may have on families and students who, as a result of the Commission's review, may not be able to complete this year's travel plans.

Superintendent Matayoshi said that the DOE respectfully requests that the Commission consider the following: (1) any Ethics Commission review or action related to teacher or other school employee travel for trips already planned this year should be consistent with the DOE's understanding of the March 30, 2015, guidance, which was that there would be a stay on further Commission action; (2) for future consideration, review the interpretation of a gift as it relates to the educational experience; and (3) for any future ethical issues as they relate to the DOE, present the Commission's concerns in a respectful and clear manner.

Chair Broglio thanked Superintendent Matayoshi for her testimony.

Lea Albert, Complex Area Superintendent for the Castle Kahuku Complex Area provided a brief overview of her written testimony submitted to the Commission.

Ms. Albert said that a letter sent to Superintendent Matayoshi regarding the meeting that was held with Executive Director Kondo and Staff Attorney Chock regarding the King Intermediate School trip accused her of providing incorrect information to the Superintendent. Ms. Albert said that Executive Director Kondo and Staff Attorney Chock were told during the meeting that there were many other schools that had planned summer trips and that, at the end of their meeting, Ms. Albert's understanding was that those trips would be allowed.

Ms. Albert said that she, the principal of King Intermediate, and Jessica Horiuchi, former Executive Assistant to the Superintendent, left the meeting with the understanding that summer trips would be allowed to go ahead. Ms. Albert said that in the past she has found the Ethics Commission to be very helpful, but that it was not helpful regarding this matter. Ms. Albert said she does not believe that after this summer and going forward, there will be any more trips for students out of Hawaii, including inter-island trips, until the law is changed.

Chair Broglio thanked Ms. Albert for her testimony.

Agenda Item No. V: Performance Evaluation of Executive Director

Chair Broglio announced that before taking public testimony on this agenda item, the Commission would go into executive session to consult with its attorneys on certain personnel and procedural matters. Chair Broglio requested a motion to recess the Sunshine Law meeting and to convene an executive session.

RECESS OF SUNSHINE LAW MEETING AND CONVENING OF EXECUTIVE SESSION

At approximately 10:27 a.m., Commissioner Tschumy moved and Vice Chair O'Neal seconded a motion to recess the Sunshine Law meeting and to convene an executive session pursuant to Hawaii Revised Statutes section 92-5(a)(2), to consider personnel matters affecting the Executive Director's privacy interest, and pursuant to Hawaii Revised Statutes 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 10:44 a.m., Vice Chair O'Neal moved and Commissioner DeGuzman seconded a motion to adjourn the executive session. The motion carried unanimously (Broglia, O'Neal, DeGuzman, Tschumy, and Wood voting).

At approximately 10:44 a.m., the Commission returned to the Sunshine Law meeting.

Agenda Item No. V: Performance Evaluation of Executive Director

Chair Broglia announced that because this is a personnel matter affecting the Executive Director's privacy interest, the Commission was going to discuss the Executive Director's performance evaluation in executive session unless the Executive Director wished to request that the Commission discuss the matter in open session. Chair Broglia said it was his understanding that the Executive Director did not wish to request an open session discussion of his evaluation and asked the Executive Director if this was correct. Executive Director Kondo replied that this was correct.

Chair Broglia said that before going into executive session to discuss the evaluation, the Commission would first accept public testimony. Chair Broglia explained that if Commissioners had questions for individual testifiers, those individuals would be asked to meet with Commissioners in executive session for further discussion.

Chair Broglia stated that the Commission received written testimony from the following individuals: Kamana'opono M. Crabbe, Ph.D., Chief Executive Officer, Office of Hawaiian Affairs; Sarah Allen, Administrator, State Procurement Office; Priscilla Brede; Daniel Hanagami, Chief Special Agent, Investigations Division, Dept. of the Attorney General; John J. Middleton, J.D., Chief Compliance and Privacy Officer, Hawaii Health Systems Corporation; Donna Ambrose; Kristin E. Izumi-Nitao, Executive Director, Campaign Spending Commission; Catherine P. Awakuni Colon, Director, Dept. of Commerce and Consumer Affairs; Larry Geller; Darolyn Lendio Heim; Joan Lee Husted; Thomas E. M. Hutton, Executive Director, State Public Charter School Commission; Warren Iwasa; Jacqueline B. Kido, Esq.; Ann Shaver, President, League of Women Voters of Hawaii; Maria Sullivan; Presley Pang; Les Ihara, Jr., State Senator, 10th District; Carmille Lim, Executive Director, Common Cause Hawaii; Cassandra J. Leolani Abdul; and Charles Totto, Executive Director, Honolulu Ethics Commission.

