

Formatted Transcription of the February 18, 2015

Honolulu Ethics Commission (EC) Meeting

Present :

Katy Chen, Esq., Chair, EC
Michael Lilly, Esq., Vice Chair, EC
Hon. Riki Amano (ret.), Commissioner, EC
Hon. Victoria Marks (ret.), Commissioner, EC
Hon. Allene Suemori (ret.), Commissioner, EC
Stephen Silva, Commissioner, EC
Stanford Yuen, Commissioner, EC
Chuck Totto, Executive Director and Legal Counsel (EDLC), Ethics Commission
Laurie Wong, Associate Legal Counsel (ALC), Ethics Commission
Letha De Caires, Investigator, Ethics Commission
Lisa Parker, Legal Clerk, Ethics Commission
Geoffrey Kam, Deputy Corporation Counsel
Carolee Kubo, Director, Department of Human Resources
Noel Ono, Deputy Director, Department of Human Resources
Gwynne Inamasu, Department of Human Resources
Lila Tom, Department of Human Resources
Jenny Tobin, Department of Human Resources
Donna Leong, Corporation Counsel
Ember Shinn, Managing Director
Ray Soon, Chief of Staff, Office of the Mayor
Al Frenzel, Member of the Public
Jack Defeo, Member of the Public
Patricia Beekman (phonetic), Member of the Public

Transcriber – Laura Okimoto

I. CALL TO ORDER

II. APPROVAL OF MINUTES

Commissioner Yuen moved to approve the minutes for the January 21, 2015 Meeting. Vice Chair Lilly seconded the vote. All were in favor.

III. OLD BUSINESS

The following dates and times were confirmed for future meetings:

March 18, 2015
April 22, 2015
May 13, 2015
June 24, 2015

IV. NEW BUSINESS

The Commission moved to enter into Executive session based on Attorney-Client privilege.

Redacted Discussion during Executive Session.

Vice Chair Lilly moved to enter into Open session. Commissioner Marks seconded the Motion. Motion was unanimously approved.

BACK IN OPEN SESSION (Due to the guests present, the agenda items were taken out of order.)

KATY CHEN - proceeding to open session agenda item 4B, request for motion to establish a Permitted Interaction Group under HRS section 92-2.5(b)(2). To present, discuss or negotiate regarding salaries of counsel at the Ethics Commission. At this time, Ms. Shinn, I believe you requested to speak.

EMBER SHINN - I was expecting to speak on item number A3 on the budget.

KATY CHEN - you're correct, so we're on IV, A3.

IV.A.3 – For Discussion: Administrative News Status of Fiscal Year 2015-2016 Operating Budget.

EMBER SHINN - thank you for allowing me to speak. The reason that I asked to come before you today is to talk about what we've done on the salaries for the Executive Director and the Assistant Legal Counsel is to give you the courtesy of my thoughts on what kinds of decisions, my decision making process. I wasn't sure what the outcome of my analysis would be but I knew that I had to make it by January 30th which was the deadline when we close the budget.

When this issue first came to my attention was about September when Mister Totto sent me an email asking me to intercede in a difference of opinion between Corporation Counsel and himself over a salary increase that he had decided to give to the Assistant Legal Counsel. At that time I bumped it over to BFS to look at it and give me some advice on what they thought about some of the issues and they never responded. So it came to a head during the budget process.

The budget process began in about late November and went through December where I met with all the departments and Mr. Totto had the ability like all the departments to present information and appeals about his budget. That's when he made his case about the issues with respect to his salary as well as the Assistant Legal Counsel's salary. There were other issues involving other staff members as well but I didn't feel

that was squarely in front of me and that was something that I asked him to work out between HR and Mr. Totto. That's the background on why I'm here.

My decision ultimately affected the way that you all have made decisions in the past. It's like you come to me to intercede, you ask me to make a decision, I make a decision and it's going to be something that is quite different from the way that you have operated in the past. Because my decision was so different from the way you've operated on salaries in the past, that's why I asked for the courtesy of giving you the benefit of my thought process on this issue.

Initially I sent Mr. Totto an email and then I formalized it in a memo in preparation for today's meeting. When Mr. Totto graciously allowed me to come on the agenda, he asked me to provide him all the details and background information. I provided this memo but a lot of the information that I also relied on was from my discussions with the Human Resources people. And that's why we brought all of our Human Resources people here so that you can ask them questions directly.

From the Corporation Counsel, I relied on her for factual information, not for legal advice. She did not advise me legally. I made all my decisions on my own but I subsequently learned afterwards that she was giving advice also to HR, and that they relied on a lot of the background information and historical information of how the Ethics Commission and the charter provisions that I relied upon had evolved. That information was alluded to me in my discussions with HR but I did not have the benefit of that full analysis until subsequent to my writing the email to Mr. Totto. But they had the benefit of that wisdom in giving me advice as to how the city operated with respect to other people.

The long and the short of it is for the Executive Director's salary, that was a very straight forward analysis, the charter is very clear that the Ethics Commission sets the salary by ordinance of the Executive Director and Chief Legal Counsel. And the ordinance says specifically that that position shall be set at the EM-7 range and EM-7 is excluded managerial. That's very clear. So within that range the Ethics Commission is free to set his salary and the only restriction on that is the same restriction that applies to every single other department in the city and that is that the mayor has the final decision on budget and allotting of funds. The mayor submits his proposed budget, the counsel appropriates the money and the mayor has the final decision making on allotting the money.

That makes sense because there has to be one person with oversight as to everything that's going on in the city. There has to be one person who understands all the financial and fiscal issues that affect every single department in the city. So that is the only caveat. I don't know if that's ever been exercised nor will it ever be exercised. But in the event that you decide to do something crazy and outrageous, which I doubt that would happen, it is obviously the last check and balance in the process.

The analysis on the Assistant Legal Counsel's position was a little bit more challenging for me. Part of it was because of the back and forth, the facts were a little convoluted, there was so much retroactive action and I got hung up on the issue that Mr. Totto brought up during our budget hearings as well as in some of the correspondence that was going back and forth between him and Corp. and then BFS, and perhaps others. And that was the use of salary savings as a means of giving staff raises. So I want to come back to that because in the end that didn't factor in with my analysis but I would like to comment on that.

My analysis was pretty straight forward. I think all of you are attorneys, I'm an attorney and it's like the rule of thumb of statutory construction as you read it, and you interpret it and if there's language that's in another statute that is more specific than the general then the specific controls over the general. So I applied those issues and in the charter it said the Ethics Commission can set the salary of the Executive Director. It can appoint staff. It does not say it can set the salary of staff. It does say that the staff shall be part of the classification plan. It does say that the staff will be exempt from civil service.

In the ordinance it's very consistent with the charter and that also says that the Ethics Commission can appoint staff. Again it is silent on whether or not the commission can set the salaries. So as I understood the history, at least the short history, with respect to this particular position during the Caldwell administration, I did not choose to look back on this although HR did. I chose only to look at the two years of our administration and our decisions cause I can't guess at what people before me did. As I understood it, there were issues, there were actions taken by this commission to provide raises for the Assistant Legal Counsel and I then believe Mr. Totto told me during the budget hearing that he had decided that he had the authority to make the decision on the staff salaries and so he made the decision effective for July 1, 2014. Subsequently he asked for that ratification of that decision in a commission meeting in October.

Those are the two factors I looked at and in the end I concluded that the specific provision that allows the mayor under charter provision 3-115, 6-1103, 6-1109, to set the salaries to establish a classification and pay plan controlled in the absence of language, charter or ordinance that gave the Ethics Commission the authority to set salaries for staff. Therefore, the mayor's directive was the controlling document that would determine the salary for the commission staff.

