

SUNSHINE LAW MEETING
MINUTES OF THE HAWAII STATE ETHICS COMMISSION

STATE OF HAWAII

Date: Thursday, February 16, 2017

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

*Susan DeGuzman was Chair at the commencement of the meeting; during the meeting's regularly scheduled election, Reynaldo Graulty was elected as Chair.

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

CALL TO ORDER

The meeting was called to order at approximately 10:00 a.m. by Chair DeGuzman.

Agenda Item No. I: Consideration and Approval of the Minutes of the January 19, 2017, Meeting

Chair DeGuzman suggested a revision to page 8, item 4, to make clear that discussion of the three late financial disclosures was deferred to the adjudicatory meeting. No other comments or corrections were made.

Commissioner Wood made and Vice Chair O'Neal seconded a motion to approve the minutes of the January 19, 2017 Sunshine Law meeting as amended. The motion carried unanimously (DeGuzman, O'Neal, Tschumy, and Wood voting; Grafty abstaining).

Agenda Item No. II: Election of Officers for 2017

Chair DeGuzman noted that this matter was deferred from the January meeting because Commissioner Grafty was absent from the January meeting.

There was an open discussion by the Commissioners on thoughts for choosing a chair and vice chair for 2017. Vice Chair O'Neal recommended that the Commission choose Commissioner Grafty as chair and Chair DeGuzman as Vice Chair. Vice Chair O'Neal noted that Commissioner Grafty has experience serving in all three branches of government. Commissioner Grafty stated that, given his lack of seniority on the Commission, he did not believe he was the right choice to be the chair. Commissioner Tschumy asked whether he would be willing to serve in that position if so selected, and Commissioner Grafty said that he was willing to do so if selected.

Commissioner Tschumy commended Chair DeGuzman for having done a good job, and noted that leadership turnover in any organization can be a good thing. Commissioner Wood asked how long Chair DeGuzman had been chair, and the Chair responded that she had served as Chair for approximately a year and a half.

Chair DeGuzman stated that she was happy to serve in whatever capacity she could be most helpful to the Commission.

The Commissioners cast votes on paper ballots. Staff Attorney Neuffer tabulated the votes for Chair. There was a tie between Chair DeGuzman and Commissioner Grafty, with one vote cast for another Commissioner. The Commissioners had a revote. With a vote of 3-2, Commissioner Grafty was elected as Chair.

The Commissioners then voted for Vice Chair. There was a tie between Commissioner DeGuzman and Vice Chair O'Neal, with one vote for another Commissioner. The Commissioners had a revote. Vice Chair O'Neal was re-elected as Vice-Chair.

Chair Gaulty requested that Commissioner DeGuzman continue to preside over the remainder of the meeting, and she agreed.

Agenda Item No. III: Executive Director's Report

1. Education / Training Report

Executive Director Gluck reported on several recent trainings and noted that many trainings were scheduled to take place soon. He stated that the goal is to focus more on a set schedule to help plan in advance and have as many people attend as possible, especially for neighbor island participants. He noted that staff continues to work to develop on-line training.

2. Guidance and Assignment Statistics

Executive Director Gluck referred to his written report and stated that requests for guidance are steady.

3. Financial Disclosures – Update

Executive Director Gluck reported that 100% of legislators met the deadline to file their financial disclosures.

4. Electronic Filing System Update

Executive Director Gluck reported his understanding that Enterprise Technology Services (ETS) has finalized the license for public access to the site. The Commission's contractor is moving forward with the components to finalize the various forms, including the gifts disclosures, financial disclosures, and lobbying forms.

5. Personnel Update

Executive Director Gluck reported that a Master's Degree student, Gil Serrano, in the University of Hawaii's Public Affairs program was interning with the Commission to complete his practicum requirement. Executive Director Gluck also reported that Staff Attorney Kee Campbell is now a full-time employee with the Commission.

6. Miscellaneous Office Projects / Updates

Executive Director Gluck reported that the Commission's Annual Report was sent to the Chief Justice for use with the Judicial Council, and that he received a gracious note back from the Chief Justice. He also reported the first issue of The High Road was sent out. He is working with the Campaign Spending Commission to create a website that would allow the public to see more information for elected officials in one place; this would include financial disclosures, gift disclosures, and campaign contributions.

Executive Director Gluck also reported that he is still in discussion with the State Archives regarding the Commission's records retention policy.

Executive Director Gluck reported that the Commission's requested budget was approved by the House, and the Senate Ways and Means Committee, and was pending final approval by the Senate (and thereafter by the Governor); that bill included additional funding for a part-time investigator position for the Commission. Executive Director Gluck expressed his gratitude to the Legislature for its support. He also stated that a separate bill would appropriate additional funds for staff raises. Given the Commission's expanded staff, the staff planned to clear out the storage room, relocate the copier/server to the storage room, and modify the current copier/server room to serve as an additional office.