Chair Broglia then called the names of individuals who asked to provide oral testimony.

Senator Les Ihara testified that he has worked with Executive Director Kondo on ethics legislation and has consulted with Executive Director Kondo on ethics issues. Senator Ihara said the Executive Director has provided clear and useful advice about the State Ethics Code, sometimes in the face of legislators' disagreement.

Charles Totto, Executive Director and Legal Counsel for the Honolulu Ethics Commission, testified about the unique challenges faced by an ethics director. Mr. Totto said he hoped the Commission keeps in mind the special burdens of the office of an ethics director during its evaluation of Executive Director Kondo.

Bruce Coppa, former Chief of Staff for Governor Abercrombie, testified that he fully supports Executive Director Kondo, who provided guidance on many issues and who spoke to the Governor's staff annually to remind them of their duty as government employees.

Kristin Izumi-Nitao, Executive Director, Campaign Spending Commission, testified that she shares a common mission with Executive Director Kondo and has found him to be very professional, intelligent and caring about the community. Ms. Izumi-Nitao said that she hopes the Commission will consider these attributes when they evaluate Executive Director Kondo's job performance.

Duke Aiona, former Lieutenant Governor of the State of Hawaii, testified that he recommended Mr. Kondo's appointment as Executive Director of the Office of Information Practices because he had the independence, intelligence, passion, and energy for the position and would be dedicated to public service. Mr. Aiona said that Mr. Kondo made decisions based on what was fair and right and what he believed was in accordance with the law.

Executive Director Kondo testified about the work of the Commission and its staff. He discussed the Commission's responsibility to maintain public confidence in government. He stated that his job is to do what is right, not what is popular, and that he has done his job with professionalism and integrity. He also stated that contrary to what some people believe, he has not rewritten the ethics code to conform to his personal notion of ethics. Executive Director Kondo stated that if the legislature disagrees with the Commission's interpretation of the law, the legislature can amend the law.

Executive Director Kondo stated that he thinks he does his job very well and that the Commission should have more objective information about his job performance to better evaluate him. Executive Director spoke about the employee evaluations he has received for his training activities, which he said reflect that he is doing an excellent job in training and building relationships with employees.

Executive Director Kondo stated that he feels the Commission evaluated him based on limited interaction with him and that the Commission had very little first-hand knowledge about what he does. He stated that some Commissioners felt he has done a poor job in responding to inquiries from the media; advising the Commission on legal issues; and maintaining professional relations with other government agencies. He stated that he did not understand the Commission's basis for concluding that he did a poor job in these areas. He presented information and explained why he disagreed with the Commission's evaluation of him in these areas.

Executive Director Kondo responded to the comments by the Superintendent of Education about his interaction with Complex Area Superintendent Albert. Executive Director Kondo suggested that the Commission weigh this one complaint against the other testimonies received by the Commission.

Executive Director Kondo referred to his last evaluation in 2012 when the Commission deemed his performance to be outstanding. He stated that since that time, he has not changed how he performs his job. He stated that if the Commission wishes to do things differently, that is the Commission's prerogative, but he felt it was unreasonable and unfair for the Commission to tell him that he is doing a sub-standard job when no one has told him that the Commission wants him to do things differently. Executive Director Kondo stated that he is willing to perform his duties differently to improve and address the Commission's concerns about his performance, but the criteria used to evaluate him did not provide enough information for him to understand the Commission's concerns. He asked the Commission to meet with him in executive session to explain the Commission's issues with his performance so that he can address those issues.

Chair Broglio stated that the Commission would continue with the remainder of the public agenda before meeting in executive session to discuss the Executive Director's evaluation.

Agenda Item No. VI: Executive Director's Report

1. Electronic Filing Update

Executive Director Kondo said that recent changes to the financial disclosure electronic filing system solved some of the problems experienced by filers and also made the forms ADA compliant. Executive Director Kondo presented a PowerPoint demonstration of the new electronic filing system for short form and long form financial disclosures, and noted that the improved electronic filing system will now work with any type of browser or device, including Apple products, an iPad, and a smartphone.

