

SUNSHINE LAW MEETING
MINUTES OF THE HAWAII STATE ETHICS COMMISSION

State of Hawaii

Date: Thursday, November 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: State Ethics Commission Members

Susan N. DeGuzman, Chair
David O'Neal, Vice Chair
Ruth D. Tschumy, Commissioner
Melinda S. Wood, Commissioner
Reynaldo D. Graulty, Commissioner

State Ethics Commission Staff

Daniel M. Gluck, Executive Director
Susan D. Yoza, Associate Director
Nancy C. Neuffer, Staff Attorney
Virginia M. Chock, Staff Attorney
Bonita Y.M. Chang, Staff Attorney
Kee Campbell, Staff Attorney
Pat Mukai, Secretary

Department of the Attorney General Staff

Robyn Chun, Deputy Attorney

CALL TO ORDER

The meeting was called to order at approximately 10:01 a.m. by Chair DeGuzman.

Agenda Item No. I: Consideration and Approval of the Minutes of the October 20, 2016, Meeting

Chair DeGuzman pointed out that there was a correction to the minutes and that on page thirteen the extra word “deferred” was removed.

Commissioner Wood commented that the minutes noted that the preparation of a Grant in Aid application is considered lobbying and that speaking to a legislator about a Grant in Aid is also lobbying. Commissioner Wood asked if this was clarified anywhere. Executive Director Gluck explained that as the Lobbyist Law is currently construed, any communication with a legislator regarding legislative action is considered to be lobbying. Executive Director Gluck further explained that there are non-profit organizations that aren't aware that preparing a Grant in Aid application is lobbying but that he hoped that proposed legislation could address this.

Vice Chair O'Neal made and Commissioner Grauly seconded a motion to approve the minutes of the October 20, 2016 Sunshine Law meeting as revised. The motion carried unanimously (DeGuzman, O'Neal, Tschumy, Wood, and Grauly voting).

Agenda Item No. II: Update on Pending Cases

- a. Hawaii State Teachers Association vs. Hawaii State Ethics Commission, Civil No. 15-1-2453-12 (RAN)

RECESS OF SUNSHINE LAW MEETING AND CONVENING OF EXECUTIVE SESSION

At approximately 10:05 a.m., Commissioner Grauly made and Vice Chair O'Neal seconded a motion to convene an Executive Session pursuant to Hawaii Revised Statutes § 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 Commission met in Executive Session.

RECESS OF EXECUTIVE SESSION AND RETURN TO SUNSHINE LAW MEETING

At approximately 11:06 a.m., Commissioner Grauly made and Vice Chair O'Neal seconded a motion to recess the Executive Session and return to the Sunshine Law meeting. The motion carried unanimously (DeGuzman, O'Neal, Tschumy, Wood, and Grauly voting).

- b. Boyd v. Hawaii State Ethics Commission, SCWC-14-0000352
(Haw. July 19, 2016)

Executive Director reported that the Hawaii Supreme Court had ruled on Boyd's motion for fees and costs. The court had granted the motion with respect to costs and denied it with respect to fees. He further reported that the final judgment has not yet been issued.

Commissioner Wood asked who was responsible for paying the costs. Executive Director Gluck said the money would come from the General Fund.

Deputy Attorney General Chun added that once final judgment has been issued, Boyd will be reimbursed for the amount he has paid in fines. This too will come from the General Fund. Although Boyd has asked for interest, the Attorney General's position is that there is no statute that provides for interest and sovereign immunity would bar it.

Agenda Item No. III: Executive Director's Report

1. Education / Training Report

Executive Director Gluck referred the Commission to the statistics for the training sessions that have been held. He added that there has been a lot of interest in the ethics course for government attorneys that will be held on December 2, 2016. Staff is also offering a one hour ethics refresher course in December at the capitol. In January, staff will offer the two hour mandatory training and another one hour refresher course.

2. Guidance and Assignment Statistics

Executive Director Gluck referred the Commissioners to the statistics for this item.

3. Financial Disclosures – Update

Executive Director Gluck said that out of approximately 1,900 filers, there are now 42 outstanding late disclosure filers, of whom 30 are board and commission members. Of the late board and commission members, about half are new appointees.

Executive Director Gluck also pointed out that one of the pieces of legislation that we are seeking will allow us to communicate to late filers through e-mail or regular mail. The statute currently requires that we communicate by registered mail, return receipt requested, which is about \$15 per mailing.

