

SUNSHINE LAW MEETING
MINUTES OF THE HAWAII STATE ETHICS COMMISSION

STATE OF HAWAII

Date: May 15, 2024
Time: 9:00 a.m.
Location: Held via Zoom video and audio conference
Link: Recorded video available at
https://ethics.hawaii.gov/category/commissionmeetings/comm_videos/

Public Meeting Location

Hawaii State Ethics Commission Conference Room
1001 Bishop Street
American Savings Bank Tower, Suite 970
Honolulu, Hawaii 96813

Present: State Ethics Commission Members

Wesley F. Fong, Chair (present in conference room)
Beverley Tobias, Vice Chair (present in conference room)
Robert Hong, Commissioner (present in conference room)
Cynthia Thielen, Commissioner (present in conference room)

State Ethics Commission Staff

Robert D. Harris, Executive Director (present in conference room)
Kee M. Campbell, Enforcement Director (via video conference)
Bonita Y.M. Chang, Compliance Director (via video conference)
Nancy C. Neuffer, Staff Attorney (via video conference)
Jennifer M. Yamanuha, Staff Attorney (via video conference)
Jodi L. K. Yi, Staff Attorney (via video conference)
Patrick W.C. Lui, Computer Specialist (via video conference)
Jared Elster, Investigator (via video conference)
Barbara Gash, Investigatory Analyst (via video conference)
Myles A. Yamamoto, Administrative Assistant (present in conference room)

Members of the Public

Judith Mills-Wong
Victoria Budiono
Blaze Lovell

CALL TO ORDER (0:12)

Chair Fong called the meeting to order at 9:00 a.m. Chair Fong, Vice Chair Tobias, Commissioner Thielen, Commissioner Hong, and Commission staff were present. All commissioners and staff participating via video or audio conference confirmed no one was in the room with them at their respective remote locations.

Agenda Item No. I: Consideration and Approval of the Minutes of the April 17, 2024 Meeting (3:00)

Vice Chair Tobias made, and Commissioner Thielen seconded, a motion to approve the minutes of the April 17, 2024 meeting. The motion carried (Fong, Tobias, Thielen, and Hong, voting in the affirmative).

Agenda Item No. II: Directors' Report (3:40)

Compliance Director Bonita Chang reported staff is following up with the Department of Human Resource Development ("DHRD") to encourage incorporating training requirements into the onboarding process for new employees. She also reported that staff have conducted live and virtual trainings throughout the month. Director Chang reported that board and commission training information is being updated as part of the annual board and commission financial disclosure update process. She noted that the due date for current employee, board, and commission financial disclosure filers is May 31. Director Chang reported that updated lists were sent to over 100 boards and commissions. She further noted that the deadline for candidate financial disclosures is June 14.

Commissioner Thielen asked about the Department of Accounting and General Services ("DAGS"). She noted that their training compliance numbers seemed low. Director Chang replied that staff has reached out to the departments with low compliance numbers to offer assistance in increasing compliance. She noted that in addition to DAGS, staff has also reached out to the Department of Transportation ("DOT") and the Department of Corrections and Rehabilitation ("DCR"). Director Chang further noted DCR is in a unique situation because they have absorbed employees from other agencies, and the employee may have completed training in their prior department assignment. She stated she is working with the agencies' HR personnel to get accurate numbers and increase compliance.

Enforcement Director Kee Campbell reported 32 matters were closed, and 25 were opened this month. He further noted that, on average, staff is closing the same number of matters as are being opened.

Executive Director Robert Harris reported no update regarding the vacancy on the Commission. He noted that the Judicial Council received a sufficient number of applicants. He further noted that the council is obligated to send two names to the Governor. The Governor then has 45 days to make a nomination. Director Harris stated that he hopes to have a new commissioner in place by July.

Executive Director Harris reported that staff is looking into producing training videos on various topics to post on the Commission's website.

Agenda Item No. III: Discussion of Media Reports Concerning Ethics or the Ethics Commission Since the Last Meeting (10:22)

Executive Director Robert Harris reported that Chair Fong appeared in an interview that aired on KITV regarding the Commission's activities. In addition, Director Harris helped write an article for Civil Beat.

Chair Fong noted that the KITV spot was well done and well received.

Agenda Item No. IV: 2024 Legislative Matters (12:38)

Executive Director Robert Harris reported that the legislative session has adjourned. He noted that ten bills have already been signed into law by the Governor. Director Harris reported that the Commission's Budget was signed by the Governor. The budget amount is lower than what was requested, but should not impact normal operations.