KATY CHEN - what about the specific language in the Ethics Commission's rules and procedure, rule 1.13D which says the legal counsel can fix the compensation of the staff.

EMBER SHINN - I suspect that I didn't look at that.

KATY CHEN - and that seems specific, very specific.

MICHAEL LILLY - and that has force of effect law.

EMBER SHINN - no, I don't think so, I don't think it can trump the charter.

MICHAEL LILLY - if it's consistent with the charter.

EMBER SHINN - it is not consistent with the charter, commissioner.

KATY CHEN - it says in absence of the laws what you just said with the charter so if this is specific...

EMBER SHINN - no, because the charter specifically gives the mayor the authority to establish salaries and the classification plan. I do not think an administrative rule can ever trump a charter provision.

MICHAEL LILLY - I have a email from DHR in November 2010, from Jenny Tobin (phonetic) to Mr. Totto and copy to the director. It's for the salary for the associate legal director stating the commission may provide a change in pay whenever it elects to provided the new pay is on one step in the SR-23 range. That we have the authority to do that.

EMBER SHINN - I can't respond to that. I said can only do -- look at this, what I looked at for this administration and when called upon to make this decision, that is the decision I made. I don't believe that administrative rule can ever trump the charter provision.

MICHAEL LILLY - administrative rule is considered a rule of law that's been properly enacted. Donna Leong was here in November 2013 before this commission and she said in response to a question that I asked about our authority with respect to the associate legal counsel salaries, she said that we were empowered, that she totally understands that under the charter that Corporation Counsel, the chief legal officer for the city that the commission is empowered to set the director's salary and that we delegate it to the executive director the authority to set the associate legal counsel's salary. And that according to Ms. Leong, she understood that we had that authority under the charter.

EMBER SHINN - with all due respect to Corporation Counsel I disagree. I was managing director at the time and I disagree.

MICHAEL LILLY - but she's the legal officer for the city.

EMBER SHINN - I made the administrative decision because I disagree. I think the charter is very clear.

MICHAEL LILLY - the Corporation Counsel is the chief legal officer of the city, is the one that interprets the law for the city. The city has to rely upon and follow the law as

interpreted by its chief legal officer. And you're saying you disagreeing with Ms. Leong's interpretation of the law.

EMBER SHINN - I don't know what Ms. Leong said in November because I was here in November.

MICHAEL LILLY - It's memorialized in our minutes.

EMBER SHINN - I was here in November and Ms. Leong was I think taking care of her grandchild in November.

MICHAEL LILLY - she was here on November 4, 2013, before this commission.

EMBER SHINN - maybe she can respond to it herself.

MICHAEL LILLY - also Nelson Koyanagi, Director of Budget and Fiscal Services in a memo of September 2013 said we recognize that the salaries of the executive director and associate legal counsel are under the purview of the Ethics Commission. We also asked specifically because your memo states that we couldn't use savings for the salary increases. I got a memo from Ms. Leong in January 2014 that said that we could approve the use of savings for salaries for the executive director and the associate legal counsel.

EMBER SHINN - I made the final decision on budget.

MICHAEL LILLY - I think the Ethics Commission makes the final decision on salaries of its staff.

KATY CHEN - I believe Ms. Leong said she wanted to respond.

DONNA LEONG - In the Fall of 2013 when this whole issue about the salaries of the various staff members of the Ethics Commission was first being discussed, it was my first (inaudible) into the issue. Based on the advice of the people with whom I conferred, it was the best information and best opinion that I had at the time.

Since the Fall of 2013 when I first appeared before this commission, I feel I've become more knowledgeable about the process. I have totally understood that consistent with my comments to the commission at the time, that I was simply implementing the guidelines provided to me by the Department of Budget and Fiscal Services. I've now also come to realize I was also implementing the guidelines provided to me by the Department of Human Resources. Since that time, I've also become more knowledgeable that ultimately it is the mayor who establishes the budget and the positions in the city to support the city services.

So I have looked at Ms. Shinn's memo to Mr. Totto, I have looked at much more carefully the provisions of the charter, the provisions of the ordinance and I asked

former Deputy Corporation Counsel Diane Kawauchi to provide me with the in depth analysis with regard to the charter's directives about the salaries of the Ethics Commission because this issue has been such a hot issue since the Fall of 2013.

In response to a recent request by the Department of Human Resources, I've issued an opinion to DHR Director Carolee Kubo that sets out the ultimate authority of the mayor, acting through his appointees to implement the operating budget for the city. Based on all of that charter commission history, which will include an analysis of the various request made by Executive Director Totto, throughout the course of the past several years with regard to the salaries of the Ethics Commission staff, I believe that Ms. Shinn's conclusion is correct, that my opinion provided in the Fall of 2013 is incorrect with regard to the salaries and I do not dispute Ms. Shinn's analysis at this time.

RIKI AMANO - Ms. Leong, may I ask you if there are any other departments or commissions that are having similar struggles?

EMBER SHINN - may I respond? for purposes of this analysis I did look at other comparable entities. As you know, in the city government the Police Commission, the Fire Commission, the Liquor Commission, the Neighborhood Board Commission and the Ethics Commission. The Police Commission does not have the authority to set the salary of the police chief and the deputies because that's set by the salary commission. The staff of the Police Commission are civil service.

The Fire Commission is similar. They do not have the authority to set the salary of the chief or the deputies because that's set by the salary commission. They have a half-time secretary but that is contract position.

The Neighborhood Board Commission is a mayor's appointee and they have no authority to hire or appoint the staff and that's set by charter. They don't have the authority to set the salary.

The Liquor Commission was an anomaly because that commission does set the salary of the director and their deputy director. When we researched it, I discovered the authority for that commission is set by state law, HRS. That specifically provides the Liquor Commission with the authority to set the salaries for the two positions. The rest of the staff of the Liquor Commission are civil service, and that is administratively assigned to BFS.

Those are the other commissions that I looked at and so this is the only one that can set the salary of their executive director and as you know the charter specifically says they may appoint staff. But it's silent on whether they have the authority to set salary.

MICHAEL LILLY - Ms. Leong, you sent us a memo last September which was part of the basis on which we took action with respect to salaries. It wasn't just 2013, it was into the last Fall of 2014 that we were relying upon emails, memos from Budget and Finance, DHR and you. But end of September none of the issues regarding the salaries

and the increases that we approved were ever issued. Everybody was aware of what we were allowed to do and what we ultimately did (inaudible). And that was in part on memos we got from you. It was also predicated on our own rules that were (inaudible) pursuant to rule making. Until that rule is ruled invalid, it has a force in effect of law.

EMBER SHINN - Vice Chair, I have to take responsibility ultimately for all the confusion, misdirection and all of the different conflicting responses that we've given. I can't explain it nor defend it because they were conflicting and I total agree that we've muddled through all of this.

When Mr. Totto came to me in September I wanted to punt on this as well because no one wants to deal with an unpleasant issue of people's salaries. This is actually the only one where I've actually had to deal with someone's salary because we have ten thousand employees in the city and we have a two billion dollar budget and everything is pretty much set by other kinds of rules. And you are the anomaly.

So in September I punted it over to BFS because I didn't even know at that point what you made. I didn't know what Mr. Totto or the assistant legal counsel made. I said tell me, give me their payroll history, figure this out and advise me. It just didn't happen before the budget session began in December when I met with them. So I apologize for that. I have to take the responsibility, had I stepped in definitively at the appropriate time when all of these things were percolating and actually read the charter, read the ordinance like I did in January in order to make this final decision and to try and make the right decision for once and for all and moving forward so that we wouldn't have any more of this controversy. I really tried to make the right definitive decision and to move forward. And so I take that total responsibility for not stepping in at an earlier time.