4. Electronic Filing System Update

Executive Director Gluck said that there has been good progress on the system and that the contractor had given them a mock up of the Gifts Disclosure electronic filing system.

Executive Director Gluck welcomed Computer Specialist Patrick Lui to the meeting to demonstrate the mock up of the new Gifts Disclosure electronic filing system.

Computer Specialist Lui presented the mock up of the Gifts Disclosure electronic filing system. Chair DeGuzman suggested that the "Submit" button be renamed to clarify that by hitting that button the filer is not yet submitting the form to the Commission.

5. Report on Outreach to Stakeholders

Executive Director Gluck said he had had one more meeting with a legislator since the last Commission meeting and had more meetings with legislators scheduled.

Executive Director Gluck said that one topic that kept recurring was the matter of the legislative allowance. The meeting materials contain an Advisory Opinion on legislative allowances that was issued in 1993, along with the guidelines that were issued in 2014 and a clarification memo issued earlier this year. Executive Director Gluck asked for the Commission's guidance on whether to amend the guidance on the legislative allowance or take a different tack.

Vice Chair O'Neal asked for the Executive Director's opinion as to whether the Commission had the authority to administer the use of the legislative allowance. Executive Director Gluck replied that he believed that the Commission had some say in the use of the allowance but that there was merit to the legislators' position that they control the use of the allowance. He noted that legislators have a unique position in government. He added that from a philosophical perspective, he wanted to hear what the Commission believed should be the limits to the use of the allowance.

Vice Chair O'Neal said he didn't think the Commission should police the use of the allowance.

Commissioner Grauly said that, in his experience, the Senate is very strict on the use of the allowance.

Commissioner Tschumy said she agreed with Vice Chair O'Neal.

Chair DeGuzman said her concern was that there is no consensus among legislators as to what their duties are. She asked if any of the legislators have said that the guidelines are helpful. Executive Director Gluck said some legislators and staffers

have said that they are helpful and added that there is a benefit in having clarity. He added, however, that the vast majority of the legislators believe that the guidelines are too restrictive and that they prevent legislators from doing what they believe is their job.

Chair DeGuzman asked if we would continue to provide guidance or if we would defer to the legislature.

Executive Director Gluck said his understanding was that, in the Senate, President Kouchi believes that each senator is autonomous and so his review of their use of allowance is pro forma. The Senate Clerk performs a more thorough review to ensure that the use of the allowance is consistent with the Senate Rules.

Executive Director Gluck said that he was considering what the purpose of our interpretation of the Ethics Code is with respect to the allowance. The expenditures are all public records, but if a member of the public wants to examine a record of expenditures, he or she has to make a request, possibly pay for its cost, and wait some time. In contrast, at the City and County of Honolulu, expenditures of the City Council allowance are posted on the council member's website in near real time. Executive Director said that there is benefit in providing clear information to the public as quickly as possible. He added that he would like the Commission's feedback on his inclination to advocate that the legislature change its rules to require posting the information on legislators' websites in real time.

Executive Director Gluck added that he believed that providing guidance on the use of the allowance was within the Commission's purview. For example, a legislator couldn't spend it on items that were strictly personal. He said that, in his discussions with legislators, two areas regarding the allowance tended to come up. First was the use of the allowance to pay for meals for staff or for things like birthday cakes for staff. Second was the use of the allowance to pay for tickets to events, such as dinners held by non-profit organizations. With respect to tickets to events, he was considering proposing a compromise to allow legislators to ask non-profits that invited them to events to waive the contribution or donation portion of the ticket; the legislators could then use the allowance to pay for the remaining value of the ticket. He added that he didn't want legislators to go overboard in paying for these tickets. He suggested capping the amount legislators are able to allocate for tickets at 5% of the allowance, which is \$650.

With respect to meals for staff who are working through meal times, Executive Director Gluck suggested again that the use of the allowance for this be capped at 5%.

Commissioner Graulty asked if the Commission could advocate a procedure similar to the city's, in which the information is posted online in real time. The Commission would then not need to get involved. Executive Director Gluck said that this was essentially what he was advocating, but with some limits.

Chair DeGuzman said that she was hesitant about using the allowance for things like birthday cakes for staff because this seemed personal. She asked if we were considering getting rid of our previous guidance or keeping part of it and loosening the reins on some of it. Executive Director Gluck replied that, currently, he was suggesting testing the waters at the legislature to see if they are interested in more transparency similar to the city's method of posting the information in near real time. The Commission could then review the earlier guidance and adjust earlier guidance where appropriate.