2. Commissioner Nominees

Executive Director Kondo said the names of two nominees to the Hawaii State Ethics Commission have been sent to the Governor for selection.

3. Ethics Training

Executive Director Kondo said he conducted an ethics training session for the Hawaii Health Systems Corporation Oahu Regional Board on May 20, 2015. The Mission Memorial Auditorium has been reserved for an ethics training session on August 18, 2015. A future ethics training session for board and commission members, as well as board and commission staff, is under discussion with Sharon Ibarra, Director of the Governor's Office of Boards and Commissions.

Agenda Item No. VII: Legislative Session Wrap-Up

Associate Director Yoza provided a summary of the bills that were tracked by staff during the 2015 legislative session, including bills that were introduced as part of the State Ethics Commission's legislative package.

Associate Director Yoza said two appropriation bills are currently before the Governor awaiting signature: (1) H.B. No. 126 provides an appropriation for staff salary adjustments, which is in line with collective bargaining increases for other state employees; and (2) S.B. No. 996 provides an appropriation for the development of an electronic filing system. The other bills, including the State Ethics Commission's bills, did not pass. A number of the bills received hearings and the bills will carry over to the 2016 legislative session.

Vice Chair O'Neal asked if the \$130,000 appropriation would take care of the online electronic filing issues. Executive Director Kondo described what he envisioned for the Commission's electronic filing system and said that this differs significantly from the electronic filing system designed by the Hawaii Information Consortium ("HIC") as a stop-gap improvement. Executive Director Kondo stated that HIC now has a better understanding of staff's expectations for an electronic filing system but unfortunately the estimated cost of the new system may not remain the same.

Agenda Item No. VIII: Delinquent Filers: 2014 Disclosure of Financial Interests

Staff Attorney Chang said that 45 fine notices were issued to delinquent financial disclosure filers in January 2015, and that approximately 38 of the late filing fine notices have been resolved.

Staff Attorney Chang said that 99% of the 1,922 state employees and board members required to file financial disclosures for 2014 have filed, and that a total of \$1,210 in late filing administrative fines has been collected and deposited into the state general fund.

Staff Attorney Chang said that requests for waiver of the late filing administrative fine have been received from Nathan Miranda, a member of the Soil and Water Conservation District – Oahu/Windward District; Freddie Woodard, Jr., an employee of the Hawaii Health Systems Corporation – Kauai; and Andrew Kahili, member of the Board of Registration for the island of Hawaii. Staff Attorney Chang said that staff recommends granting these waiver requests based on the good cause stated in the individual waiver requests.

Vice Chair O'Neal moved and Commissioner DeGuzman seconded a motion to approve the waiver requests for good cause shown. The motion carried unanimously (Broglio, O'Neal, DeGuzman, Tschumy, and Wood voting).

Agenda Item No. IX: Timeline for Review and Enforcement of 2015 Financial Disclosure Statement Filing Requirement

Staff Attorney Chang said that courtesy reminders regarding the filing of a 2015 financial disclosure statement have been sent to current state employees and board members. Staff Attorney Chang said that reminders will be sent to new appointees upon receipt by staff of confirmation of the new appointment.

Staff Attorney Chang presented a proposed schedule for 2015 financial disclosure filings. The deadline for filing 2015 financial disclosure statements is June 1, 2015. Staff will begin following up with individual late filers in July with an initial warning letter, followed by subsequent fine notices to those individuals who do not comply. Staff Attorney Chang said that staff anticipates completing all delinquent filer follow-ups by November 2015.

Agenda Item No. X: Free Trips to Teachers Who Chaperone Student Educational Tours

Chair Broglio said the Commission has received written testimony on this agenda item from the following: Joan Kamila Lewis, Teacher, Kapolei High School; Kimberly Oh, Teacher; Kathryn Matayoshi, Superintendent, Department of Education; Lea Albert, Complex Area Superintendent, Department of Education.

Chair Broglio said that Wilbert Holck, Executive Director of the Hawaii State Teachers Association, asked to provide oral testimony on this agenda item.