Director Harris reported that the bill increasing the Commission's administrative fine authority to \$5,000/violation was also signed into law. He noted that the authority is for violations in the future. The staff has been directed to develop guidelines for setting fines and settlements for violations. Chair Fong stated he is pleased that the penalties have been increased.

Director Harris reported that HB 1915 is pending before the Governor. This bill concerns acts of violence against judges and other officials. The bill would shield certain information from the public for specific classes of officials. He noted that the legislation is in response to increased acts of violence against judges and other officials. Director Harris believes the Commission does not publish information protected under the bill. However, should an individual request it, staff will review individual requests to remove protected information. He further noted that the Commissioners and staff may also fall under the protections of this legislation.

Director Harris reported that HB 2374 is also before the Governor. This bill makes an emergency appropriation for hazard pay for employees who worked in the office during the COVID pandemic. He further noted that a final memo is also forthcoming with details about who would qualify and how the pay will be distributed.

Director Harris reported that SB 2216 is pending before the Governor. It is designed to update the Commission's advice procedures. The bill clarifies that advice is confidential; allows for a written summary to be given, if requested; and allows the Commission to issue advisory opinions independently without waiting for a request. Director Harris gave the example of a situation where staff receives multiple inquiries about a particular issue or concern. The proposed legislation allows the Commission to issue an opinion to address this issue without an outside party requesting an opinion.

Director Harris reported on SB 2217, which is also before the Governor. This bill would align the gifts reporting period to the fiscal year.

Director Harris reported that SB 2191 is also before the Governor. This bill revokes the sunset clause to an existing law that exempts technology transfers at the University of Hawaii from the Ethics laws.

Director Harris reported that HB 1884 did not pass the legislature and urged the Commission to consider reintroducing it next year. The proposal would include lobbying organizations and clients of lobbying firms as groups that must be reported on disclosures. Director Harris noted the importance of transparency and disclosure to identify conflicts of interest.

Chair Fong asked if legislators must disclose their ties to lobbyists and lobbying organizations. Director Harris replied that the current law requires reporting on ties to lobbyists but not lobbying organizations. Chair Fong asked if there is a distinction between profit and non-profit entities concerning lobbying laws. Director Harris replied that there is no distinction.

Commissioner Thielen asked if the bill could be reintroduced and suggested that a purpose clause/preamble addressing legislators' concerns be added to a new proposal and any bills proposed by the Commission.

Commissioner Hong concurred with Commissioner Thielen's suggestion.

Vice Chair Tobias also agreed with Commissioner Thielen's suggestion.

Director Harris also noted that it is essential to rally public support behind this proposal.

Director Harris added that a second proposal to add procurement and executive actions under the umbrella of lobbying also failed. He noted that the lobbying laws have remained essentially unchanged since the 1970's. He said that the main focus of the laws is on legislation and rulemaking. The new proposals include interactions between

officials and vendors in the definition of lobbying. He said that there was support for the proposal by agencies and outside entities.

Agenda Item No. V: Discussion of Civil Beat/The New York Times' "Inside the Late-Night Parties Where Hawai'i Politicians Raked in Money" Article (33:24)

Executive Director Harris reported that this agenda item stems from the discussion at previous meetings regarding the Civil Beat/New York Times Article, "Inside the Late-Night Parties Where Hawai'i Politicians Raked in Money". The article examined data regarding campaign contributions by contractors. Director Harris noted that the article underscores the importance of disclosures. The article examined publically available data. Director Harris pointed out the main issues the article raised were: 1) government contractors responsible for over \$24 million in contributions; 2) dozens of legislators working for government contractors; and 3) employees engaging in political activities during non-work hours and coordinating contacts with legislators, officials, and contractors. Director Harris reported that the first issue is primarily a Campaign Spending Commission issue. Campaign Spending Commission has proposed expanding the ban on political contributions to include officers, owners, and immediate families. He suggested that the Commission consider supporting this proposal. He also suggested continued dialogue to integrate data between both Commissions.

Concerning ethics, Director Harris reiterated earlier proposals to expand the definition of lobbying to include contractors and vendors. He noted that the City and County of Honolulu recently issued a policy pertaining to inaugural events. The question was whether donations are contributions or gifts and whether they are allowed. The policy increased information and oversight regarding these events. He suggested that the state consider adopting a similar policy.