Chair Grauly suggested the Commission might need more space in the building. Executive Director Gluck stated that he would remain alert to news of any adjacent space opening up, but noted that the Legislature has already set the amount of funding for the Commission for 2017-2018. Executive Director Gluck stated that the Commission would soon begin negotiations for a lease extension (or a new lease at another location), and that former Commission Chair Leolani Abdul would be assisting the Commission.

There were no other questions or comments about the Executive Director's report.

Agenda Item No. IV: Legislative Update

Executive Director Gluck distributed a chart summarizing the status of the Ethics Commission's bills. He reported that two bills had cleared the House Committee on Labor and two had passed the House Committee on Judiciary.

Executive Director Gluck reported that the lobbying bill, HB 511, was heard by the House Judiciary Committee, but there were some questions and amendments. He explained that he was working with the House Judiciary Chair to try to come up with a compromise on the Chair's concerns regarding Grant in Aid ("GIA") lobbying; one possible compromise was to exclude the first 10 hours of lobbying on a GIA by an employee of a non-profit (but not for a non-profit's outside, hired lobbyist). Executive Director Gluck asked the Commission whether it was willing to accept this language to see the bill move forward.

Chair Grauly stated that he believed this was a good compromise; he also noted that compromise is always a part of the legislative process.

Executive Director Gluck also noted that the Judiciary Chair has been extraordinarily helpful and willing to work with the Commission on this legislation, and expressed his appreciation for the Chair's work on the Commission's bills.

Chair Grauly further noted that the representatives from non-profit organizations who come to testify on GIA applications, often with clients or those they serve, may not be in the same category as other lobbyists.

Vice Chair O'Neal asked for some clarification regarding what activities relating to a GIA application are currently considered lobbying. Executive Director Gluck responded by discussing the current law and the proposal in HB 511. Vice Chair O'Neal stated his belief that, if a non-profit organization hires an outside lobbyist, that lobbyist ought to be regulated under the lobbyist law. Executive Director Gluck stated that, under the proposed compromise in HB 511, the lobbyist and any expenditures incurred by that lobbyist would continue to be subject to the lobbyist law. In response to a question from Commissioner Wood, Executive Director Gluck then provided additional clarification regarding the preparation of GIA applications under the proposed bill.

Chair Grauly asked how many of the non-profit organizations had the funds to hire outside lobbyists for their GIA applications. Executive Director Gluck stated he did not know, but that non-profit organizations occasionally hire outside lobbyists for different activities.

Executive Director Gluck summarized the discussion by stating that the Commission appears to agree with the proposed compromise.

Executive Director Gluck then reported that the Commission has submitted testimony on several bills regarding the University of Hawaii's technology transfer proposals, and asked for the Commission's feedback. He stated that there were two proposals: the first bill sets up a technology transfer program for the University and clarifies that other state laws – including but not limited to the State Ethics Code – should be construed in light of the public purpose served by the technology transfer program. Executive Director Gluck stated that the Commission has testified with comments, stating the language is superfluous because the Commission already considers public purpose in considering whether an activity complies with the Ethics Code. He stated that he has also been referencing a 1992 advisory opinion, in which the Commission decided technology transfer activities were permissible under the Ethics Code as long as they met certain safeguards.

The second bill creates a wholesale exemption from the Ethics Code for technology transfer activities. Executive Director Gluck explained that the Commission has testified in opposition to the bill for two reasons: first, the Commission opposes exemptions from the Ethics Code, and second, the Commission opposes delegating the determination of whether something violates the Ethics Code to another agency.

Executive Director Gluck stated that he has had productive discussions with UH personnel, including the Vice President of Research and University Counsel. The University's primary concern is with the (unsuccessful) 2014 proposal to overturn the Commission's 1992 Advisory Opinion. The University does not want to be surprised again.

Executive Director Gluck asked for the Commission's feedback as to whether the Commission was comfortable with the position taken before the Legislature; the Commissioners responded that they agreed with this approach.

Commissioner DeGuzman asked whether Executive Director Gluck and University Counsel Presley Pang were on the same page regarding this issue. Executive Director Gluck stated his belief that the University appears to prefer that both its bills move forward – and that there does appear to be a disagreement between the University and the Commission on this issue – but that Executive Director Gluck is working with the University to try to assuage its concerns. Commissioner DeGuzman asked whether the Commission's processes or outcomes would change if the first bill (directing the Commission to consider the public purpose of the technology transfer program) were to pass. Executive Director Gluck stated his belief that the substance likely would not change, but that the Commission may note the public purpose of the technology transfer programs in any opinions on the issue.

Executive Director Gluck also reported that a measure regarding emoluments and another measure regarding teacher travel appeared to be dead for the session.

The Commissioners and Executive Director Gluck discussed a number of other questions regarding the legislative process and the Commission's bills.

Agenda Item No. V: Complaint by Tom and Christine Russi against Executive Director Gluck

1. Consideration of complaint against Executive Director for alleged misconduct while handling ethics complaints filed by Tom and Christine Russi against four current or former state officials.

Commissioner DeGuzman noted that no one was present in the audience, such that no public testimony was offered for this agenda item. She further noted that on Wednesday, February 15, 2017, the Commission received an e-mail from Mr. and Mrs. Russi notifying the Commission that they wished to withdraw their complaint against the Executive Director and re-submit the complaint at a later date.

