

SUNSHINE LAW MEETING
MINUTES OF THE HAWAII STATE ETHICS COMMISSION

State of Hawaii

Date: Wednesday, September 16, 2015

Time: 11:00 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
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
Megan Y. S. Johnson, Staff Attorney
Bonita Y. M. Chang, Staff Attorney

CALL TO ORDER

The meeting was called to order at approximately 11:03 a.m. by Chair DeGuzman.

Agenda Item No. I: Minutes: Consideration and Approval of the Minutes of the August 19, 2015, Meeting

Commissioner Wood suggested that the phrase "attorney-of-the-day (AOD)" in item number 2 of the Executive Director's Report be amended to read "attorney-of-the-day calls (AOD calls)."

Vice Chair O'Neal made and Commissioner Tschumy seconded a motion to approve the minutes of the August 19, 2015, Sunshine Law meeting as amended. The motion carried unanimously (DeGuzman, O'Neal, Tschumy, Wood, and Grauly voting).

Agenda Item No. II: Executive Director's Report

1. Education/Training Report

Executive Director Kondo said the Governor's Office of Boards and Commissions will hold a training seminar for new and existing members of boards and commissions on September 17, 2015, in the State Capitol Auditorium. Executive Director Kondo will participate in the training seminar, along with representatives of the Office of Information Practices and the Attorney General's Office. Ethics training sessions have also been scheduled for the Hawaii Health Systems Corporate Board and the staff of the Hawaii State Hospital.

Chair DeGuzman asked whether there are plans to reschedule the lobbyist workshop. Executive Director Kondo said that staff originally planned to convene a group, including lobbyists and public interest groups, to discuss some of the issues involving lobbying. The workshop was postponed to better consider staff's interpretation of the Lobbyists Law. Executive Director Kondo said he has concerns regarding staff's interpretation of several lobbying issues, including goodwill lobbying, that he believes the Commission should revisit.

Commissioner Wood said it was important to do something for lobbyists before the legislature convenes in 2016. Commissioner Grauly suggested that Commission staff meet with key professional lobbyists to determine the type of information that would be helpful to clarify what is required of lobbyists. Executive Director Kondo said that some lobbying issues may require legislation and professional lobbyists may be very supportive of clarifying the law.

Executive Director Kondo said it was his impression that, in the past, the Commission was not supportive of staff engaging in this exercise. Chair DeGuzman and Commissioner Wood said they were supportive of staff's efforts to clarify the Lobbyists Law.

Commissioner Grauly made and Commissioner Wood seconded a motion that Executive Director Kondo contact key lobbyists to determine how the Commission may be helpful in clarifying the current Lobbyists Law or to suggest improvements to the law.

Commissioner Tschumy asked whether this matter was properly noticed under the Sunshine Law and suggested the matter be placed on the agenda for the next Commission meeting. Executive Director Kondo said that he felt this matter does not require action by the Commission because it is related to training. Executive Director Kondo said he would like the opportunity to explore this matter further at the staff level.

Commissioner Grauly withdrew his motion and said he felt the Commission should provide some direction to staff regarding this matter.

2. Development of New Electronic Filing System

Executive Director Kondo said that staff is working with Hawaii Information Consortium (“HIC”) to develop a new electronic filing system for both lobbyists and financial disclosure filers. HIC has provided very high level statements of work for the project and staff is working with HIC to develop more detailed statements of work in order to increase understanding of the final product by both HIC and Commission staff. Executive Director Kondo said that the legislature had appropriated \$130,000 for the new electronic filing system.

Executive Director Kondo said he is concerned that work on the new electronic filing system is progressing very slowly, but he is hopeful that the system will be available for online testing in January 2016.

3. 2015 Delinquent Financial Disclosure Filers

Staff Attorney Chang said that the number of delinquent financial disclosure filers has declined significantly due to the work of staff in following up with filers. There are currently three employees who have not yet filed, two of whom are new filers, and 52 members of boards and commissions who have not yet filed, 33 of whom are new filers.

Staff Attorney Chang said that staff will continue to follow up with the delinquent filers and will request board/commission administrators to assist with follow up for the 19 continuing active delinquent board/commission filers. The next stage will be to send a written late notice to each delinquent filer.

Vice Chair O’Neal asked if any of the delinquent filers had indicated they would not file. Staff Attorney Chang said most of the delinquent filers indicated that they had just not gotten around to filing, or were trying to get familiar with our e-filing system. Executive Director Kondo said that the majority of the delinquent filers are members of boards and commissions and that staff has been doing a very good job in trying to get voluntary compliance.

Chair DeGuzman asked Executive Director Kondo to pass on the Commission’s appreciation to the staff for their follow-up efforts.

4. August 2015: Requests for Guidance and New Assignments Opened

Executive Director Kondo updated the Commission on staff’s activities for the month of August. Staff received a total of 70 attorney-of-the-day calls, opened 75 new files, and closed 33 active files during August. Executive Director Kondo said much of the guidance provided by staff related to teacher chaperone travel or teacher fundraising matters.

