

SUNSHINE LAW MEETING
MINUTES OF THE HAWAI'I STATE ETHICS COMMISSION

STATE OF HAWAI'I

Date: Thursday, January 16, 2020

Time: 9:00 a.m.

Place: Hawai'i State Ethics Commission Conference Room
American Savings Bank Tower
1001 Bishop Street, Suite 960
Honolulu, Hawai'i 96813

Present: State Ethics Commission Members

Reynard D. Graulty, Chair
Ruth D. Tschumy, Vice Chair
Susan N. DeGuzman, Commissioner
Melinda S. Wood, Commissioner
Wesley F. Fong, Commissioner

State Ethics Commission Staff

Daniel M. Gluck, Executive Director
Susan D. Yoza, Associate Director
Virginia M. Chock, Staff Attorney
Bonita Y.M. Chang, Staff Attorney
Kee M. Campbell, Staff Attorney

Excused: Nancy C. Neuffer, Staff Attorney

CALL TO ORDER

Chair Graulty called the meeting to order at 9:05 a.m. and welcomed the visiting delegation from the Myanmar Anti-Corruption Commission. The Commissioners introduced themselves.

Robert LaMont introduced himself and explained that he works with a USAID project in Myanmar – Promoting the Rule of Law in Myanmar – with the goal of strengthening anti-corruption efforts in Myanmar's transition from a dictatorship to democracy. One of its projects is working with the Myanmar Anti-Corruption Commission. Fourteen individuals were present and introduced themselves, including

several members of the Commission and its staff, representatives from the Supreme Court and Attorney General's office, and journalists and other members of civil society.

Agenda Item No. I: Consideration and Approval of the Minutes of the November 21, 2019 Meeting

Vice Chair Tschumy made and Commissioner Wood seconded a motion to approve the minutes of the November 21, 2019 Sunshine Law Meeting. The motion carried unanimously (Grauly, Tschumy, DeGuzman, Wood, and Fong voting).

Agenda Item No. II: Election of Officers for 2020

Executive Director Gluck explained that, per guidance received from the Office of Information Practices, the Commission staff would maintain records of how each Commissioner votes on the election of officers for 2020.

Chair Grauly was re-elected as Chair. Commissioner Wood asked whether Vice Chair Tschumy would be willing to continue serving as Vice Chair, and Vice Chair Tschumy said that she was. Vice Chair Tschumy was re-elected as Vice Chair.

Agenda Item No. III: Executive Director's Report

At Chair Grauly's request, Executive Director Gluck introduced himself and the staff and gave a brief overview of the Commission and its operations to the visitors.

2019 Annual Report

Executive Director Gluck stated that, per the Commission's request, staff had prepared an annual report describing the Commission's work in 2019.

Education / Training Report

Executive Director Gluck stated that staff had already done four trainings in 2020, with many other trainings scheduled. He also reported that the on-line training system launched a week and a half earlier and over 200 individuals had already taken the training. Associate Director Yoza stated that 77 Department of Education employees had taken the training, with other large numbers from the Department of Health, Department of Transportation, and Department of Accounting and General Services. She also reported a wide range of types of employees taking the training, including janitors, Principals and Vice Principals from the Department of Education, Department of Health immunologists, and heavy equipment operators.

In response to a question from Commissioner DeGuzman, Executive Director Gluck stated that staff has publicized the on-line training system by sending memoranda to approximately 150 state officials, including department directors, the Governor, and officials with the University of Hawaii and the Office of Hawaiian Affairs; placing the information on the Commission website; sending the information out on Twitter; and informing state officials in person about the availability of this new resource.

Guidance and Assignment Statistics – 2019

Executive Director Gluck referred the Commissioners to the meeting folder materials, but did not have other additional information to report.

Financial Report for FY 2019-2020 (Quarter Ending December 31, 2019)

Executive Director Gluck indicated that the office was under budget in its expenditures.

Miscellaneous Office Projects/Updates

Executive Director Gluck reported that the office installed a new workstation and would be disposing of a desk.

After beginning the discussion on Proposed Administrative Rules, Executive Director Gluck also stated that Staff Attorney Chang and Computer Specialist Lui were working to implement several improvements to the on-line filing system for financial disclosures and lobbying reports. Staff Attorney Chang explained some of these improvements, including automatic reminders for filers.

Chair Grauly asked whether the neighbor island ethics boards could piggyback off the Commission's on-line training platform; Executive Director Gluck said he would look into this.

Agenda Item No. IV: Proposed Administrative Rules

Executive Director Gluck stated that he met with the Senate President and the Speaker of the House earlier that week, both of whom indicated their preference to repeal the statutory provision requiring the Commission to promulgate rules governing legislators' disclosures of potential conflicts of interests. Executive Director Gluck reported that they had collectively agreed to introduce a measure that addresses this issue while also addressing a long-standing Commission concern regarding the legislative exemption in the Fair Treatment law. The Commissioners discussed this proposed measure and approved of this approach.