Mr. Holck said that a number of concerns were received from teachers regarding the possibility that they may not be able to go on the student trips that have already been planned. Mr. Holck said that it seems there is an issue regarding student travel and gifts, and the Hawaii State Teachers Association asks that as that issue is sorted out, the Commission allow for those schools that have already planned trips to proceed with those trips.

Chair Broglio thanked Mr. Holck for his testimony.

Chair Broglio requested a motion to recess the public meeting and convene an executive session to consult with the Commission's attorneys.

RECESS OF SUNSHINE LAW MEETING AND CONVENING OF EXECUTIVE SESSION

At approximately 11:51 a.m., Commissioner DeGuzman moved and Commissioner Tschumy seconded a motion to recess the Sunshine Law meeting and to convene an executive session pursuant to Hawaii Revised Statutes 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 (Broglia, 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 12:22 p.m., Commissioner Tschumy moved and Vice Chair O'Neal seconded a motion to adjourn the executive session. The motion carried unanimously (Broglia, O'Neal, DeGuzman, Tschumy, and Wood voting).

At approximately 12:22 p.m., the Commission returned to the Sunshine Law meeting.

Agenda Item No. X: Free Trips to Teachers Who Chaperone Student Educational Tours

Vice Chair O'Neal disclosed that his wife is a DOE resource teacher, but is not involved in chaperoning student trips.

Staff Attorney Chock said that questionnaires have been sent to DOE schools in an attempt to obtain information regarding upcoming student trips. Staff Attorney Chock said staff is aware that some trips have been scheduled for June 2015, at least one trip is scheduled for December 2015, and other trips have been scheduled for March 2016. Staff Attorney Chock said staff understands that these trips have already been planned and paid for by the students and that refunds are not available at this time.

Chair Broglia asked Staff Attorney Chock to review the issue of the gifts disclosure law and its applicability to the matter of free trips for teachers who chaperone student educational tours.

Staff Attorney Chock said this matter raises issues under the gifts disclosure law and several other sections of the State Ethics Code. Staff Attorney Chock explained that the gifts law, Hawaii Revised Statutes section 84-11, prohibits a state employee from soliciting or accepting a "gift," such as free travel, if there is an appearance that the gift is given to influence or reward official action. The issue is whether a teacher can accept a free trip, i.e., gift, from a travel company for taking official action affecting the travel company (the official action being selecting the travel company with which to do business, deciding on the travel destination, and promoting the trip to the students/parents). In the scenarios staff has dealt with, the more students who sign up for the trip, the more free trips are offered to the teachers. Staff Attorney Chock

explained the free trip can be viewed as a gift given by the travel company to influence or reward the teacher for official action.

Executive Director Kondo said that there has been some misunderstanding as to the Commission's position with respect to the teacher chaperoned free travel. Executive Director Kondo said that the Commission is not saying that these trips do not have value to the students, nor is the Commission questioning whether or not the teacher chaperone is working during the trip. Executive Director Kondo said that the issue is the free travel and whether the free travel is permitted under the State Ethics Code. Executive Director Kondo said that the State Ethics Code is applied equally to state employees.

Staff Attorney Chock said that, related to the gifts law is the gifts reporting law, which requires a state employee to report a gift if the gift is over \$200 and the donor of the gift has interests that may be affected by official action taken by the recipient. Staff Attorney Chock said that in this situation, all of the travel packages are well over \$200 in value and the state employees who receive gifts of travel will need to report them to the Commission on a gifts disclosure statement.

Staff Attorney Chock said that other provisions of the State Ethics Code also apply to this matter. Hawaii Revised Statutes section 84-14(d) says that a state employee cannot assist or represent a business for compensation on matters in which the employee has participated in his/her capacity as an employee, or on matters that come before his/her own state agency. Staff Attorney Chock explained that a teacher who is involved in promoting a trip could be viewed as assisting or representing the travel company in a matter in which the teacher participated, because the teacher was involved in planning the trip. The "compensation" to the teacher would be the free trip the teacher would receive from the travel company.

Staff Attorney Chock said the fair treatment law provides that a state employee cannot use or attempt to use his/her state position to get unwarranted advantages or privileges or benefits for himself/herself or anyone else. Staff Attorney Chock said that if a teacher is involved in promoting a trip in order to receive a free travel package for himself/herself or other teachers, issues arise under the fair treatment law.