Regarding the issue of legislators working for contractors, it was suggested to ban outside employment for legislators while in office. Director Harris noted that such a proposal would be very controversial. He further said that the historical and current view is that the legislature is part-time. Director Harris suggested that there needs to be an acceptance of the reality that most legislators work full-time, year-round. He further noted that most second jobs legislators hold are government-related in some way and may ultimately be with contractors or lobbyists.

Commissioner Thielen asked if expanding the lobbying definition would help disclose the events described in the article. Director Harris replied that expanding the policies by the Campaign Spending Commission may capture hosting a fundraising event. He noted that if a state employee hosts a fundraising event, that must be reported. However, if a state employee is attending an event hosted by another entity, their participation may not be reported.

Commissioner Thielen expressed her concerns about state employees hosting political events and not disclosing it. Director Harris replied that the primary purpose of

the Commission's Financial Disclosure is to identify potential conflicts of interest rather than political activities. He noted that most disclosures are confidential, so the information is not public. He suggested that changes to the campaign spending framework may be more effective.

Commissioner Thielen explained that she feels that hosting political fundraisers is a form of lobbying. Director Harris noted that the current definition of lobbying requires that an individual be paid for his/her work.

Chair Fong requested that this item remain on the agenda for further meetings.

Commissioner Thielen suggested looking at regulating hosting fundraising events.

Director Harris explained that the Commission needs to provide direction regarding what aspect(s) they would like the staff to address. He noted more transparency on the campaign spending/fundraising side of the house may be effective. He expressed his concern about prohibiting executive officials from participating in political fundraising from a Constitutional perspective, or as a practical matter.

Commissioner Thielen recommended creating a prohibition on hosting political fundraisers by officials. Director Harris asked if someone like the Governor would be included in such a prohibition. Commissioner Thielen replied that the Governor should not be prohibited. Director Harris asked what state employees should be banned from political engagement.

Vice Chair Tobias agrees that this issue raises a significant ethical dilemma. She noted that when you start to regulate an activity, people will start looking for loopholes or ways around the regulation.

Commissioner Hong suggested that staff return at the next meeting with recommendations and proposals to discuss.

Chair Fong asked about the prohibition on legislators holding a second job. Director Harris replied that this had been previously discussed by the Commission. He stated that two avenues can be pursued. First, a targeted ban on employment with lobbyists or contractors. Second, a total ban on outside employment. He noted that both proposals would be very controversial and face opposition by the legislature.

Chair Fong asked if the staff could come back with additional recommendations and proposals.

Executive Director Harris summarized the next steps, based on direction from the Commissioners, as follows: 1) review past bills with procurement interaction between contractors and high-level executives; 2) look at developing a policy for inaugural events; and 3) look into a prohibition of high-level officials on political activities similar to the prohibition in place for the Election Commission and Ethics Commission and the

constitutionality of such a prohibition. The staff will put on hold the proposal to limit outside employment by legislators.

Agenda Item No. VI: Discussion of Ethics Oversight over the Judicial Branch (1:03:40)

Executive Director Harris reported that conversations with the Judiciary have continued. The Judiciary is looking at proposed rule revisions related to ethical issues. He noted that the Judiciary expressed interest in hosting events alongside the Commission to encourage public participation.

Chair Fong noted that the Judiciary has been very receptive to the Commission's feedback and suggestions.

Agenda Item No. VII: Akana v. Hawaii State Ethics Commission and Daniel Gluck, Civil No. 18-1-1019-06 (JHA); Akana v. Hawaii State Ethics Commission, Civil No. 19-1-0379-03 (JHA); State of Hawaii, Ethics Commission v. Rowena Akana, Civil No. 20-1-0453 (BIA) (1:04:55)

Executive Director Harris reported that the court denied an OHA Request to file an Amicus Brief on this matter. He noted that OHA can refile the brief should the case move forward.

Chair Fong asked about the timeline for a decision. Director Harris replied that he is unsure but hopeful that the matter will be resolved in six months.

Agenda Item No. VIII: Adjournment of Sunshine Law Meeting (1:10:08)

At approximately 10:10 a.m., Vice Chair Tobias made, and Commissioner Thielen seconded, a motion to adjourn the meeting. The motion carried (Fong, Tobias, Hong, and Thielen voting in the affirmative).

The meeting was adjourned at 10:11 a.m.

Minutes approved on June 19, 2024.