MICHAEL LILLY - you're saying conflicting opinions. We don't have any conflicting opinions until we got your memo. Up till then, the memos from the Corporation Counsel, DHR, Budget and Finance confirmed that we have that authority. So it wasn't any conflicting authority. We acted accordingly with our own rules to approve the salary increases and we are an anomaly. We're an anomaly because we're independent agency.

The reason that we're independent agency is because we can't be subject to the kinds of control that other agencies are subject to because of the kind of sensitive things that we do, investigating ethics violations by employees of the city. That's why I say we have the independent authority to set salaries as it said in our rules so that we are independent.

Now, is that a runaway authority? no. Obviously we have to go within certain ranges which we followed. Mr. Totto worked with Corporation Counsel, Budget and Finance and DHR to come up with the appropriate salaries for the staff and then we approved it. It's not a wild decision by the commission, it was well grounded in looking at salaries of comparable people in other departments. It's not out of the ball park, its right within the range and it was a decision that we made.

Back on my point, the reason we have this authority is so that we're not subject to the kinds of control the other agencies have to be subject to because we have to be independent because of the nature of the investigations we undertake.

EMBER SHINN - Mr. Lilly, I have a healthy respect for the work and the mission of the Ethics Commission and you do have to be independent to be able to conduct the investigatory charge, that part of your mission. You cannot be independent for purposes of budget and fiscal.

The Ethics Commission of all groups, you are charged with looking at government corruption. Government corruption festers when there is no check and balance system, unfettered authority. You may call it independent authority but I call it unfettered authority, only leads to the potential of government corruption. Of all things the Ethics Commission needs to understand that.

The fiscal part of the, the budget part of it, the salary part of it is specifically reserved to the mayor. The only exception was the charter provision that allowed the executive director's salary to be set by the commission. But everything else has to be part of rules, there has to be a check and balance system. I'm not saying that you will act crazy, but I am saying that for the other staff members, there has to be a check and balance system. Because to use salary savings, which we've never allowed in this administration the use of salary savings, allows your administrative people to make decisions on using their budget in a way that it was not intended.

We budget salaries based upon what the expected salaries for the positions that you've asked for. You've asked for positions which we agreed to based upon your staffing needs and of course no one ever gets all they want. And then to use salary savings from unfilled positions in the face of your concerns that you don't have enough staff would allow for that type of unfettered decision making. Because then you could use salary savings for purposes of giving people who are charged with the responsibility of filling vacancies that authority. I just don't think that we can do that. We don't allow salary savings to be used in that capacity.

MICHAEL LILLY - we didn't do it in a vacuum, Ms. Shinn. Donna Leong wrote a memo to Chuck in January 2014, copied to you, Nelson Koyanagi, Carolee Kubo, Jennifer Tobin, Lyla Tom and Pamela Fong. So every person that would have a say in what budgeting, what we can do with our budget saying that the commission could use salary savings (\$5,697) to further increase the EDLC and ALC salaries for fiscal year 2014.

STEPHEN SILVA - we're trashing this stuff around for months. What are we talking about dollar wise where the difference in pay is. Look at all the staff we have, look at all the paper work we have, we spent more already on this problem than the raise in salary compensate. Logically, we're wasting a lot of time on not only four thousand dollars. Is it worth it? It's a waste of time and effort.

VICTORIA MARKS - why wasn't the executive director for the Ethics Commission included in the salary commission employees.

EMBER SHINN - historically why wasn't it, I don't have the answer to that.

VICTORIA MARKS - my guess is because this commission set the salary for its executive director.

DONNA LEONG - historically when you go back when I was first was with the city, 35 years ago, the legal counsel to the Ethics Commission (before they became independent), initially that legal counsel was a special deputy corporation counsel. The salary commission establishes my salary, the first deputy's salary, and then wages for the deputies.

RIKI AMANO - Ms. Shinn, do you have any recommendations for how we can go forward now?

EMBER SHINN - we made the decision from an administrative standpoint. Obviously not everyone is happy with that decision. It's really the assistant legal counsel's position that's at issue. Part of it was the issue as to what that position's salary would be in the FY16 budget. So I've made that decision that that will be covered under section 4 of the mayor's directive which covers exempt, excluded employees. And that position will be treated in the same way so the next salary increase for that position is in parity with bargaining unit 13, and that will be in January where they're entitled to a 3.5 percent increase. So everyone in that category 4 of the mayor's directive will be treated in the same way.

That is how we budgeted, there is no decision the way I've interpreted the charter, the ordinance and the mayor's directive, there's no decision for the commission to make because it'll be automatically made in accordance with the mayor's directive until the charter is amended to address (inaudible).

With respect to the executive director's salary, we actually made his salary retroactive to when it was given. So our recommendation was to raise salary because you actually made the appropriate decision way back when and it just never got into the computer and it was never processed. That was a mistake on our part and it should've been done. So I directed his salary will get retroactive to July 1, 2014 and going forward it will be up to you. Hopefully you will make the decision relatively quickly before the budget of July 1 begins.

We have built in to the budget a four percent increase which is about the amount of money that we are putting in for excluded managerial employees into our budget and it does not mean that that position will get that raise. It will be up to you to make that determination as to what raise you want to give the executive director. And if you gave the executive director more than four percent and if it was still reasonable, then the money would have to come out of your budget (salary money or expense money).

DONNA LEONG - but the caution that we Corp. has provided to the executive director is that if you use salary savings, because you do not fill the investigator's position, then should you need those funds for whatever comes up later in the fiscal year, you will not have it available to you to fund that investigation. That would be my only caution.

Just to correct a little bit of what Ms. Shinn said, and that is the executive director asked Corp. not to fund his raise until the associate legal counsel's raise had been funded. Which is why his raise had not been implemented.

ALLENE SUEMORI - are we not discussing about a philosophical perspective on budget and government and what's independent and what's unfettered and is it the position that the mayor may or may not have limited control over his budget with the Ethics Commission?

DONNA LEONG - Commissioner Suemori, so yes, ultimately that is the whole point of this discussion. And the memo that Commissioner Lilly refers to which was dated September or October, which was distributed to the commissioners, and again it's very bad memo with a lot of attachments. We've looked at the history of the charter provisions with regard to the Ethics Commission.

It is entirely about the mayor's power and authority for ultimate control over the funding of the city's business and (inaudible) through the budget ordinances and implementation of that budget ordinance which necessarily means the amount of money that each agency, each commission gets for its business and also the controls that the mayor sets forth for the agencies through the mayor's directive with regard to the budget. It is ultimately about that and I totally understand the constitutional mandate for the independence of the Ethics Commission and by taking the actions that the mayor takes with regard to the budget and implementation thereof it is not an attempt in any way to control that independence of the commission. It is simply recognition of the structure of government and the ultimate responsibility of the mayor to control the city (inaudible).

STEPHEN SILVA - I'm not a lawyer, just a simple minded tax payer. It bothered me to hear this kind of comments at the highest level in the city government where we had acted in good faith, you had made comments or written some (inaudible) and you refer to your statement because of new found information. That applies to everything. Tomorrow you're going to have new found information. So where is the trust, there's some credibility problem here and then maybe dealing with integrity also. Because now what you're saying is today you decided on this, tomorrow you may have new information and we may approach it from a different direction. So that bothers me.

IV.B. – For Action: Request for a Motion to Establish a Permitted Interaction Group under HRS Sec. 92-2.5(b)(2)

KATY CHEN - moving onto IV B on the agenda. For action: request for **motion to establish a Permitted Interaction Group (PIG)**. Mr. Tutto, do you want to comment on that?

CHUCK TOTTO - basically the **request coming from staff was to set a permitted interaction group of fewer commissioners in order to deal with this particular issue that we've just spent a fair amount of time on**. The two aspects are the salary of the ALC and the salary of the EDLC. Also it is important to review the authority of the Ethics Commission to set salaries for its legal staff. The purpose of putting together a PIG, is in order to allow people to have discussions with members of the administration. Whether that's the former managing director Ms. Shinn or new managing director of the mayor.