Commissioner Tschumy said she supports the Commission upholding the State Ethics Code regarding the issue of free trips for teachers who chaperone student educational tours. Commissioner Tschumy said she is concerned, however, about the misunderstanding between ethics staff and representatives of the DOE regarding whether permission was given for only King Intermediate School ("King") to continue with their student travel plans or whether permission was given to any school to continue with their student trips if the travel had already been planned. Commissioner Tschumy said that the Commission is aware that there are trips that have been planned for school year 2015-2016 and that these trips have already been paid for by parents. Commissioner Tschumy said that there need to be better policies and rules promulgated by the DOE regarding student travel, but she is concerned that the parents who have already paid for the travel will be penalized.

Staff Attorney Chock said that unfortunately, there was a misunderstanding on the part of the DOE, and it is not possible for staff to determine whether the student trips are acceptable under the State Ethics Code without knowing the complete facts and circumstances of a particular trip. Staff Attorney Chock said that once the facts and circumstances of a particular trip are known, staff can provide informed guidance to the school.

Commissioner Wood said that the Commission should look at the issue of a gift of free travel in a manner similar to how the Commission viewed the issue of a gift of free golf. Commissioner Wood said that the Commission determined that, in any case, a gift of free golf must be disclosed and that a gift of free travel should also be disclosed in accordance with the statute.

Vice Chair O'Neal said that there is a huge difference between the golf investigation and the current teacher trip matter. Vice Chair O'Neal said that in the golf investigation, one person was responsible for the action of receiving a gift of golf. But with regard to a teacher, in order to avoid the possibility of an ethics violation, the teacher may have to cancel a trip affecting 20 students. Vice Chair O'Neal said that, without a resolution by the Commission, the trip could possibly be cancelled.

Commissioner Wood disagreed. She said that the teacher, not the Commission, would be the party responsible for cancelling the trip. Commissioner Wood said the teacher should seek guidance from the Commission to ensure that school trips are acceptable under the State Ethics Code.

Vice Chair O'Neal said he felt that the Commission wanted to work with the DOE to ensure that student trips are acceptable under the State Ethics Code. He was concerned that there was insufficient time to work out the issues before the trips that have been scheduled and paid for are taken.

Commissioner DeGuzman asked if it was possible for the DOE to pay for the teacher's trips that are scheduled to depart over the next few weeks, or reimburse the travel agency for the value of those trips so that the free chaperone travel is not considered a gift. Commissioner DeGuzman said that although it may be a budget issue for the DOE, it would be a way that the DOE could preserve the educational value of the trips.

Chair Broglio said that the practice of student travel has been ongoing for 20+ years and that the Commission needs to work with the DOE to ensure that student trips may continue in the future, by establishing a clear approval process within the State Ethics Code. Chair Broglio said he favored resolving the issues regarding trips that have been planned and paid for, so the teachers can go forward without fear of an ethics code violation. He asked for a motion to take care of the teachers who in good faith planned student trips.

Associate Director Yoza said that this matter is not under investigation at this time; staff is only attempting to provide guidance and advice to the DOE and the teachers.

Executive Director Kondo said that staff has attempted to reach out and speak with the teachers without much success. Executive Director Kondo explained that staff developed the questionnaire in an attempt to more efficiently obtain the information needed to make an assessment in order to advise the Commission if there are any issues with the planned travel.

Chair Broglio asked what action staff would recommend be taken regarding trips scheduled to depart in June 2015.

Staff Attorney Chock said if the facts are substantially similar to those of the King trip, staff would not be inclined to recommend any type of administrative action against anyone who organized, promoted or accepted the trip. Staff Attorney Chock said that, unfortunately, staff does not yet have complete information regarding these trips.

Commissioner Wood said the Commission should strongly encourage teachers and the schools to return their completed questionnaires so that staff may provide guidance to prevent violations of the State Ethics Code. Commissioner Wood said that the Commission needs to make clear that the questionnaire is not a punitive tool.

Executive Director Kondo said that the purpose of this agenda item is to update the Commission as to the status of this matter and to inform Commissioners that staff is attempting to gather information in order to provide a more reasoned recommendation or reasoned advice can be provided to the schools themselves.

