

SUNSHINE LAW MEETING
MINUTES OF THE HAWAII STATE ETHICS COMMISSION

State of Hawaii

Date: Wednesday, August 19, 2015

Time: 10:05 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
Susan N. DeGuzman, Chair
David O'Neal, Vice Chair
Ruth D. Tschumy, Commissioner
Melinda Wood, Commissioner
Reynaldo D. Grauly, 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. Chang, Staff Attorney

CALL TO ORDER

The meeting was called to order at approximately 10:05 a.m. by Chair DeGuzman.

Agenda Item No. I: Minutes: Consideration and Approval of the Minutes of the July 22, 2015, Meeting

Commissioner Tschumy made and Vice Chair O'Neal seconded a motion to approve the minutes of the July 22, 2015, Sunshine Law meeting. The motion carried unanimously (DeGuzman, O'Neal, Tschumy, Wood, and Grauly voting).

Agenda Item No. II: Minutes: Consideration and Approval of the Minutes of the July 22, 2015, Executive Session Regarding Agenda Item V: Consideration and Approval of the Minutes of the May 27, 2015, Executive Session Regarding Performance Evaluation of Executive Director

Commissioner Wood said there was a typographical error in the spelling of her last name in the second to the last line on the first page of the Executive Session minutes.

Vice Chair O'Neal made and Commissioner Grauly seconded a motion to approve the July 22, 2015, Executive Session minutes, as amended, regarding the Performance Evaluation of Executive Director. The motion carried unanimously (DeGuzman, O'Neal, Tschumy, Wood, and Grauly voting).

Agenda Item No. III: Executive Director's Report

1. Education/Training Report

Executive Director Kondo said he conducted an ethics training session for approximately 228 state employees at the City and County of Honolulu's Mission Memorial Auditorium on August 18, 2015. Executive Director Kondo said that other ethics training sessions will be held for the Hawaii Health Systems Corporation East Hawaii Region board members in Hilo on August 25, 2015; board and commission members and their staff at the State Capitol Auditorium on August 26, 2015; state employees at the Hawaii State Hospital at a date to be scheduled; and an orientation for board and commission members on September 17, 2015, which is being coordinated by the Office of the Governor.

Chair DeGuzman inquired about the pre-retirement seminars listed on the education schedule. Executive Director Kondo said that staff has a limited time of 15 minutes to discuss the post employment section of the State Ethics Code to state employees contemplating retirement.

2. July 2015: Requests for Guidance and New Assignments Opened

Executive Director Kondo said that Vice Chair O'Neal had a good suggestion for staff to present information on the work that occurs in the office in addition to the cases that are presented to the Commission at the meetings. Executive Director Kondo said that telephone calls to the office from state employees or other individuals, which require the staff attorneys' guidance on the ethics laws, are called AOD calls or attorney-of-the-day calls. Executive Director Kondo said that for the month of July, staff received 59 AOD calls. Staff has received as high as 84 AOD calls in a month, with the average for this year of 70 AOD calls a month. Executive Director Kondo explained that if an issue in an AOD call becomes complicated, the AOD call then becomes an assignment.

Assignments are placed in categories, such as complaints, and are assigned to the staff attorneys. Executive Director Kondo said that, in July, staff received 68 new assignments and 47 assignments were resolved and closed. Executive Director Kondo said that many of the assignments will resolve themselves without Commission involvement, but some of the assignments will evolve to the point where Commission action is needed.

Chair DeGuzman asked for a ballpark figure as to pending assignments or staff's current caseload. Executive Director Kondo said staff has approximately 60 to 70 pending cases. Chair DeGuzman asked for examples of AOD calls that are quickly resolved and AOD calls that would develop to assignments. Executive Director Kondo said that AOD calls requesting guidance on filling out a financial disclosure form can be resolved quickly. AOD calls from state employees needing guidance on outside employment with possible conflicts of interests issues may require a request for additional information and will become an assignment.

3. Staff Memorandum to Department of Education Teachers Regarding Free Travel From Private Tour Companies

Executive Director Kondo said that the memorandum from the Department of Education ("DOE") Superintendent, dated August 5, 2015, and the Commission's memorandum regarding free travel from private tour companies, dated August 4, 2015, were included in the meeting's material for the Commission's information. Executive Director Kondo said that staff has received calls and emails from teachers and other individuals regarding the memoranda. Executive Director Kondo said staff plans to meet with the DOE to address the follow-up questions regarding currently planned travel and fundraising options by the DOE schools.