The purpose was to weigh some of the problems that have been discussed and see if some discussion could occur as opposed to simply having Ms. Shinn state what her position is and the commission state what its position is. So there is a draft of the resolution which basically lays out that this would be a group that could present, discuss or negotiate with representatives of the administration regarding the authority of the commission. Not only does it include the items that we've talked about so far and the history, but it also looks at what may be a longer term issue, which is to develop a solution to the pay disparity between commission attorneys and the deputies at Corp. and at the Prosecuting Attorney's office. And now I understand that also includes the office of Council Services, so that the commission can establish salaries that will be attracted to keeping good legal team on board.

One of the things we didn't mention was the problem that if we make the associate legal counsel an SR-26 just like any other person who's in civil service, and she's not a civil servant, she does not have the protections of civil service. She is in without a bargaining unit contract or anything that protects her. So she has the lower salary that is given to an SR-26 and no protection that an SR-26 would have.

The difficulty with that is, the commission may be aware, is that you end up having not only the disparity that we've already seen between the Ethics Commission attorneys and the attorneys at Corporation Counsel or the Prosecutor's Office, but then we have even a further one which is illustrated by the fact that the highest salary an SR-26 attorney can earn is about \$85,000, and the salary commission has said an attorney with ten years relevant experience at Corporation Counsel would be entitled to \$98,800. Now I'm not suggesting that's what they get paid, but you can see that there is a huge disparity.

If our process or our structure ends up being the lowest one on the totem pole between the Attorney General's office, Corporation Counsel and other government lawyers, we will end up in a situation where the associate legal counsel will be a revolving door. The pay will be so low that only brand new attorneys or first year attorneys who want to get a foot in the door for government lawyering will come in and they'll need a lot of training. That will take more time away from the EDLC's job, ultimately this will cause the door to

revolve as soon as someone who is in government as an ALC sees a better opportunity, which will be many, then they'll be likely to leave.

I don't know if either Corp. or Ms. Shinn want to comment on that but that's the bottom line is to see if we can't come up with some long term and short term resolution of the various issues that's been brought up.

EMBER SHINN - I think there's two facets of this, one is process and that's what my decision was based on process, and that's the mayor's directive governing salary. The charter and ordinance are very clear that says that the staff positions are part of the classification plan. The first one is process and that's what I looked at. What process determines what the salary will be for the ALC position.

The second part of it is whether the classification of this position is appropriate. I specifically said in my memo that I did not look at that because to the extent that Mr. Totto's legitimate concern, every responsible administrator wants to hold staff and keep and recruit good staff, has exactly the same concern. I hear it all the time from every one of my directors. I can't pay this person enough money to keep good staff because our salaries are so low. So it's a totally legitimate concern. That classification issue is something that has to be determined because salary is connected to classification and the charter is really clear that all staff positions in the commission are part of the classification. I want HR to respond to this because I've consulted with them on this and they are better equipped to address the classification aspect of it.

VICTORIA MARKS - the issue was establishing a PIG.

MICHAEL LILLY - I would like to have two motions. **I'd like a motion that the commission reaffirms its position that it has the authority to set salaries and set forth in its adopted rules. We disagree with the actions taken.**

Secondly, **that we move to establish this PIG.** So one, we voice our position on what has happened and secondly then we can undertake this PIG to do whatever it might be able to do. That is my recommendation.

EMBER SHINN - the administration people are happy to meet with the commission without being part of the PIG. We're talking about process and classification. We're not talking about people.

MICHAEL LILLY - the PIG is just a way in which you can have a smaller group, sit down and discuss the issues.

KATY CHEN - are you making a formal motion then?

MICHAEL LILLY - I move that we reaffirm, that we have the authority under our rules and under the authority that we can provide up until now and past practice to set salaries. And we disagree with the action taken.

KATY CHEN - let's vote on that first. All in favor? Is that four in favor? Or...

LAURIE WONG - we do a roll call?

KATY CHEN - we need to clarify. Do you want to make your motion louder?

MICHAEL LILLY - I move that the commission reaffirm its decisions on salaries, that its position is that it has the authority under the advice we've been given, our past practice and our adopted rules to set salaries.

RIKI AMANO - I'd like to call for discussion. I have looked at and I don't feel comfortable supporting a motion like that without my own eyes upon the actual language. So if it comes to the vote, I'm going to go against it.

ALLENE SUEMORI - me too, because I'm just definitely not ready to vote on that. But (inaudible) until I'm ready. You guys are way ahead so this is the way it is. You've heard my side of my question.

VICTORIA MARKS - I wouldn't vote against but I would abstain.

KATY CHEN - so you put forth the motion, it was seconded. So we're in the middle of taking a vote.

VICTORIA MARKS - we're in the middle of discussion.

KATY CHEN - so we should take a vote, all in favor, I...

LAURIE WONG - can we do a roll call?

MICHAEL LILLY - so four in favor, two no's and one abstain.

LAURIE WONG - Vice Chair Lilly, who else?

KATY CHEN - right, and Chair Chen, Commissioner Yuen and Commissioner Silva are "Ayes."

ALLENE SUEMORI - I vote no.

LAURIE WONG - Commissioner Marks abstains.

KATY CHEN - then there is the second motion to establish a Permitted Interaction Group.

RIKI AMANO - I would like to hear Ms. Shinn's point of view.

EMBER SHINN - I would suggest that you ask the HR people to review this position for classification purposes before you find the necessity for PIG. Could very well be that they would agree that this is warranted at a higher level of classification than it is now. As far as I know, unless I'm wrong, has this been done? Do you know?

LILA TOM - we classified the position.

EMBER SHINN - initially in 2010.

LILA TOM - Lila Tom, Division Chief of Classification and DHR, when the position was created in 2010, I did assess the classification. Per charter we have to compare it with other civil service classes. That's what the classified plan is. In doing so we compared it -- we didn't have very many classes within the City and County to compare with so primarily it was classes in the Judiciary that we found that were the most comparable. At that time we found that the SR-26 level was appropriate. We just determined the SR.

As far as the rates attached to the (inaudible) that is all decided through collective bargaining. In relative terms of complexity we found that it was most comparable to attorney type positions in the Judiciary that were classified an SR-26.

Should there be significant changes particularly in the responsibilities and we'll look at it pretty much in scope, nature, complexity. If there have been significant changes a revised position description can be done and we would then again review it and classify it and see if it's still appropriate at the SR-26 level.

MICHAEL LILLY - what kind of timing are we talking about would it take to get to the end of that decision.

LILA TOM - the classification review? It depends on how long it would take to get the position description, granted let's say if it comes in within a week, I would say give us a month to do a thorough review because often times it will include talking to people and auditing people, and particularly it's another jurisdiction that we would compare with.

ALLENE SUEMORI - can we defer this for two months?

VICTORIA MARKS - we're in discussion. I would do things more quickly than not. You also have fiscal year budget coming up.

CHUCK TOTTO - also, did you request to do that back in mid-November for the ALC position? We were in meeting with Mr. Ono, Ms. Kubo, yourself and my understanding was that...

LILA TOM - I didn't get an official revised position description to review.

CHUCK TOTTO - in fact, you didn't ask for one. You simply said that you folks were going to start taking a look at that and to see whether or not the SR-26 position was appropriate.

LILA TOM - what I would look at then would be what we have on file as far as what the official position description was. And in terms of that we thought it was appropriate.

CHUCK TOTTO - then why didn't you let us know because that was the other thing you were going to do is to let us know. I'm sorry to call you on this but...

