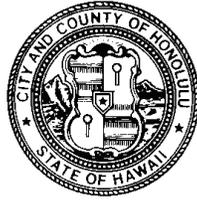


ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU

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MAYOR



CHARLES W. TOTTO  
EXECUTIVE DIRECTOR &  
LEGAL COUNSEL

MINUTES  
ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU

Date and Place: March 13, 2013  
Standard Financial Plaza  
Conference Room, Suite 211

Present: Charles W. Gall, Esq., Chairperson  
Rachael S. Wong, Dr.PH, Vice Chairperson  
Stephen Silva, Commissioner  
Jeffrey Burroughs, Ph.D., Commissioner  
Stanford Yuen, P.E., Commissioner  
Charles W. Tutto, Executive Director and Legal Counsel (EDLC)  
Laurie A. Wong, Associate Legal Counsel (ALC)  
Geoffrey Kam, Deputy Corporation Counsel (IV.B)

Absent: Michael A. Lilly, Esq., Commissioner  
Katy Chen, Esq., Commissioner

Stenographer: Lisa Parker

I. CALL TO ORDER

The 466th meeting of the Ethics Commission (“Commission” or “EC”) was called to order at 12:06 p.m. by Chair Gall.

Each member of the EC had been provided with a copy of the EDLC’s EC Meeting Open Agenda Items Memo dated March 6, 2013.

II. FOR ACTION: REQUEST FOR A MOTION TO APPROVE THE MINUTES  
OF THE OPEN SESSIONS OF THE JANUARY 7 AND THE FEBRUARY 13, 2013  
MEETINGS

The EDLC informed the EC that a correction needed to be made on Page 2, III.A, of the February 13, 2013 Open Session Minutes, and that “Tuesday,” March 13, 2013 should be

changed to “Wednesday” March 13, 2013. Vice Chair Wong added that a correction on Page 2, II., paragraph 3, last sentence, the word, “was” should be changed to “were,” “...all were in favor.” The Vice Chair also asked that a correction on Page 6, last paragraph, right above VI. ADJOURNMENT, the word “lead” should be changed to “led,” “Chair Gall ‘led’ a discussion of various personnel-related issues”.

Vice Chair Wong commented that she thinks she and Commissioner Chen may have sounded alike on the recording, since on the other minutes their actions were transposed. She’s been trying not to make any motions. She also mentioned that she didn’t know how to distinguish herself in the record of the meeting. The EDLC responded she could say, “this is Vice Chair Wong.” He also said staff will try to make sure who is talking. Chair Gall offered that listening to the recording may be augmented by the stenographer’s notes.

**Chair Gall asked if there were any other discussion on the Minutes. The EDLC acknowledged that all changes would be made. Chair Gall asked for a motion to adopt the minutes with the changes discussed. Commissioner Yuen made a motion to that effect, Commission Silva seconded, and all were in favor.**

### III. OLD BUSINESS

#### A. Confirming the Date and Time of the April 19, 2013 Meeting

The meeting was confirmed for Friday, April 19, 2013 at 11:30 a.m.

#### B. Setting the Date and Time for the Meeting During the Week of May 13, 2013

The meeting was confirmed for Monday, May 13, 2013 at 11:30 a.m.

The EDLC reminded the EC of the training on April 10, 2013, and would send out a reminder again. The Campaign Spending Commission staff and members of their Commission, as well as the State Ethics Commission will also attend.

### IV. NEW BUSINESS

#### A. For Discussion: Administrative News

1. Complaints and requests for advice statistics:
2. Website statistics:

The EDLC moved ahead of the Complaints and requests for advice, as well as the Website statistics, unless anyone had questions.

3. Education and training statistics:

The EDLC reported that staff will have trained over 2,000 officers and employees by the

end of the fiscal year. He further reported that he would be training the Cabinet on the weekend. Vice Chair Wong asked if the class was full, and the EDLC responded that it was just about full because there were a lot of “acting” cabinet members. The EDLC announced that Donna Leong was the new Corporation Counsel, and per Deputy Corporation Counsel Kam, she is supposed to start on April 1.

4. Report on mandatory ethics training for all City employees:

The DVDs had been ordered. A list of trainers from most of the City departments were obtained, so the process of training them will begin soon.

5. Update on the Fiscal Year 2014 budget issues:

The EDLC reported that the EC is getting about \$80K more than before, which is about a twenty-eight percent (28%) increase. It will be enough to hire a full-time investigator and to also have sufficient funds, should we need transcription, hearings officer, etc. The question is will we have enough funds to at least keep at the pace we’re going now for fiscal year 2014 and it’s still a guess, because we have anticipated an increase in work by 50% and just don’t know how realistic that is until we get into the training for all the different City employees. The EDLC informed the budget committee that he would be knocking on their door again in fiscal year 2015.

The EDLC also reported that the staff should have their pay reductions removed under the FY14 budget.