Agenda Item No. IV: Advisory Opinion Regarding Application of the State Ethics Code to Free Travel and Other Benefits Offered to Teachers By Tour Companies

The Commission Will Consider Issuing an Advisory Opinion Regarding the Application of the State Ethics Code to Free Travel and Other Benefits Offered to Teachers by Tour Companies

Staff Attorney Chock said staff recommends that the Commission issue an advisory opinion to formally state its position and explain how the State Ethics Code applies to the matter of free travel and other benefits offered to Department of Education ("DOE") teachers by tour companies. Staff Attorney Chock said staff prepared a draft advisory opinion for the Commission's review and consideration, and that Chair DeGuzman has suggested revisions to the draft advisory opinion. Staff provided the Commissioners with a revised draft of the advisory opinion, which incorporated many of Chair DeGuzman's suggestions and also included additional revisions by staff. The Commission considered the revised draft of the advisory opinion. Staff Attorney Chock said that the Commission may want to defer issuing the advisory opinion if the Commission feels that the advisory opinion should be revised further.

Chair DeGuzman asked if there was anyone who wished to submit public testimony at this time. There was no public testimony.

Commissioner Graulty said he approved of the advisory opinion, except for the last paragraph, which says that the Commission has offered to assist the DOE in finding possible ways to fund the teachers' travel. Commissioner Graulty felt that the paragraph did not belong in the advisory opinion as plans to fund the teachers' travel would be the responsibility of the DOE and not the Commission. Commissioner Graulty suggested that the last paragraph of the advisory opinion be deleted.

Commissioner Tschumy asked staff why the Commission might consider deferring the advisory opinion. Executive Director Kondo said that, as written, the draft advisory opinion is a solid, legal document. Executive Director Kondo suggested, however, that the advisory opinion may contain too much legal language that readers may have difficulty understanding. Executive Director Kondo felt that the advisory opinion could be reworked to use plainer language. Executive Director Kondo said that the DOE is already aware of the Commission's position and has received the Commission's memorandum regarding free travel from tour companies. He said that the release of the Commission's advisory opinion could be deferred to the next meeting.

Commissioner Tschumy felt that if the staff recommended deferment of the advisory opinion, the Commission should consider it. Chair DeGuzman recognized that the advisory opinion was written in "legalese" and was concerned because the advisory opinion would be released to the general public. Chair DeGuzman said that the DOE has access to attorneys to advise them about the contents of the advisory opinion, but not everyone in the public has access to a lawyer to assist in digesting the information in the advisory opinion. Chair DeGuzman preferred that the advisory opinion be worked on to be more readable by the layperson.

Commissioner Graulty said that he would prefer that the advisory opinion be released as soon as possible as it would be easier for the DOE to start adjusting to the changes and to find alternative means of funding for travel by the teachers and chaperones. Executive Director Kondo suggested a middle ground where the Commission could issue this advisory opinion and also issue a layperson's version of the advisory opinion that reiterates the information in the advisory opinion. Vice Chair O'Neal said that it may entail more work for staff and be more confusing to the DOE and the public to have two documents issued on the same opinion.

Commissioner Graulty said a reason for issuing the advisory opinion as soon as possible is that, if staff is going to be engaged in discussions with the DOE about this matter as it relates to the State Ethics Code, it would be important that the DOE recognizes that the Commission has declared its opinion on the matter. By the Commission speaking through the advisory opinion, the Commission is giving its support to staff.

Commissioner Graulty made and Commissioner Wood seconded a motion to amend Advisory Opinion No. 2015-1 by deleting the last paragraph.

Vice Chair O'Neal believed it was important to leave the last paragraph in the advisory opinion so that the teachers are aware that the Commission is offering to assist them as the DOE addresses its travel policy. Executive Director Kondo suggested that the word, "developing," could be changed to "reviewing," with the last paragraph to read, "The Commission has offered to assist the DOE in reviewing policies and procedures to address the State Ethics Code concerns associated with the teachers' acceptance of free travel and other benefits, including possible ways to fund the teachers' travel for upcoming student educational trips." Commissioner Graulty said that he was still concerned about the last part of the paragraph regarding the Commission's offer to find ways to fund the teachers' travel for upcoming student educational trips. He felt this was the DOE's responsibility rather than the Commission's. Chair DeGuzman said that the Commission and staff would be reviewing the DOE's suggestions for funding teachers' travel to advise the DOE as to whether the funding proposals were consistent with the State Ethics Code. Commissioner Tschumy agreed that the Commission and staff should review whether the DOE's plans to fund teacher travel align with the State Ethics Code. Commissioner Graulty said that he could accept the inclusion of the last paragraph of the advisory opinion if the word "developing" was revised to "reviewing," as suggested.