LILA TOM - oh, no, but I wasn't aware that it was an official request to reply. The only way that we give a formal decision is if we get a formal request which comes out through Corporation Counsel to us.

MICHAEL LILLY - so you're saying you have to do a formal request to you to reclassify the ALC position.

LILA TOM - yes, that's the process we have (inaudible).

VICTORIA MARKS - can you take this as a formal request.

NOEL ONO - can I ask for clarification what meeting you talking about. I'm not...

CHUCK TOTTO - November meeting at Corporation Counsel's large conference room with you...

NOEL ONO - that's the one we were discussing something else though and this came up. I just want to clarify which meeting. Chuck, I'm not attacking, I'm just asking you what meeting so it's clear in our mind where we were and what the discussion was about.

CHUCK TOTTO - but didn't you folks have the ball on your court?

NOEL ONO - it starts with a revised job description. We went through this for the investigator. Did you submit a revised job description reflecting what the changes our in the job we can review it. Nothing's changed, that's the process.

MICHAEL LILLY - as I understand it's not just us asking you here. You need to have the back up.

LILA TOM - well, it starts with that official document which is a revised position description. That's the process.

NOEL ONO - so Chuck, you can go ahead and send us a revised and we'll give it top priority. If we dropped the ball we apologize. I thought since you've (inaudible) for a long time you were aware of the process.

VICTORIA MARKS - to ask you to do a review, can you consider this a specific request and do you need anything else from the commission or commission staff to get that started?

DONNA LEONG - may I first say that the person who was speaking behind me is Deputy Director of Department of Human Resources Noel Ono. And I would like to respond by saying that Corporation Counsel's administrative services officer and I spent a lot of time supporting your executive director in a lot of different ways.

Most recently, one of them was to reclassify your investigator position from an Investigator II to III. Mr. Tutto knows that what is required in order for that reclassification consideration, which is what Ms. Tom is referring to and what Deputy Director Ono is referring to is a revised position description based upon which Ms. Tom can conduct the review and diligence that she is just mentioning which requires conversations with others and audit and so forth and so on. Which is why it's way beyond my pay scale in so far as knowledge about HR pay classification, etc...

So, the first order of business and for Corp. I will take your request as the official request, however, for the record we require a revised position description from Mr. Tutto.

KATY CHEN - so the motion to establish a Permitted Interaction Group, it talks about and discussing and negotiating with administration regarding your salaries and other related issues, it sounds like this would fall under the purview of the Permitted Interaction Group as stated here in this motion.

LILA TOM - we just require the revised position description and then it can get the whole ball rolling and then we basically turn it over to DHR and they do their thing because they are the experts. That's one of the key things that I've learned since the Fall of 2013. I'm just implementing...

ALLENE SUEMORI - Commissioner Marks, wouldn't you think that we get through faster if we did (?) have PIG and just let them do their job and come back. And maybe we'll tell them to come back in a month. Why go through a PIG just to get to the same goal that we're trying to get to this way. So let's defer the motion...

VICTORIA MARKS - I didn't make the motion.

MICHAEL LILLY - would a PIG slow it up?

ALLENE SUEMORI - it seems to me that while we're waiting for the PIG, they're going to stop. So if want to stop them, up to you.

KATY CHEN - I disagree, I don't think a PIG would stop them. What I'm trying to say is it seems like that's the topic within the PIG. And it seems like the PIG actually has topics beyond just that particular issue. That's what my understanding how the PIG is. My understanding of what is being proposed here is beyond just that particular issue.

CHUCK TOTTO - I think you might be assuming that there's going to be some change or position from DHR and the administration. But if there isn't and they say no, SR-26 is the right place for this...

ALLENE SUEMORI - then it would be the next step would be a PIG.

CHUCK TOTTO - I think then you've lost a month.

KATY CHEN - I also think that my understanding of this proposed PIG is that it's more than just this particular issue, is that not correct?

CHUCK TOTTO - yes, the other thing is to look at the overall view. Commissioner Marks hit the nail on the head, salary commission. I don't know why we weren't included in the salary commission either. But maybe that's more appropriate place. Unfortunately, that will require a charter amendment according Corporation Counsel and I agree with them. A lot of these issues would dissipate because of that but that is one of the long standing issues.

KATY CHEN - so there's more than just this issue. So for that reasons, I just want to make sure that we're clear on it, if we were to establish a PIG, we're just discussing other things as well.

RIKI AMANO - I think I heard Ms. Shinn say we don't need something like this to open up discussions about broad issues relating to salary and I think that would be an appropriate way to proceed quickly. I also think that this particular drafting sets out too much detail. I think if you're going to set a group of people out there and talk about these things that I would rather have it more open ended so that everything can be discussed and all alternatives can be reviewed. So I wouldn't support this as it is currently (inaudible).

CHUCK TOTTO - I tried to make it specific so that the issues would be clear. It does say the group may take any action reasonable to present, discuss or negotiate the salary issues described above. Number four talks about the more general or generic issue regarding salary commission or other options. The purpose of making it specific was so everybody knew...

VICTORIA MARKS - I have a general question. Can any one of these commissioners on the Ethics Commission go and talk to HR about options, go and talk to Budget and

Finance, talk to Ms. Shinn, Managing Director? Can two of us go do that or is that a violation of such.

GEOFFREY KAM - two would be the problem. To some extent you can talk one on one but at this point, given the situation it might actually be the safest way for you all to go.

MICHAEL LILLY - if we do a PIG, it can be simultaneous with his request for a classification change. You wouldn't hold it up pending the PIG?

LILA TOM - my action would be just dependent on when I receive a revised PD.

MICHAEL LILLY - because let's say he submits the formal request with the documentation and let's say for argument sake at the end of that in a month she gets a step up SR and that may actually eliminate a good part of the PIG, then that's all I would do. We might have some issues in the PIG but it would eliminate some portion of it. But it wouldn't hold up your review of the request.

LILA TOM - no.

MICHAEL LILLY - so the PIG is a way in which we can have meetings and not (inaudible).

GEOFFREY KAM - right, it's something less than a full meeting.

NOEL ONO - just so that you guys understand how this classification system work...I don't want the commission to have certain expectations that something's going to happen. For Lila's group to make any change in the classification, essentially Mr. Totto is going to submit a position description that reflects a change in duties, change in complexity or that kind of thing. If the position description does not reflect that, our decision is going to be no change in the SR-26. That's the parameter we have to work under.

Chuck is going to have to show that there's been a substantive change in the job.

LILA TOM - she's an associate legal counsel, we would look at a new class...

NOEL ONO - so we have to see something that breaks her out of her existing classification. Without that, then it's going to come back no change. And that's how it is for every classification or PD that comes before us. So I wanted you to understand that that's how it's going to work. We can give it a priority, we'll ask them to expedite it as quickly as possible and we apologize, Chuck, if you were under the misunderstanding that (inaudible). It starts with the revised position description. It has to come in, we cannot take any action. We can talk informally but unless something officially comes into Lila's group, they can't move on it.

KATY CHEN - whatever the decision of classification, it is highly unlikely that it would be subject to negotiations anyway, right? it's unlikely that the mayor or mayor's representative will...

VICTORIA MARKS - it's a classification decision.

KATY CHEN - right, If we get into the business of second guessing HR, we run into a whole mess of trouble.

CAROLEE KUBO - Chuck sent me a memo and he had some questions about the investigator position and it deals with classification also.

KATY CHEN - if you can please just respond to Mr. Totto directly on that. I don't think that's relevant to this discussion.

NOEL ONO - this material is important that you review because in here it addresses some of the concerns and issues that Ms. Shinn and Ms. Leong have raised regarding the bigger problem. You all need to look at this because this address not only the investigator situation but also matter of whether Ethics has the right to determine salary (inaudible).