RECESS OF SUNSHINE LAW MEETING AND CONVENING OF EXECUTIVE SESSION

At approximately 10:47 a.m., Commissioner DeGuzman made and Vice Chair O'Neal seconded a motion to convene an Executive Session pursuant to Hawaii Revised Statutes § 92-5(a)(2) to consider personnel issues affecting personal privacy; 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; and Hawaii Revised Statutes §§ 92-5(a)(8) and 84-31(b) to deliberate or make a decision upon a matter that requires the consideration of information that must be kept confidential pursuant to state or federal law, or a court order.

Executive Director Gluck noted for the record that, to the extent the Commission was considering convening in executive discussion to discuss his job performance or any other matter involving his privacy interests, he waived any right to have the matter heard in executive session and was willing to have the matter considered in a public session.

The motion carried unanimously (Grauly, O'Neal, DeGuzman, Tschumy, and Wood voting).

The Commission met in Executive Session.

RECESS OF EXECUTIVE SESSION AND RETURN TO SUNSHINE LAW MEETING

At approximately 11:15 a.m., Vice Chair O'Neal made and Commissioner Wood seconded a motion to recess the Executive Session and return to the Sunshine Law meeting. The motion carried unanimously (Grauly, O'Neal, DeGuzman, Tschumy, and Wood voting).

Commissioner DeGuzman asked Executive Director Gluck whether he wished to make any statement in public session regarding the Russis' complaint against him. Executive Director Gluck apologized to the Russis and to the Commission for not promptly responding to the Russis' request for a document pursuant to Hawaii's open records law. He stated that this was an oversight in reviewing the Russis' e-mail, that he takes his obligations under the Uniform Information Practices Act seriously, and that he will endeavor to do better in the future.

Commissioner DeGuzman stated that during the executive session, the Commission discussed the procedural aspects of the Russis' withdrawal of their complaint.

Commissioner DeGuzman stated that the Commission acknowledged and accepted the Russis' withdrawal of their complaint and instructed Associate Director Yoza to send a letter to the Russis confirming this.

Agenda Item No. VI: Requests for Advisory Opinions

1. Request for Advisory Opinion regarding state employee's ability to engage in private employment where potential conflicts may arise between the employee's private employment and duties as a state employee.

RECESS OF SUNSHINE LAW MEETING AND CONVENING OF EXECUTIVE SESSION

At approximately 11:17 a.m., Commissioner Wood made and Commissioner Tschumy seconded a motion to convene an Executive Session pursuant to Hawaii Revised Statutes §§ 92-5(a)(8) and 84-31(f) to deliberate or make a decision upon a matter that requires the consideration of information that must be kept confidential pursuant to a state or federal law, or a court order. The motion carried unanimously (Graulty, O'Neal, DeGuzman, Tschumy, and Wood voting).

The Commission met in Executive Session.

RECESS OF EXECUTIVE SESSION AND RETURN TO SUNSHINE LAW MEETING

At approximately 11:20 a.m., Chair Graulty made and Commissioner Wood seconded a motion to recess the Executive Session and return to the Sunshine Law meeting. The motion carried unanimously (Graulty, O'Neal, DeGuzman, Tschumy, and Wood voting).

Commissioner DeGuzman stated that, in Executive Session, the Commission approved the draft Advisory Opinion as amended.

2. Request for Advisory Opinion regarding potential conflicts between a state official's: (1) private participation in a lawsuit and duties as a state official; and (2) private employment and duties as state official.

RECESS OF SUNSHINE LAW MEETING AND CONVENING OF EXECUTIVE SESSION

At approximately 11:22 a.m., Commissioner Wood made and Vice Chair O'Neal seconded a motion to convene an Executive Session pursuant to Hawaii Revised Statutes §§ 92-5(a)(8) and 84-31(f) to deliberate or make a decision upon a matter that requires the consideration of information that must be kept confidential pursuant to a state or federal law, or a court order. The motion carried unanimously (Graulty, O'Neal, DeGuzman, Tschumy, and Wood voting).

The Commission met in Executive Session.

RECESS OF EXECUTIVE SESSION AND RETURN TO SUNSHINE LAW MEETING

At approximately 11:26 a.m., Commissioner Wood made and Commissioner Tschumy seconded a motion to recess the Executive Session and return to the Sunshine Law meeting. The motion carried unanimously (Graulty, O'Neal, DeGuzman, Tschumy, and Wood voting).

Commissioner DeGuzman stated that, in Executive Session, the Commission approved the draft Advisory Opinion as amended.

ADJOURNMENT OF SUNSHINE LAW MEETING

At approximately 11:27 a.m., Chair Graulty made and Commissioner Tschumy seconded a motion to adjourn the Sunshine Law meeting. The motion carried unanimously (Graulty, O'Neal, DeGuzman, Tschumy, and Wood voting).

The meeting was adjourned at 11:27 a.m.

Minutes approved on: March 17, 2017