

SUNSHINE LAW MEETING
MINUTES OF THE HAWAII STATE ETHICS COMMISSION

State of Hawaii

Date: Thursday, March 17, 2016

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: Hawaii State Ethics Commission Members
David O'Neal, Vice Chair
Ruth D. Tschumy, Commissioner
Melinda Wood, Commissioner
Reynaldo D. Graulty, Commissioner

Hawaii 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. Chang, Staff Attorney

Absent: Susan N. DeGuzman, Chair

CALL TO ORDER

Vice Chair O'Neal called the meeting to order at approximately 10:02 a.m.

Agenda Item No. I: Minutes: Consideration and Approval of the Minutes of the February 18, 2016 Meeting

Commissioner Graulty moved that the matter be deferred until the Commission's April meeting. Commissioner Tschumy seconded the motion. The motion carried unanimously (O'Neal, Tschumy, Wood, and Graulty voting).

Agenda Item No. II: Executive Director's Report

1. Education/Training Report:

Executive Director Kondo reported that staff held 2 separate trainings on Tuesday, March 15 at the City's Mission Memorial Auditorium: a general ethics code training class and a lobbyist discussion. Executive Director Kondo said that there were about 185 employees who attended the ethics session and about 50 people who attended the lobbying session.

Executive Director Kondo explained that the general purpose of the lobbying session was to provide information to the lobbyists regarding the Commission's interpretation of the Lobbyists Law, how the Commission applies the statute, and how the Commission wanted expenditures to be reported. Executive Director Kondo noted that the statute is challenging to "fit" together. Executive Director Kondo said that staff informed attendees of the areas in which staff wanted expenditures reported differently than how expenditures, generally, are currently reported.

Executive Director Kondo also reported that staff has scheduled training at the request of DOA's Pesticides Branch on May 20, at the request of RCUH on July 16, and expected to schedule a day during the week of June 20 for training on Kauai at the request of DOT. He said that the DOT training would be at the Kauai Community College auditorium and that DOT offered to allow employees of other state agencies to participate. Executive Director Kondo relayed that UH was interested in training for its employees.

2. February 2016: Guidance and Assignment Statistics

Executive Director Kondo referred to the statistics that were included in the Commissioners' materials and asked if the Commissioners had questions about the numbers. None of the Commissioners had questions about the information.

Agenda Item No. III: 2016 Legislative Session/Bills

Executive Director Kondo reported the status of S.B. No. 3024, S.B. No. 2425, and H.B. No. 1713. Executive Director Kondo said that the House Committee on Education had issued a hearing notice that included S.B. No. 2940 but subsequently withdrew the notice with respect to S.B. No. 2940. Executive Director Kondo discussed the advice that staff had received from first deputy attorney general Russell Suzuki regarding the language that staff had suggested be included in the UH technology transfer bill. He said that he did not agree with first deputy attorney general Suzuki's opinion that the language was unconstitutional, and that he had advised UH general counsel that staff expected UH to lead any further proposals relating to the bill.

Commissioner Graulty reported that he and Chair DeGuzman had met with Senate Committee on the Judiciary and Labor chair Gilbert Keith-Agaran and House

Committee on the Judiciary chair Karl Rhoads. He said that Senator Keith-Agaran had expressed his disappointment regarding certain amendments to the State Ethics Code that former chair Clayton Hee had passed. He further reported that Senator Keith-Agaran preferred to restore the language of the legislators' exemption to its prior form.

Commissioner Graulty said that Representative Rhoads felt that there needed to be a bill to address issues with the State Ethics Code comprehensively, including the gifts and fair treatment laws, but that there is no time to do so this session. Commissioner Graulty also said that Representative Rhoads believed that there was a problem with H.B. No. 813, but that he felt that he may accept the Senate's position to restore the legislators' exemption until there is opportunity to review the gifts and fair treatment laws in a more comprehensive manner.

Agenda Item No. IV: Legislators' Discretionary Allowance

Staff Attorney Chang provided an update regarding staff's review of 2015 legislative allowance expenditures. Based on staff's review of additional information provided by the House and Senate clerks, the majority of the disbursements appear to be consistent with the Commission's guidelines. Several of the expenditures, however, appear to be for charitable fundraising dinners, staff appreciation luncheons, and personal meals. As a result, staff recommended sending a general reminder memo regarding the Commission's guidelines.

Further discussion was held regarding how to handle this matter. Commissioners Tschumy, Graulty, and O'Neal stated that the memo should be directed to the Senate and House leadership.

Commissioner Graulty moved and Commissioner Tschumy seconded the motion for staff to send a memo regarding the use of legislators' discretionary allowances to Senate and House leadership for dissemination to the Senate and House clerks. The motion carried unanimously (O'Neal, Tschumy, Wood, and Graulty voting).

Agenda Item No. V: Financial Disclosure Statements: Reporting Interest in Personal Residence

Executive Director Kondo explained that the statute does not require a financial disclosure filer to report the street address or the tax map key number of the filer's personal residence or residences; accordingly, in reporting the "interests in real property held," filers are not required to report their personal residences.

Executive Director Kondo, however, noted that the statute does not exempt from disclosure the name of the person from whom residential property is purchased or to whom residential property is sold during the reporting period; similarly, the financial disclosure law does not exempt from disclosure the amount that the filer paid to acquire residential property or received from the sale of residential property during the reporting period.

Executive Director Kondo said that the parts of the financial disclosure form where filers report interests in real property acquired during the reporting period and interests in real property transferred during the reporting period, and the instructions relating to those parts of the form, expressly instruct that personal residences acquired or transferred are excluded from the reporting requirement.

Executive Director Kondo expressed his opinion that the Commission's forms and instructions are inconsistent with the statute. More specifically, he said that, because the financial disclosure law only exempts from disclosure the street address and tax map key number of a filer's personal residence or residences, filers should be required to report the name of the person from whom personal residential property was acquired and the amount of consideration paid to acquire the property and to report the name of the person to whom personal residential property was transferred and the amount of consideration received to transfer the property. Executive Director Kondo recommended that items 7 and 8 of the financial disclosure form and instructions relating to those items be revised by deleting the references that personal residences are excluded from the reporting requirement.

Executive Director Kondo explained that requiring filers to report the name of the person from whom personal residential property was acquired and the amount of consideration paid to acquire the property and to report the name of the person to whom personal residential property was transferred and the amount of consideration received to transfer the property was, in his view, consistent with the general purpose of the financial disclosure law. As an example, he said that, if a Commissioner sold his residence to someone who the Commission was investigating and the sale price was well-above the fair market value, the public should be entitled to information that may suggest that the Commissioner was unduly influenced because he received an unwarranted benefit or advantage. Executive Director Kondo reiterated that the street address and the tax map key number, however, relating to the residential property that the filer acquired or transferred did not have to be reported.

Commissioner Tschumy expressed her belief that the information is personal and should not be required to be disclosed. Executive Director Kondo reminded the Commission that it was responsible for interpreting and administering the statute and did not have the authority to create exceptions to the disclosure requirements that are not stated in the statute.

Commissioner Graulty said that he was unclear about the issue that staff was raising and that he wanted to defer the agenda item.

The Commission by consensus deferred the matter for further consideration at the April meeting.

Agenda Item No. VI: Adjournment

Commissioner Gaulty moved to adjourn the meeting; Commissioner Wood seconded the motion. The motion carried unanimously (O'Neal, Tschumy, Wood, and Gaulty voting).

The meeting adjourned at approximately 10:53 a.m.

Minutes approved on April 21, 2016.