KATY CHEN - right now we're having a discussion about whether to establish this FIG. So I understand that there's people waiting so we need to move forward.

DONNA LEONG - would it be okay for DHR to just submit their document to you for consideration so that they can present their concerns. I think that's what you're asking, and it deals with classification.

CAROLEE KUBO - of the investigator, yes. So it's all built into the Ethics Commission and we have some documents with some historical information for all of you so you see the whole picture.

KATY CHEN - yes, you can submit it. Is there any further discussion on establishing a FIG.

RIKI AMANO - in view of Mr. Kam's comments, I will support this entity, this group, but I would **ask that we amend the (inaudible) to exclude all the specifics so that the entity can go forward and talk about all the issues. I don't think it's appropriate to put in all the details into the resolution.**

VICTORIA MARKS - like the numbers.

RIKI AMANO - yes, if you could just (inaudible) with the last (inaudible) for **where it says be it resolve, and regarding the authority of the commission to set the salaries and other (inaudible) of the commissions, associate legal counsel and**

executive director of legal counsel period. And then you go right down to (inaudible) further resolve. Just exclude all the details.

MICHAEL LILLY - I'm happy to amend it to be consistent with what the judge (inaudible).

KATY CHEN - all in favor.

Unanimous – Aye.

KATY CHEN - so now we'll make another motion based on the amendment. All in favor.

Unanimous – Aye.

KATY CHEN - that was unanimous.

RIKI AMANO - I want to thank all of the counties HR folks and Ms. Leong and particularly Ms. Shinn for coming here to the commission. It clarified a lot (inaudible) but it also demonstrates a willingness to try to work with us. I hope that you got the same in return because that's what we want. We all want the same thing. Also we want a healthy and strong Ethics Commission which will help everyone.

KATY CHEN - moving on to item 4.

IV.D – For Action: Request for Formal Advisory Opinion Regarding the Use of City Resources for “Keep Hawaii’s Heroes” Petition

KATY CHEN - (inaudible) fact that there are people waiting to speak with us, I'm going to move to item number 4D, request for formal advisory opinion regarding the use of city resources for Keep Hawaii's Heroes Petition.

LAURIE WONG - so I did submit an attorney/client privilege document. If you folks have any questions about it, if you want to discuss the (inaudible) issues in that memo we can go into executive session. If you have no questions, we have several speakers, a Mr. Al Frenzel is here. He requested the formal advisory opinion. I believe there's other members of his group here and also Mr. Ray Soon is here representing the Office of the Mayor.

AL FRENZEL - the issue here that I have in regards to the mayor's use of city resources has to do with whether or not the Hawaii's Heroes program with the chamber of commerce is in fact a community wide benefit. Because I think that's what the decision relies on whether its community wide benefit. To me that term is self-explanatory.

When I throw a net over the community and it encompasses most of the community, maybe a couple fish sneak out of the net, that's okay. But generally speaking the wide

net would include the bulk of the community. I would submit that Keep Hawaii's Heroes program was not for the benefit of the whole community, if the mayor had just spent a little bit more time looking at the issue.

I want to talk about one of the primary reasons the Chamber of Commerce, being a business oriented entity whose sponsored this drive is for financial reasons. I want to talk about some of the financial reasons why I don't think this is a community benefit.

First of all, I want to use the chambers numbers, they've thrown out 14.7 billion is the contribution of the military and implied that that is part of the Hawaii's Heroes program. But in fact, in reality this is the totally DOD contribution and the Army's contribution is very small, only 1.3 billion. Even the chamber will agree and they use these numbers that only 16% of this 1.3 million (phonetic) actually gets spent in the local economy. So the Chamber of Commerce's website would brag that 208 million would be spent locally and that the City and County receives 9 million in GET. That's not a lot to brag about. 9 million in GET is pocket change.

The chamber wouldn't even argue that this 208 gets spent on a multiplier factor. For fairness, the 208 is real money, it's not small potatoes. But it's not 1.3 which is what the mayor and other people will throw around. And it's definitely not the 14.7. So that's what I call the green or the good part of the Hawaii's Heroes program.

If I had gone to the mayor said, Mr. Mayor, I can take 5.1% of the Oahu population and have them disappear, and that means they won't be on our city streets, they won't be using our schools, they won't be using our parks and our city and state services, and say 49,000 people are just going to disappear and they're not going to wind up on the employment lines. These 49,000 people don't pay Hawaii State taxes. And all these people that live on base, which is 38,000 of them don't pay property taxes, and they don't contribute to the GET. So I can take 5.1% of the population and save all those city and state county services and they don't even vote locally. So you're not even losing voters.

If I took that option to the mayor and said that I could that, he'd probably hug me and say that's a miracle. But the fact that it's associated with the Chamber of Commerce and the Army campaign makes it so much different. I'm not coming from an anti-Army position, I'm retired Army Colonel 27 years. I see this as a good thing for the Army to not be on Oahu because they have to downsize. So when I look strategically across United States where they can downsize, this is the best place.

So my issue isn't about anti-Army or we're not supporting the Army if we don't support Keep Hawaii's Heroes. So let's talk about the negative aspect...

MICHAEL LILLY - the issue for this commission is whether the mayor's use of city funds would somehow violate some ethical rule or law or ordinance or charter, something like that. Whether or not your position has merit on the facts, that's not an issue for this commission.

The question for us is and which what I would ask you is what ethical rule, law or ordinance would say that the mayor can't do that. Because that's the only thing that we could pass on.

AL FRENZEL - that's what I brought up at the beginning is that the only issue that the mayor could use to justify using City and County resources for a private endeavor is that a decision was made based on legislation that this falls within this campaign falls in a community wide benefit.

So I'm arguing that the issue is not community wide benefit. And I've discussed what the positive aspects of the campaign are but I want to discuss the negative aspects of the campaign to illustrate why not everybody in the community that we threw this wide net across actually benefit.

I'd like to go from the standpoint of City and County and State government taxes. Remember, this is a potential opportunity if 5.1% of Oahu's population to return to the mainland. Well, if you take what it cost to fund 5.1% of the population in just City and County and State services, that's 539 million dollars, that's real money. That's also subject to a multiplier effect. If you ever take money out of the economy through taxes, you're taking money that can be spent over and over and over again. So it's much more than 539. And if you talk about the city's 2 billion dollar budget and you take 5.1% of that budget away, that's a 110 million dollars that we spend on people that live here that remember, don't pay state taxes, don't pay property taxes, don't pay much GET, etc...

So total in government services they cost us 649 million dollars without reimbursement. The Department of Education's numbers will tell you, if you look at the website that 28,000 Department of Defense students are in Hawaii's DOE school. 28,000 federal students. Remember, they're not paying state income taxes, the majority of them. Yet it cost \$13,000 per year per student to educate them. Now the federal government recognizes that and they give each one of the states a little bit of money, they call it impact aide.

Of the 364 million it cost us to train the military's and federal government's children, the Feds give us 41 million. Leaving you and I, tax payers, to pay for the balance of that cost. It's not cheap to send people to school in Hawaii and we are subsidizing it as Oahu citizens and state citizens.

So if the Army (inaudible) that only contributes 9 million in GET were to disappear, we would save 126 million alone in what we spend just to education these students in our schools. I'm not denying that they shouldn't get the education, I would argue that there should be more of an impact aide figure.

My argument overall is that there are cost to the Army being here and when you throw the net over the community and you look at the good and the bad financially, it is not a community wide benefit.

And finally if you look at what the people believe, because you have to ask the opinion of the people whether or not the Army is a benefit. Two questions were posed in June 30th to the Star Advertiser and then on February 15th of the Star Advertiser. It had to do with the public opinion on “are you happy that the Army’s here”. Even one question alleges the 1.4 billion dollars that I mentioned earlier that isn’t even a true number.