With this update, Executive Director Gluck stated that he believed the rules were ready to go to public hearing, and asked the Chair how the Commission would like to

proceed. Chair Grauly recognized Bob Toyofuku, a registered lobbyist who was present at the meeting, and asked whether Mr. Toyofuku had anything he would like to share regarding the proposed rules.

Mr. Toyofuku stated that he had not reviewed the final draft, but that he had some discussions with Executive Director Gluck. Mr. Toyofuku asked whether “discussing existing or potential legislation or administrative rules” would be limited to discussions with a legislator, or would it include internal discussions, when determining whether something is “direct lobbying.” Executive Director Gluck responded that, while the interpretation would be up to the Commission, he believed that purely theoretical discussions about potential legislation would not be included, but that even internal discussions among staff about existing legislation – and strategies on any legislative efforts – would be included.

Mr. Toyofuku also referred to the past practice of allowing up to \$25 in expenditures for food for legislators and staff, and whether that would be included in the rules. Executive Director Gluck responded by stating that, in his reading of the proposed rules in Chapter 7, gifts from registered lobbyists to legislative staff would be prohibited. Mr. Toyofuku asked whether this would apply to staff, or whether gifts to staff would be attributable to the legislators themselves. Executive Director Gluck stated that gifts to staff would be imputed to the supervisor/legislator, and that, pursuant to proposed HAR § 21-7-2, all gifts from lobbyists to legislators or legislative staff would be prohibited.

Commissioner Fong asked whether a lobbyist would be able to bring two boxes of malasadas to a legislator’s office. Executive Director Gluck stated that, under the current draft of the rules, this would be prohibited; however, Executive Director Gluck noted that these were draft rules, that the promulgation and interpretation of these rules would be up to the Commission, and that these rules had not yet gone through public hearing.

Mr. Toyofuku asked about lei or other items on Opening Day of the Legislature. Executive Director Gluck stated that there is an exception for lei, other than money lei, on special occasions.

Mr. Toyofuku said that he would submit any additional feedback on the rules to Executive Director Gluck, and he thanked the Commission.

Sandy Ma from Common Cause Hawaii was also present. She asked whether the rules would prohibit Common Cause from inviting legislators to a public event where Common Cause provides food and drink. Executive Director Gluck said that, as he read the rules, if a lobbying entity were hosting an event, then legislators would be prohibited from accepting food and drink from the lobbying entity. Executive Director Gluck said that he would give more thought to the issue of events that are open to the general public, which events may be attended by legislators, but that the general rule would be no gifts from lobbyists to lawmakers.

Mr. Toyofuku added that corporate lobbying entities used to have large receptions to which the entire Legislature was invited; these events were scaled back to try to keep the per-head cost to under \$25, but Mr. Toyofuku has advised some clients not to have these events at all because of the difficulty of keeping the costs down.

Chair Graulty asked Executive Director Gluck whether there was anything further on this matter. Executive Director Gluck stated that the staff had several additional proposed edits and asked whether Chair Graulty wanted to try to finish the draft rules at this meeting or defer this discussion until February. Commissioner Fong asked whether staff had received other feedback on the rules, and Executive Director Gluck stated that there were similar kinds of questions to those raised by Mr. Toyofuku at the Lobbyists Law training presented by staff earlier that month. Executive Director Gluck asked whether the Commission wanted another month to review the rules, and Chair Graulty stated that he believed the rules had been percolating for long enough and that he believed the Commission was ready to move ahead with a public hearing after review by the Attorney General's office and the Office of the Governor.

Executive Director Gluck discussed additional proposed edits: first, deleting the entirety of § 21-7-10, and moving the language of subsection (c) to become part of § 21-8-4; second, making minor changes to § 21-5-10.

Commissioner Fong made and Commissioner DeGuzman seconded a motion to approve the draft of the proposed administrative rules, as amended, for public hearing on March 19. The motion carried unanimously (Graulty, Tschumy, DeGuzman, Wood, and Fong voting).

Agenda Item No. V: Report from attendees of COGEL Conference

Chair Graulty reported on the COGEL Conference in Chicago in December 2019, informing the Commission and staff about speakers from British Columbia and a film about corruption in a small town. He thanked Office Manager Caroline Choi for her assistance with travel logistics. He asked Commissioners Wood and Fong and Staff Attorneys Chang and Campbell for their feedback as well.

Commissioner Wood stated that she attended several sessions on voting regulations. She reported hearing that all 50 states' election systems had been probed by foreign agents, largely from China, Iran, Russia, and Nigeria, and that the Department of Homeland Security has a cybersecurity division devoted to election security.

Commissioner Fong asked the delegation from Myanmar about Myanmar's voting system. Myanmar Anti-Corruption Commissioner Daw Myat Myat So explained that Myanmar uses advanced voting, and that voters must appear in person at voting stations.