6. Report on financial disclosure annual filings:

The Legal Clerk noted that about 30 board and commission members had not yet filed. The EDLC asked to put the Notices of Violation on for the April 19<sup>th</sup> meeting. , and that hopefully, when that is done, the outstanding Financial Disclosures will get filed,

Chair Gall set the return date on the Order to Show Cause for April 19. The EDLC had no other administrative news to discuss and asked if the EC had any questions.

Chair Gall asked about Item B, with the Corporation Counsel.

B. For Discussion: Position of Department of Corporation Counsel Regarding its Representation of City Officers and Employees Before the Ethics Commission.

Deputy Corporation Counsel Geoffrey Kam responded that he hadn’t seen the response letter yet. Chair Gall asked if there was any anticipated time on receipt, and Deputy Kam responded that it was with the Acting Corporation Counsel, Diane Kawauchi, who is very busy doing COR’s budget and running the office, so the response is pending. Deputy Kam said he didn’t know if the EC wanted a general or specific response.

The EDLC responded that both responses are needed. The EC would like to understand the position of COR regarding Duane Pang’s October 30, 2012 letter. In addition, the EC would

like to know whether COR gives ethics advice or represents officers or employees who have been identified in an ethics complaint.

Chair Gall commented that his recollection of the question given COR was to basically put it back on the COR and ask them to respond, in full. Deputy Kam responded that he will pull the EDLC's emails, and would respond to the emails, but again if the decision is to wait for COR's response, then all he can report is that they haven't responded as yet.

Chair Gall noted that there needs to be some guidance as to the role of Corporation Counsel, both in general and in terms of representing city officers and employees, and even with respect to its representation of the Commission. The EDLC responded that he'll work with Deputy Kam on the issue.

Chair Gall asked the EDLC and Deputy Kam to discuss the matter offline, and see if progress can be made in resolving the matter.

## V. SUMMARY OF EXECUTIVE SESSION MINUTES

Prior to the hearing, a copy of the memorandum dated March 6, 2013 regarding the Executive Session Agenda Items for the March 13, 2013 Meeting had been transmitted to each Commission member.

A. For Action: Request for a Motion to Approve the Minutes of the Executive Sessions of the January 7 and February 13, 2013 Meetings

Chair Gall asked for any discussion and approval of the Minutes for the January 7 and February 13, 2013 meetings. Vice Chair Wong and the EDLC responded that they had the same comments for the February 13, 2013 meeting in the Open Session.

**Chair Gall then asked if anybody else had any other discussion, and since there was no further discussion, he asked for a motion to approve the Minutes of the January 7 and February 13, 2013 meetings, subject to the earlier changes. Commissioner Yuen made a motion to that effect, Commissioner Silva seconded, and all were in favor.**

B. For Action: Request for a Motion to Approve and Adopt a Proposed Settlement Between Ethics Commission Staff and Attorney for a Former City Officer for Alleged Misuse of City Resources for Personal Benefit in Violation of RCH Sec. 11-104.

And

C. For Action: Request for a Motion to Approve and Adopt Ethics Commission Staff's Proposed Formal Advisory Opinion Regarding Violations of RCH Sec. 11-104 (Misuse of City Positions and Other Resources) by a Former City Officer for Personal benefit.

The EDLC requested that matters V.B. and V.C. be heard together. He referred to his description of the matter, as stated in the March 6, 2013 Exec Session Memo, and represented that the Respondent's attorney had waived his right to attend the meeting. The EDLC further stated that the attorney had signed the settlement. The draft Advisory Opinion, attached as EXEC-2, lays out more of the facts. The EDLC asked if the EC wanted him to go through the facts, and if they needed any further justification, other than what was stated.

Chair Gall asked if there were any inconsistencies between the stipulated settlement and the opinion. The EDLC responded that there was none.

Chair Gall asked if anyone had any questions or discussion. Vice Chair Wong commented that it was a good resolution.

**Chair Gall asked for a motion to adopt the recommendation of staff with respect to both the entry of the proposed settlement and also approving and adopting the proposed formal advisory opinion. Commissioner Burroughs so moved, Commissioner Yuen seconded, all were in favor, and the motion was unanimously carried.**

**Deputy Corporation Counsel Kam exited the meeting at 12:28 p.m.**

Miscellaneous, non-agenda matter re contested case hearing involving a former City officer.

**Chair Gall had a follow-up question regarding the last time the EC discussed hiring Dale Lee as a hearing officer, and wanted an update on the situation.**

The EDLC responded that he still needed to set a contract with Mr. Lee for a \$4,000, not to exceed contract, which should be within the Commission's FY13 budget. The EDLC also stated that staff is on track for the early May hearing, and that he and the ALC would make a settlement offer to the Respondent. The EDLC also noted that Respondent had also hired an investigator.

D. For Discussion: Request for Advice Regarding Gifts to a City Officer.

The EDLC stated that EXEC-3 is a proposed response to the email request. Chair Gall had requested that the matter be put on the Agenda for discussion because he thought it highlights the practical implications of some of the duties of the EC, and also thought the questions raised issues about the gift laws. Chair Gall hoped that the Commission could give more specific guidance, as well as streamline the process, which would make it easier for the City Officer to deal with similar invitations.