As you can see on both questions, at least a third of the population that reads the Star Advertiser in Hawaii aren’t that enamored with having the Army here and see that there’s some benefits to that. So I would use this as further argument that the mayor’s decision to use the community wide benefit clause in legislation to allow government resources to be used for private purposes is unethical.

RAY SOON - so the issue is at a high enough level that he asked me to come. I’m really not going to argue the points. I think the law is fairly clear. If the mayor determines that it’s a community wide benefit that he has the authority to make the determination. I would say it’s used judiciously over a two year term that we’ve been in office (inaudible) 33 times. It’s for things as narrow (phonetic) as Korean Festival, the Marathon, for a variety of festivals and events that are very specific to a small slice of the population often, does not touch everybody in the entire community but it is clearly a benefit to go.

Having said that, I really think that he had the authority to make that determination. Let me talk a little bit about some of the reasons that he did. I’m not prepared with charts to argue those. We’re talking about losing 20,000 troops, 30,000 members of their families as well. Following 9-11, 10,000 troops at one point were deployed to Afghanistan and Iraq. That had a devastating effect on that community (Schofield). (Inaudible) 75% of the businesses were closed for some period of time. Some for a month, some for a few months and we lost a lot of local businesses in Wahiawa and Mililani area.

The impact is not just to the troops on the base. It’s not just removing those people. It’s removing the business that live off of that population, but it’s also (inaudible) community relationships that have been built. Yes, the military kids go to public schools and the local kids go to those public schools as well. And the families mix and they get to know each other. Lots of stories that one could tell, I don’t have any data or statistics about it but if you look at the pain that occurred during that period, you can see that. And that was only 10,000. That’s wasn’t 50,000 people. The impact on the community surrounding the bases of Mililani, Wahiawa, Kunai, perhaps all the way down to upper Waipahu would be significantly affected. So that’s a large part of why the mayor made that decision. And the number of 1.3 billion dollars impact was not (inaudible) and it came from work that was done by fairly reputable people.

We feel strongly that the effort was justified in that we raised over 42,000 signatures in support of keeping the troops here in Hawaii. I’m not sure how many that the opposition

raised. I would submit that that was a pretty strong endorsement. I'm mainly here more to answer questions.

PATRICIA BEEKMAN (phonetic) - I feel strongly that it was an unethical decision on the mayor's part. He knew about the potential benefits if the Army were to leave. There's a good chance if the Army leaves that the state will get Schofield Barracks and some other military property such as Makua Valley, Kolekole Pass, the Army reservation in Dillingham, the assets on the bases such as the housing which a lot of it is brand new and the facilities there. The list would be a wonderful benefit to the people of Hawaii and yet the mayor, his personal opinion is up to him but he went over the line when he decided to use city facilities. That's just outrageous.

For example he had the city satellite halls with posters there and under the poster it said go to counter 14 or whatever to sign the petition to keep Hawaii's heroes which is the Chamber of Commerce initiative. At Blaisdell Center which is county property they had petition signing. This is how they get a lot of 40,000 signatures. Then the mayor's representative went to all the neighborhood boards and told the people there about the petition and told them that they could sign it. That's about 36 different neighborhood boards. I was astounded that something called Ethics Commission could endorse that and say that it was an ethical decision to allow the mayor to do that, to use city property on a public issue.

JACK DE FEO - I want to reiterate that had we been given the same opportunity that was afforded to the Chamber of Commerce, I'm sure the poll that was run by the Star Advertiser would've been in favor of what we propose as a community wide benefit package for all of us here in state of Hawaii. It was short sighted on the mayor's decision to fund the Chamber of Commerce by not reaching out to the community to say let's give both side pro and con, an opportunity to voice what their concerns are.

It was one sided, it was not an even playing field and absolutely without any reasonable doubt, was a conflict of interest and at the same time a serious ethical violation. We were not afforded the same benefits that the Chamber of Commerce was given when they were funded to run their campaign to support Hawaii's Heroes.

We just primarily on a grass roots effort, we achieve 35% who favor Army downsizing. When the poll of Star Advertiser came out, 65% were in favor. Had we received that funding, I can guarantee you those numbers would be in our favor. Was not a level playing field. The opportunity to voice our concerns we were shut down. Had we done what the Chamber of Commerce did, we would've been arrested.

They were given special privileges, we were excluded and there's no doubt at all whatsoever that the mayor's decision was in ethical violation. When we speak of community wide benefits, just that terminology, words are very specific, and as an attorney, you know that words are very powerful. How you choose to use those words when you mention community wide, it's inclusive. The opposite took place.

I'm a member of the community. The majority of us who live here are members of the community. Only Wahiawa was given special treatment. Why? I'll leave you with that, thank you.

KATY CHEN - thank you, is there anyone else? At this time I think we should move into executive session.

CHUCK TOTTO - would that be in order to discuss the legal memorandum from the associate legal counsel?

KATY CHEN - yes. Could I have a motion to move into Executive Session? May I have a second.

Commissioner Yuen moved to enter into Executive Session. Commissioner Silva seconded the Motion. All were in favor.

LAURIE WONG - will everyone who has opinions in regard to item 4D will you be sticking around?

RAY SOON - if we're needed.

LAURIE WONG - there might be additional factual questions.

Chair Katy Chen left the meeting at approximately 2:10 pm.

Executive Session discussion redacted regarding Items IV.D and V.B.

Commissioner Silva moved to approve the Settlement Stipulation for Agenda Item V.B. Commissioner Yuen seconded the motion. All were in favor.

Commissioner Lilly moved to go back into Open Session. Commissioner Marks seconded the Motion. All were in favor.

MICHAEL LILLY - all I have to do is report that **in executive session we approved the stipulation to settle the Notice of Alleged Violations of former city officer under item V.B. of the agenda.**

Do we have a motion on the request for formal advisory opinion regarding use of city resources for Keep Hawaii Heroes petition?

VICTORIA MARKS - do we know if the people left?

CHUCK TOTTO - they're not here.

MICHAEL LILLY - do we have a motion?

Commissioner Silva moved to approve formal advisory opinion regarding use of city resources for Keep Hawaii Heroes petition. Commissioner Amano seconded the Motion. All were in favor.

VICTORIA MARKS - we should have the record also reflect that Commissioner Suemori had to leave.

CHUCK TOTTO - that should be noted at the time she left (1:30 pm).

VICTORIA MARKS - I move to go into executive session to approve the executive session minutes.

Commissioner Silva seconded the Motion. All were in favor.

Executive Session discussion redacted.

Commissioner Amano moved to approve the minutes as amended. Commissioner Silva seconded the Motion. All were in favor.

Commissioner Marks moved to return to Open Session. Commissioner Amano seconded the Motion. All were in favor.

RIKI AMANO - who's going to be on the PIG, probably something we should discuss.

CHUCK TOTTO - it's important just so we don't get confused, so you don't mix and match. Should be three people or less, whoever you decide, it could be one person. Maximum is three.

VICTORIA MARKS - I have thoughts about it, but I don't have the time to be on it.

CHUCK TOTTO - I want a sane voice to talk with them because I don't know how far we'll get with this review of the position, etc... We've talked about that for two years with them and it so far has gone nowhere.

VICTORIA MARKS - well, let me make this suggestion. You have to do a position description, I think you ought to talk to -- my guess is on the SR-26 they looked at law clerks at the Judiciary but you also have staff attorneys.

CHUCK TOTTO - my understanding was they looked at staff attorneys.

VICTORIA MARKS - well, there might be levels of staff attorneys.

CHUCK TOTTO - there are, I know there's at least a SR-28. The other thing we're going to do, if you don't mind me talking a little bit about this because I think it helps. I think we need to have -- well, as I mentioned, the staff can communicate with the commission members with the PIG about this anytime.