Commissioner Graulty made and Vice Chair O'Neal seconded a motion to include the last paragraph of Advisory Opinion No. 2015-1, with the revision of the word, "developing" to "reviewing." The motion carried unanimously (DeGuzman, O'Neal, Tschumy, Wood, and Graulty voting).

Commissioner Graulty made and Commissioner Wood seconded a motion to approve Advisory Opinion No. 2015-1, as amended.

Vice Chair O'Neal said that he felt the advisory opinion should be deferred as recommended by staff in order to revise it into a more reader-friendly opinion. Commissioner Tschumy agreed. Chair DeGuzman called for the vote on the motion to approve Advisory Opinion No. 2015-1, as amended. The motion carried (DeGuzman, Wood, and Graulty voting aye; O'Neal and Tschumy voting nay). Advisory Opinion No. 2015-1 was circulated to the Commissioners for signature.

Agenda Item No. V: Advisory Opinion Regarding Application of the State Ethics Code to Charter School Employees' Employment With Non-Profit Organizations Whose Purpose is to Support the Employees' Charter School

The Commission Will Consider Issuing an Advisory Opinion Regarding the Application of the State Ethics Code to Employees of Charter Schools Who Are Employed or Otherwise Compensated by Non-Profit Organizations Whose Purpose is to Support the Employees' Charter School

Staff Attorney Neuffer said staff became aware that governing board members and employees of charter schools either were involved with, or may become involved with, private non-profit organizations that support the charter schools. Staff Attorney Neuffer

said that staff realized it was not well understood by the charter school community that this situation raises concerns under the conflicts of interests section of the State Ethics Code. Staff recommended that the Commission issue an advisory opinion to bring awareness to the charter schools about the application of the State Ethics Code to this situation.

Staff Attorney Neuffer said the advisory opinion addresses the issue of dual employment, where a paid employee of the non-profit organization is also a member of the governing board or an employee of the charter school. As discussed in the draft advisory opinion, two sections of the conflicts of interests law are primarily applicable. Hawaii Revised Statutes (“HRS”) section 84-14(a) prohibits the employee or member of the governing board of the charter school from taking state official action affecting the non-profit organization. This includes signing checks, making budget decisions, and/or approving contracts affecting the non-profit organization. HRS section 84-14(d) prohibits the paid employee of the non-profit organization from assisting or representing the non-profit organization before the charter school. This includes the submittal of invoices to the charter school, speaking on behalf of the non-profit organization before the governing board, and/or negotiating with the charter school on behalf of the non-profit organization.

Staff Attorney Neuffer said that Chair DeGuzman had suggested revisions to the advisory opinion and those revisions were incorporated into the latest version of the advisory opinion. The revised advisory opinion clarifies that the opinion applies to both the situation in which the charter school employee or member of the governing board is currently employed by the non-profit organization, and the situation in which the charter school employee or member of the governing board is contemplating such employment.

Vice Chair O’Neal made and Commissioner Wood seconded a motion to approve Advisory Opinion No. 2015-2, as revised. The motion carried unanimously (DeGuzman, O’Neal, Tschumy, Wood, and Gaulty voting). Advisory Opinion No. 2015-2 was circulated to the Commissioners for signature.

Agenda Item No. VI: Legislative Allowance: Chief Clerk of the House of Representatives Denial of Request for Public Records

The Commission Will Consider the Chief Clerk’s Response to Staff’s Request for Access to Public Records in the Format that the Records are Maintained

Executive Director Kondo informed the Commission that this agenda item is a moot issue as staff received the public records on legislative allowances from the Chief Clerk of the House of Representatives in the requested Excel format on the day prior to the Commission meeting. Associate Director Yoza said that staff also received the public records on legislative allowances from the Senate this morning in the requested Excel format.

ADJOURNMENT

At approximately 10:49 a.m., Commissioner Wood moved and Vice Chair O'Neal seconded a motion to adjourn the Sunshine Law meeting. The motion carried unanimously (DeGuzman, O'Neal, Tschumy, Wood, and Gaulty voting).

The meeting was adjourned at approximately 10:49 a.m.

Minutes approved on September 16, 2015.