Vice Chair O’Neal asked if any of the teacher chaperone travel inquiries were found to be in violation of the State Ethics Code. Executive Director Kondo said that some of the travel questionnaires received from teachers indicated that the teachers

would pay for their own travel. He said that if teachers paid for their own travel, there would be no violation of the State Ethics Code.

Commissioner Grauly said he received a phone call informing him that there was a nonprofit organization in Washington, D.C. that funds or supports teacher travel. He said he felt that this information might be beneficial for teachers and he referred the caller to the Department of Education.

5. Letter from Richard Dvonch, Chief Attorney, House of Representatives

Executive Director Kondo said that a letter was received from Richard Dvonch, Chief Attorney, House of Representatives, concerning staff's inquiry into Representative Matthew LoPresti's efforts to assist in obtaining funds for public schools. Executive Director Kondo said that staff contacted Representative LoPresti regarding the 'Cool Schools 4 Ewa' program as a result of an inquiry from the Attorney General's Office and in order to clarify certain facts regarding the program.

Executive Director Kondo said that staff will respond to Mr. Dvonch because staff does have the ability to ask questions in order to clarify whether there is an issue that needs investigation.

Commissioner Grauly asked if the details of the Attorney General's inquiry could be disclosed. Executive Director Kondo said that staff does not publicly discuss allegations because they may end up becoming an adjudicatory matter.

6. Office of Information Practices Decision F 16-01 (July 24, 2015)

Executive Director Kondo provided Office of Information Practices Decision F 16-01 for the Commission's information to remind Commissioners that discussions outside of meetings may implicate the Sunshine Law.

7. William Eric Boyd vs. Hawaii State Ethics Commission

Executive Director Kondo reviewed the Intermediate Court of Appeals ("ICA") opinion regarding the appeal from the Third Circuit Court in the Boyd case and noted that the ICA rejected every argument made by Mr. Boyd on appeal. Vice Chair O'Neal asked if Mr. Boyd would appeal the ICA opinion. Executive Director Kondo said that Mr. Boyd only has the right to apply to the Hawaii Supreme Court ("Court") for a Writ of Certiorari and the acceptance of a Writ is discretionary by the Court.

8. Teacher-Chaperone Free Travel

Executive Director Kondo said Staff Attorney Chock has been working with the Department of Education ("DOE") on policies with respect to teacher travel, as well as on the fundraising issue.

Executive Director Kondo said he was invited to speak at the September 1, 2015, Board of Education ("BOE") meeting. As a result of that meeting, the BOE created an

Investigative Committee on Ethics, Educational Travel, and Teacher Participation, a permitted interaction group (“PIG”) consisting of three BOE members (Vice Chair Brian De Lima, Hubert Minn, and Amy Asselbayer). The objective of the PIG is to examine teacher chaperone trips, among other things, and ensure that student travel will occur with the participation of teachers. Executive Director Kondo said he hoped that the fundraising issue would also be examined by the PIG.

The PIG will collect relevant information, meet on September 25, 2015, and report to the BOE on October 6, 2015. It is anticipated that the BOE will take action on the PIG’s recommendation(s) at its October 20, 2015, meeting.

Executive Director Kondo said that although Commission staff has not been involved in the meetings of the PIG, he assumed that staff would be asked to participate at some point. Executive Director Kondo said that staff will support and assist the BOE wherever it is able.

Agenda Item No. III: Follow-up Discussion Regarding Executive Director’s Performance Evaluation and Review of Executive Director’s Performance Objectives

Chair DeGuzman requested 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/or 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.

RECESS OF SUNSHINE LAW MEETING AND CONVENING OF EXECUTIVE SESSION

At approximately 11:43 a.m., Vice Chair O’Neal moved and Commissioner Gaulty 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/or 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 (DeGuzman, O’Neal, Tschumy, Wood, and Gaulty voting).

Staff left the meeting at approximately 11:43 a.m.

EXECUTIVE SESSION

The Commission met in Executive Session.

ADJOURNMENT OF EXECUTIVE SESSION AND RETURN TO THE SUNSHINE LAW MEETING

At approximately 1:59 p.m., Commissioner Tschumy 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 (DeGuzman, O'Neal, Tschumy, Wood, and Grafty voting).

At approximately 1:59 p.m., the Commission returned to the Sunshine Law meeting. Staff returned to the meeting at approximately 1:59 p.m.

Agenda Item No. III: Follow-up Discussion Regarding Executive Director's Performance Evaluation and Review of Executive Director's Performance Objectives

Chair DeGuzman said that this matter will be placed on the agenda for the next Commission meeting.

ADJOURNMENT

At approximately 2:00 p.m., Commissioner Grafty 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 Grafty voting).

The meeting was adjourned at approximately 2:00 p.m.

Minutes approved on October 29, 2015.