One of the things we looked at before was to actually take some of the things I do and shift them to Laurie. That way I can't diminish my position too much because then I'll fall out of my position. But on the other hand there's so much work that we do now and the difficulty of the level of work. And we may go back to doing that. Because as Noel Ono said, if you just leave it the same nothing much is going to change.

VICTORIA MARKS - the other thing is you have to get both the SR-26, like law clerk, and then the staff attorney if there's a SR-28 to see where the differences are. My other suggestion is you should go to disciplinary counsel and see the way they describe the positions there and look at what their pay ranges are and things like that. You might also want to look at the State Ethics Counsel and see those things as well. So you can look at what the pay ranges are and what their job descriptions are.

I'm guessing is the other thing you're going to bump up against, which is going to be a (inaudible) is that you've got this leap frog thing. Are you going to leap above Corp Counsel folks and things like that. Because you can cause problems for Corp Counsel. I'm all for raising the sea level so everybody's boat goes up but you can't create a problem for Donna.

CHUCK TOTTO - that brings me back to wanting to make the charter change. Philosophically it's the cleanest way to do this. But whether or not it can be done is a matter of practicality.

VICTORIA MARKS - I think you have to go a step at a time and if you're going to do a charter change and this is maybe part of the reason you look at a PIG. If you're going to do a charter change, where do you want to change the charter. Do you want to do it for salary, commission or something else.

CHUCK TOTTO - I've mapped out that language but the issue is the problem with any charter commission there's always a limited number of charter amendments that they can accept. At some point the vote just gets worn down by how many different issues there are. I appreciate those comments. I think this is a good way to start looking at it.

VICTORIA MARKS - I'm sure there's Ethics Commission group -- a national group.

CHUCK TOTTO - it's a pitiful thing but there is.

VICTORIA MARKS - they must have some statistics or something.

CHUCK TOTTO - I've looked at that for the last 15 years.

VICTORIA MARKS - like National Center of State Courts, when the Judiciary tried to get a raise you really have to do a job of selling whatever it is you're trying to do.

CHUCK TOTTO - my concern was we're all operating under what I thought a set of rules everybody knew, including most of the people in here who had advised us. So there are ups and downs for each approach and we'll see what DHR will do for us this time.

RIKI AMANO - I volunteer.

MICHAEL LILLY - so we're going to have two members.

LAURIE WONG - I thought it was vice chair Lilly.

MICHAEL LILLY - I'll be on it.

RIKI AMANO - all I want to see is clarity. That we don't have -- we have something smooth going on, something that we can rely on, they can rely on, even if it has to be the nature of a recommendation that (inaudible).

CHUCK TOTTO - if she would've asked...

VICTORIA MARKS - I think you have to have a different point of view. I would say you shouldn't be expecting them to ask anything. I think that the first move for you is your job is to make it as easy as pie whenever you deal with the administration. And that means point by point by point, lay out your position. You may think that you've done it, but they don't see it that way. So your side may need to be bolstered.

CHUCK TOTTO - I'll do what I can, but if they're going to come back with something that is completely out of left field, I won't know how to deal with it.

VICTORIA MARKS - I understand how that can be real frustrating and I think Mike made it pretty clear.

MICHAEL LILLY - what I've read and for the last three years we've been dealing with this. And I read what DHR and what Donna Leong had said and for them to come in here and say we changed our mind.

VICTORIA MARKS - that was a surprise.

RIKI AMANO - that didn't help, totally understand.

STEPHEN SILVA - one point that I remember one of the first meetings we had with her, I'm new to this. And so she had all her staff and she kept turning to them for answers.

MICHAEL LILLY - she had all the budget people here, she had all the personnel people.

CHUCK TOTTO - there's a thick memo in here from Donna Leong to Carolee Kubo about the authority of the mayor over salaries and positions of the employees of the

Ethics Commission. It's dated February 13th, and we'll send you copies. I haven't looked at it at all, I don't know what's in here. I assume it would be a lot of what was said.

RIKI AMANO - my thinking on this is that there was miscommunication and when they switched gears like that, we can't do anything. We relied on it, it is what it is but the process -- that's why we focus on the process, this process, having this meeting with them coming here. Ember's background is in legislative analysis. She's the statute person, that's why she reads it that way.

I think when she said, this is my thinking, I didn't ask for (inaudible) opinion, I thought it was my call. Whether I agree or don't agree, I got it. And we don't any longer have to sort of assess a bad motive on her part or on the mayor's part, or on Donna's part, anybody's part. We hear what she said -- she said it -- Donna said what she said, the guy Ono he's got his own thing going. That's all we need, we just need to have it on the table. I don't want to be looking behind every door for who's out to get us.

CHUCK TOTTO - the consistency is absolutely critical.

RIKI AMANO - I like that we were open enough to have that conversation. And Mike, you know, to say what you said, I like that too because that's where you're coming from, it's honest.

CHUCK TOTTO - I think it also showed them -- I have the sense that maybe they thought we just kind of grabbing numbers out of the sky. And no, there was a method to the madness here and this is how it was. I think the other lesson here is that in government, the left hand and right hand usually don't know what's going on. The left hand at DHR and BFS and Corp. did not know that the right hand at the MD's was going to go a 180 degrees.

RIKI AMANO - and we're not the first or the last people to be caught (inaudible).

CHUCK TOTTO - I talked to Don Pacarro at the Liquor Commission and I asked what's going on with your stuff and he's going oh...

RIKI AMANO - I think (inaudible) suggestions are really born of her years with government. That's who she comes from because she's been here too. But that's the way you survive, right.

STANFORD YUEN - the concern that I have is I understand where they're coming from. And there's always a reason for people changing their mind. But the concern that I have is how binding will their comments be from here on.

CHUCK TOTTO - that's a really good point because we were operating under one set of assumptions and rules which had been going okay. It would've been interesting to be a fly on the wall with DHR employee saying well, wait, we told um before this. I'm not

considering a law suit. But the way it was done is kind of like wait, you're taking away a pay raise.

VICTORIA MARKS - that was the other question I was going to raise. I didn't think you could reduce someone's pay if they're -- at least in state level unless you reduced everybody's.

CHUCK TOTTO - I haven't looked at that and Laurie and I have talked about this a lot and we both really don't want to be rocking that boat. It doesn't do much good for anybody. We're hoping the PIG will be able to either recreate the position or...

RIKI AMANO - as commissioner, I feel a responsibility to be able to retain good people, have a strong Ethics Commission Director and Counsel. From a management point of view, you have to pay them the right amount. So we have an interest in that. We should advocate for them in the appropriate way. I don't know how to what degree we can rely on anything. But I'm hoping that the communications will lead us to something that would be more reliable than we've had in the past.

MICHAEL LILLY - (inaudible) you might be successful in reclass. You got a lot of work to do because she said that you get it to her in a week or two, she could have it done in a month.

LAURIE WONG - even if there's a reclassification, that still doesn't address the issue -- just still in the future that the only time whoever is in this position will ever get raises depending on bargaining unit 13. It's not subject to the delegation of the EDLC.

RIKI AMANO - your position and his position are two different. So it's like the judges we're in the same boat until it got thrown into the salary commission. And that's probably where you need to go. It's probably (inaudible) down the road. But your position is going to get locked into Bargaining Unit 13. It's not unusual, it's the way it is.

VICTORIA MARKS - that's why you need to look at disciplinary counsel and the different levels with staff attorneys.

RIKI AMANO - before we leave can I just for the record offer our Congratulations to our Commissioner Yuen for his recognition as the Distinguished Alumnus at the University of Hawaii.

Commissioner Marks moved to adjourn the meeting. Commissioner Silva seconded the motion. All were in favor.

The meeting adjourned at approximately 2:30pm.