Staff Attorney Chang reported speaking with other agencies' staff about their electronic reporting systems, and that Hawaii is relatively ahead of the game with respect to its e-filing capabilities. Staff Attorney Campbell stated some other ethics entities will reach out to trainees prior to ethics training, to provide those trainees with materials and to solicit questions, and he thought this could be implemented here. Staff Attorney Campbell also stated that some jurisdictions are requiring disclosures of fundraisers by state agencies – particularly in locations that have large, well-resourced companies giving money or other resources to governmental entities.

Agenda Item No. VI: 2020 Legislative Session

Executive Director Gluck referred to the earlier discussion about the new ethics bill; the Commission agreed, by consensus, to support that measure.

Executive Director Gluck stated that the other bills proposed by the Commission had been revised by the Legislative Reference Bureau, and he noted that neither the Commissioners nor the Commission's Executive Director were included in the list of positions subject to the new post-employment restrictions on lobbying. Executive Director Gluck asked whether there was any objection to having Executive Director Gluck testify to the Legislature that the Commission, and its Executive Director, are willing to be included on this list of positions. By consensus, the Commission indicated it had no objection to Commissioners or the Commission's Executive Director being included on this list.

Commissioner Wood raised concerns with the existing provision in the post-employment law excluding individuals who worked for the State for fewer than 181 days; Executive Director Gluck stated that he would like to see that provision amended so that the confidentiality provision applies even to those individuals who work for the state for fewer than 181 days.

Commissioner Fong made and Commissioner DeGuzman seconded a motion to move ahead with these legislative proposals. The motion carried (Graulty, Tschumy, DeGuzman, and Fong voting yes; Wood abstaining).

Executive Director Gluck then stated that the University of Hawaii was likely looking to remove the sunset provision on legislation from several years ago exempting technology transfer activities from the Ethics Code; Chair Graulty suggested that the sunset provision should not be removed entirely if the University has not yet completed its rules for these activities.

Executive Director Gluck also discussed possible legislation that would restrict legislators from representing private clients before state agencies. The Commission indicated that it would like to support this measure.

Agenda VII: Akana v. Hawaii State Ethics Commission and Daniel Gluck, Civil No. 18-1-1019-06 (JHA)

Executive Director Gluck reported no change in this matter.

Agenda Item No. VIII: Akana v. Hawaii State Ethics Commission, Civil No. 19-1-0379-03 (JHA)

Executive Director Gluck stated that the Department of the Attorney General is taking action to try to recover both the administrative penalty imposed upon Ms. Akana and the gifts improperly received by Ms. Akana.

Agenda Item No. IX: Appeal of Denial of Request to Access Government Records

Executive Director Gluck stated that the Commission received a request to access government records regarding an investigation. Executive Director Gluck explained his belief that all records are confidential, such that the Commission would not disclose records pursuant to a Uniform Information Practices Act (“UIPA”) request, even if the request came from the complainant. Executive Director Gluck explained that someone submitted a UIPA request to the Commission and Executive Director Gluck denied the request, after which the requester filed an appeal with the Office of Information Practices.

Executive Director Gluck asked whether the Commission wished to continue to take the position that its investigatory files are confidential, including those items received from the complainant. The Commission discussed the issue, and agreed to continue to take the position that all its investigatory files are confidential.

Chair Grauly called for a brief recess at 10:25 a.m.

Chair Grauly reconvened the meeting at 10:35 a.m. Commissioner Fong left the meeting at approximately 10:35 a.m.

Agenda Item No. X: Discussion with Myanmar Anti-Corruption Commission

Members of the delegation asked about the Commission’s education and training programs, and the Commission, its staff, and the delegation discussed these and other matters. The delegation explained how the Anti-Corruption Commission is trying to train 130 of its own employees. The delegation also explained how it organized a Youth Integrated Camp Program, in which the Anti-Corruption Commission held a five-day camp for approximately 130 university students to learn about government ethics. The Ethics Commissioners talked about the importance of the Commission’s independence

and explained Hawaii's process for selecting Commissioners. The delegation had questions about the Ethics Commission's role in the legislative process, the Commission's priorities for enforcement, the Commission's relationship with the media, and the Commission's regulation of lobbyists. The Commission and its staff had questions about the Anti-Corruption Commission's process for investigating complaints and its training program.

Chair Graulty concluded the meeting by stating that the Ethics Commission was honored by the delegation's visit, and he wished the delegates well.

ADJOURNMENT OF SUNSHINE LAW MEETING

At 11:25 a.m., Commissioner DeGuzman made and Vice Chair Tschumy seconded a motion to adjourn the Sunshine Law Meeting. The motion carried unanimously (Graulty, Tschumy, DeGuzman, and Wood voting).

Minutes approved on: February 20, 2020