Associate Director Yoza suggested that if staff receives information about a particular trip that's coming up fairly quickly and it believes, based on the information provided, that the situation is comparable to that of King, then the staff can advise that particular school with regard to that particular trip the same as it advised King. Associate Director Yoza also suggested that if staff receives information about trips that are further down the line and the trips look problematic, those trips would be brought to the Commission for further discussion. Associate Director Yoza said that if these suggestions meet with the approval of Commissioners, staff can proceed. Associate Director Yoza said that staff would also advise teachers that they need to report the trips on a gifts disclosure statement.

Commissioner DeGuzman asked what would happen if staff finds information that is not consistent with King. Executive Director Kondo said that it would depend on the specific facts uncovered, but that state law applies.

Commissioner DeGuzman recalled that, regarding the cases involving free golf, the Commission found violations, but that some golfers were not fined, some golfers were assessed small fines and others were assessed very large fines. Commissioner DeGuzman suggested that the teacher travel matter could be handled in a similar manner, i.e, there is a violation, but it is at the Commission's discretion as to whether a penalty of some type would be enforced.

Executive Director Kondo remarked that, as in the golf cases, given the circumstances and all the other factors, if there is a violation, the law could be applied prospectively.

Chair Broglio asked what will happen with the trips departing in the next 30 days.

Executive Director Kondo said that if the teachers or the schools do not provide staff with the requested travel information, it is his expectation that the teachers will go forward with the trips and there will be no prejudice or harm to the students or the parents. Executive Director Kondo said that staff is trying to help the teachers help themselves by gathering information so that staff can provide the teachers with some assurance about the currently planned trip, but that the teachers recognize that future trips would need to be done differently.

Commissioner Tschumy asked if staff has asked the DOE to provide a plan or policy that would align with the State Ethics Code. Staff Attorney Chock said that the DOE appears willing to work with the Ethics Commission with the goal that, in the future, the DOE will implement a process allows these trips to go forward without violating the State Ethics Code.

Chair Broglio asked if the Commission would like to make a motion to provide assurances to the teachers, parents, and students participating in the school travel currently planned. Commissioner Wood said that she felt the Commission did not currently have enough information regarding these trips because the teachers or the schools have not returned their questionnaires.

Vice Chair O'Neal moved that the Commission put on record that it will not pursue ethics violations; that the Commission may determine there is a violation but may not necessarily enforce it. The motion was not seconded.

A discussion followed regarding the possibility of the Commission approving trips that are already planned and paid for. Staff Attorney Chock said it may be difficult to draw lines because there are different levels of planning involved. Staff Attorney Chock said that some trips have been planned but only a couple of people have signed up and interest in the trip is still being solicited.

Executive Director Kondo said that the application of our statute is always fact based, and it would be unusual for the Commission to establish a bright line pass without understanding more about specific situations. Executive Director Kondo said that staff is trying to get the teachers and the DOE to help them understand whether or not the trips are going to cause issues. Executive Director Kondo suggested that the Commission not issue blanket bright line immunity for trips and allow staff to continue to gather the necessary information regarding individual trips.

Vice Chair O'Neal asked for an estimated timeline by which this matter could be resolved with the DOE.

Executive Director Kondo said that an estimated timeline would depend on the Superintendent and the DOE and what they want to do to resolve this matter. Executive Director Kondo said the DOE could either stop all student travel or, if they want to continue with student trips, the DOE would need to develop an appropriate student travel policy. Executive Director Kondo said that staff would be available to review such a policy.

Vice Chair O'Neal said that he believes it is well on record that the Commission's intent is to resolve this matter. Vice Chair O'Neal said that the Commission's goal is not to be punitive, but to ensure that the Ethics Code is not being violated. Vice Chair O'Neal said he believes that the ethics staff should continue to gather information regarding student trips and he hopes that the DOE will work with the Commission to resolve this matter.

Agenda Item No. V: Performance Evaluation of Executive Director

Chair Broglio requested a motion to recess the Sunshine Law meeting and to convene an executive session to consider personnel matters affecting the Executive Director's privacy interest and to consult with the Commission's attorneys.

RECESS OF SUNSHINE LAW MEETING AND CONVENING OF EXECUTIVE SESSION

At approximately 1:12 p.m., Vice Chair O'Neal moved and Commissioner Tschumy seconded a motion to recess the Sunshine Law meeting and to convene an executive session pursuant to Hawaii Revised Statutes section 92-5(a)(2), to consider personnel matters affecting the Executive Director's privacy interest, and pursuant to Hawaii Revised Statutes 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.