Vice Chair Wong asked, for the record, if Chair Gall might want to state his relationship connection to the requester. Because the requester was acting as a conduit for the City officer, there was no conflict of interest. Chair Gall further stated that it is no different if it was

somebody else, like if the managing director had presented the question. On that basis, it was decided that there was no conflict and he didn't have to recuse himself.

The EDLC responded that the gift laws are complicated, and it's unfortunate, because everybody's life would be easier if there was a "bright line" standard, limited to say, \$50. But that is not the current law. Staff earlier had offered simplified guidance to the City officer. The difficulty with gifts is that the factual circumstances of the gift below \$200. The factual analysis is required because the question is whether a reasonable person knowing all the facts would conclude that the gift is offered to influence or reward the City officer in conducting his City duties.

The EDLC mentioned that the City has \$50 rule of thumb regarding gifts. Chair Gall asked where the \$50 rule of thumb came from, and the EDLC responded that when the Gift Guidelines were reviewed in mid-2006. In order to describe a "token of Aloha," and invariably people asked how much the token could be worth. So it was decided that a "token of Aloha" is valued at a \$50 level in the Gift Guidelines. The State uses \$25. The EDLC continued to say that if a Lobbyist is giving a gift to a Councilmember, and the definition of a Lobbyist is someone who wants to influence policy making of the City, you've got to be really careful that you're not accepting anything over the "token of Aloha" amount.

The EDLC stated that the EC has carved-out a couple of exceptions, which relaxes the limits on City officers and employees. The value of a fundraiser ticket is the value of the food, not the cost of the \$250 fundraiser ticket that was given to the City official. Also, if the donor has no matters before the City that the City officer could influence, there could be no offer to influence

The EDLC stated that the problem is in balancing clarity and ease of understanding the restrictions in the law against having a law that can be applied to all the different types of factual circumstances asked of the Commission or staff.

Another approach is, if the City officer is attending on behalf of government, he/she may accept the gift of the dinner through the Council Gift Policy. If it is not a government function, the officer could pay with personal funds.

Chair Gall further asked if there are ways we can give some clear guidance or describe exceptions to the gift laws. The EDLC mentioned that some mainland jurisdictions have found that, if the official attending as a function of the office, it may be looked at as part of his/her government duties. The EDLC informed the Commission that he would look into it.

Commissioner Burroughs asked if there were other jurisdictions that have a higher "token of Aloha" amount. The EDLC responded that they range, and when he last did a thorough review, it looked like it was about \$50 to \$500, and that was back in 2002. The trend has been to lower those dollar caps.

Commissioner Yuen noted that in the federal system the dollar value of the gift of meals to flag officers were covered specific guidelines and depended on who was sponsoring and attending the event. Commissioner Yuen further stated that there's no hard and fast rule, so we have our legal people address it case-by-case. If the sponsor is a contract or engineering firm, that would be a red flag, but maybe not in the case of the Boy Scouts.

The EDLC will check with the State, since they've tried to find ways of simplifying the process

Chair Gall stated that he understood that the gift laws don't apply if there is no matter in which the officer could be involved. He would like that point emphasized in the informal advisory opinion. The EDLC agreed.

Commissioner Yuen stated that a separate issue is, what if staff becomes inundated with a lot of gift questions. The EDLC responded that requests for advice regarding gifts come in spurts, usually during the transition between administrations or from new Councilmembers.

The EDLC informed the Commission that he would review prior advice to the City officer since he had tried to basically focus on most of the important factual questions.

**Chair Gall asked if anybody else had any discussion, and since there was none, he asked for a motion that staff revise the opinion consistent with the discussions that had been held, and the issue with the proviso that the Commission will do additional analysis of the question to see if we could give more bright line guidelines in the future. Vice Chair Wong asked if the further review was to be focused on the City officer or to all officers and employees, and Chair Gall responded that it would be focused on the City officer. Vice Chair Wong so moved and Commissioner Yuen seconded. All were in favor and the motion was passed.**

E. For Discussion: Sunshine Law Requirements, Limits on Executive Session Meetings.

The Commission discussed with its counsel the legal requirements the Sunshine Law and the legal limits of executive sessions.

Vice Chair asked if this should be in an executive session discussion. The EDLC responded that he is giving the Commission legal advice, since he interpreted the law, and is reporting back on his legal research and policy. So it should be executive session. Also, the EDLC said that the Commission could determine whether to waive the attorney-client privilege and have the discussion in open session. Generally, the EDLC assumes if it's going to call for legal analysis, we would take issue in executive session. Chair Gall responded that it was appropriate for executive session.

The EDLC referred to the next agenda item (V.F), where he reviewed the history of how Corporation Counsel has worked with the Commission.

Chair Gall informed the Commission that since the item was just a discussion, no motion is needed.

## VI. ADJOURNMENT

**Chair Gall asked if there were any other issues for the Open Session, and having no further business to discuss, Chair Gall asked for a motion to go into Executive Session. Commissioner Silva moved to adjourn the meeting, and all were in favor. Session adjourned at about 12:25 p.m.**