By consensus the Commission agreed to this approach.

6. Revised Financial Report – FY 2016-2017 (Quarter ending 9/30/16)

Executive Director Gluck said that the report at the last meeting listed an incorrect allocation amount but that this has been corrected and the Commission is still well under budget.

Agenda Item No. IV: Proposed Budget for 2017-2018 Fiscal Year

Executive Director Gluck explained that the office had an opening for a full time staff attorney. He ended up splitting the position and hiring a 60% time staff attorney and a 40% time investigator. He said that he would like to request that the Commission keep the full time staff attorney position and add an investigator position at 60% time. The other addition to the budget would be a request for \$11,000 for new computers. Those increases are offset to some extent by cuts in the proposed budget to mainland travel and subscriptions.

Chair DeGuzman asked what travel mileage and parking expenditures were for. Executive Director Gluck explained that it is reimbursement to staff when they drive to trainings or to the airport. Vice Chair O'Neal asked if this also covered the parking costs for Commissioners. Executive Director Gluck said he was unsure.

Chair DeGuzman asked about vacation payouts. She said she understood that if a staff member left for another state agency, the staff person's vacation payout is paid from our budget to the General Fund and not to the other state agency. But if a staff person came to the Commission from another state agency and then left state service, the vacation payout comes from the Commission budget and not the General Fund. Executive Director Gluck said he believed this was correct.

The Commission took the next item out of order.

Agenda Item No. VI: Review of Proposed Legislation for the 2017 Legislative Session

Executive Director Gluck said that he was considering proposed legislation for both 2017 and 2018. For 2017, he wanted to focus on structural issues to clarify the Commission's authority and process. There were substantive issues he was also concerned with, such as nepotism and strengthening the conflicts law, but he wanted to address the structural issues first.

Chair DeGuzman confirmed that the amendment to the Fair Treatment law to address the exemption for legislators was part of the package.

Executive Director Gluck asked for Commission feedback on the legislative package. He said that he planned to take the whole package to a few legislators for some initial feedback. Then he would ask that the omnibus bill and the various component pieces of the omnibus bill all be submitted for introduction.

By consensus, the Commission approved of the package. Executive Director Gluck said that the University of Hawaii Technology Transfer bill will also likely come up and that his inclination was that if the University was satisfied that its interests were protected then this likely addressed the ethics concerns. Chair DeGuzman approved of working with the University on this matter.

Agenda Item No. VII: Planning for 50th Anniversary of the Hawaii State Ethics Commission (2018)

Executive Director Gluck said that staff was open to any ideas to commemorate the Commission's anniversary. Commissioner Gaulty said he remembered listening to the Dalai Lama when he spoke to the legislature years ago and suggested that possibility. Chair DeGuzman suggested Commissioners call the Executive Director if they come up with any ideas.

Agenda Item No. VIII: Setting the 2017 Ethics Commission Meeting Calendar

Chair DeGuzman said she would miss the March meeting because she would be out of state from March 2-16, 2017. Commissioner Gaulty said he would be out of the country from January 9-20, 2017. Vice Chair O'Neal requested moving the June meeting to June 22, 2017. Executive Director Gluck said he might be out of state on June 22 but was not sure of his schedule yet.

The Commissioners agreed to amend the meeting schedule to move the March meeting to March 17. They agreed to revisit rescheduling the June meeting to June 22 once the Executive Director had more information about his schedule.

Agenda Item No. V: 90-Day Performance Evaluation of Executive Director

RECESS OF SUNSHINE LAW MEETING AND CONVENING OF EXECUTIVE SESSION

At approximately 12:03 p.m., Commissioner Graulty made and Vice Chair O'Neal seconded a motion to convene an Executive Session pursuant to Hawaii Revised Statutes § 92-5(a)(2) to discuss matters relating to the evaluation of an employee.

ADJOURNMENT OF EXECUTIVE SESSION AND RETURN TO SUNSHINE LAW MEETING

At approximately 12:15 p.m., Commissioner Tschumy made 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 Graulty voting).

ADJOURNMENT OF SUNSHINE LAW MEETING

At approximately 12:16 p.m., Commissioner Graulty made and Commissioner Tschumy seconded a motion to adjourn the Sunshine Law meeting. The motion carried unanimously (DeGuzman, O'Neal, Tschumy, Wood, and Graulty voting).

The meeting was adjourned at 12:16 p.m.

Minutes approved on January 19, 2017.