Vice Chair O'Neal left the meeting at approximately 4:48 p.m.

RECESS OF EXECUTIVE SESSION AND RETURN TO THE SUNSHINE LAW MEETING

At approximately 4:59 p.m., Commissioner DeGuzman moved and Commissioner Wood seconded a motion to recess the executive session and return to

the Sunshine Law meeting. The motion carried unanimously (Broglia, DeGuzman, Tschumy, and Wood voting).

At approximately 4:59 p.m., the Commission returned to the Sunshine Law meeting.

MOTION TO CONTINUE SUNSHINE LAW MEETING AND RECESS

At approximately 4:59 p.m., Commissioner DeGuzman moved and Commissioner Wood seconded a motion to continue the Sunshine Law meeting to June 9 or June 12, 2015, as determined by the Commission at a later time. The motion carried unanimously (Broglia, DeGuzman, Tschumy, and Wood voting).

The meeting was recessed at approximately 4:59 p.m.

In accordance with the Notice of Meeting filed on June 4, 2015, the meeting was reconvened on June 10, 2015.

CONTINUED SUNSHINE LAW MEETING

Date: Wednesday, June 10, 2015

Time: 9:00 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. Broglia, Chair
David O'Neal, Vice Chair
Susan N. DeGuzman, Commissioner
Ruth D. Tschumy, Commissioner
Melinda Wood, Commissioner

State Ethics Commission Staff
Leslie H. Kondo, Executive Director

Department of the Attorney General
Russell Suzuki, First Deputy Attorney General
Nelson Nabeta, Deputy Attorney General

CALL TO ORDER TO RECONVENE MEETING

The meeting was called to order and reconvened at approximately 9:02 a.m. by Chair Broglio.

Agenda Item V: Performance Evaluation of Executive Director

RECESS OF SUNSHINE LAW MEETING TO RECONVENE EXECUTIVE SESSION

Chair Broglio stated the Commission is reconvening its meeting that was recessed on May 27, 2015. Public testimony has concluded and no new public testimony will be accepted. At this time, he asked for a motion to recess the public meeting and convene an executive session pursuant to Hawaii Revised Statutes section 92-5(a)(4) to consult with their attorney.

Commissioner Tschumy so moved and her motion was seconded by Vice Chair O'Neal. The motion carried unanimously (Broglio, O'Neal, DeGuzman, Tschumy and Wood voting).

The Executive Director asked for clarification of the agenda item. Chair Broglio stated the agenda item was for the Commission to complete its evaluation of the Executive Director.

EXECUTIVE SESSION

The Commission met in executive session.

ADJOURNMENT OF EXECUTIVE SESSION AND RETURN TO THE SUNSHINE LAW MEETING

Vice Chair O'Neal moved and Commissioner Tschumy seconded a motion to adjourn the executive session and return to the Sunshine Law meeting. The motion carried unanimously (Broglio, O'Neal, DeGuzman, Tschumy, and Wood voting).

RECESS OF SUNSHINE LAW MEETING TO RECONVENE EXECUTIVE SESSION

At approximately 9:37 a.m., Chair Broglio asked for a motion to recess the public meeting and reconvene in executive session pursuant to Hawaii Revised Statutes section 92-5(a)(2) to consider personnel matters concerning the Executive Director. Vice Chair O'Neal so moved, Commissioner Tschumy seconded the motion and 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 12:28 p.m., Commissioner DeGuzman moved and Vice Chair O'Neal seconded a motion to adjourn the executive session and return to the Sunshine Law meeting. The motion carried unanimously (Broglio, O'Neal, DeGuzman, Tschumy, and Wood voting).

At approximately 12:28 p.m., the Commission returned to the Sunshine Law meeting.

In the public session, Chair Broglio announced that the Commission has concluded its private discussion with the Executive Director regarding his performance and they will be doing a further evaluation in the future. He then asked for a motion to adjourn.

ADJOURNMENT

At approximately 12:29 p.m., Commissioner DeGuzman moved and Vice Chair O'Neal 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 12:29 p.m.

Minutes approved on July 22, 2015.