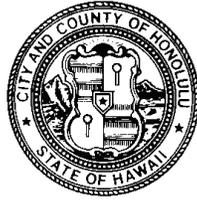


ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL  
MAYOR



CHARLES W. TOTTO  
EXECUTIVE DIRECTOR &  
LEGAL COUNSEL

MINUTES  
ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU

Date and Place: July 15, 2013  
Standard Financial Plaza  
Conference Room, Suite 211

Present: Rachael S. Wong, Dr.PH, Vice Chairperson  
Michael A. Lilly, Esq., Commissioner  
Katy Chen, Esq., Commissioner  
Jeffrey Burroughs, Ph.D., Commissioner  
Stephen Silva, Commissioner  
Charles W. Totto, Executive Director and Legal Counsel (EDLC)  
Laurie A. Wong, Associate Legal Counsel (ALC)

Absent: Charles W. Gall, Esq., Chairperson  
Stanford Yuen, P.E., Commissioner

Stenographer: Lisa Parker

I. CALL TO ORDER

The 470th meeting of the Ethics Commission (“Commission” or “EC”) was called to order at 12:06 p.m. by Vice Chair Wong.

The Commission had before it the memorandum regarding the Agenda Items for the July 15, 2013 Meeting, Open Session, dated July 9, 2013.

II. FOR ACTION: REQUEST FOR A MOTION TO APPROVE THE MINUTES  
OF THE OPEN SESSIONS OF THE MAY 15, 2013 MEETINGS

Vice Chair Wong asked for a motion to approve the Minutes of the Open Session of the May 15, 2013 meeting.

**Commissioner Chen made a motion for approval of the Minutes, Commissioner Silva seconded, and all were in favor, with the Vice Chair abstaining.**

### III. OLD BUSINESS

#### A. Confirming the Date and Time of the August 12, 2013 Meeting

The meeting was moved to and confirmed for **Monday, August 19, 2013 at 11:30 a.m.**

#### B. Setting the Date and Time for the Meeting During the Week of September 16, 2013

The meeting was set for **Monday, September 16, 2013 at 11:30 a.m.**

The Vice Chair asked the EDLC to go through the Administrative News.

### IV. NEW BUSINESS

#### A. For Discussion: Administrative News

##### 1. Complaints and requests for advice statistics:

The EDLC informed the Commission that the FY13 statistics were attached as OPEN-1. The most important issue is the level of increase overall. All requests for advice and complaints were up 14%; complaints investigated up 23 percent; ethics training total increased by 165 percent; formal advisory opinions were down to 6, so that was a 45 percent drop; and the website hits were up 13 percent. The EDLC further stated that it was a busy year, and the FY 14 will probably be busier as we continue doing the training and accepting a lot of requests for advice and complaints as employees receive ethics training.

##### 4. Hiring the full time Staff Investigator:

The EDLC informed the Commissioners that we have an outstanding offer to Letha DeCaires, a retired police captain. She had about 27 years at HPD, up through the ranks, and she's very well qualified, as well as very interested in ethics issues and community issues. The HPD Deputy Chief gave her good reviews. The EDLC further stated that he was hoping that her start date will be August 1.

Vice Chair Wong asked if coming from HPD brings strengths in the EDLC's opinion. The EDLC responded that one strength is that the candidates worked on internal affairs issues, which is similar to the work we do and she brings with her knowledge of people in government, how city government works and a broad background.

The EDLC informed the Commission that we were also able to get another UH Po'okela Intern. The ALC has been kind enough to volunteer to have the Po'okela Intern share her office.

##### 5. Status of hearing officer for a contested case:

The EDLC informed the Commission that we finally obtained the contract for the hearings officer at \$4,000, \$2,400 of which will come from the fiscal year that just ended (FY13), so we can at least get things started.

6. Council on Governmental Ethics Laws (COGEL) Conference:

The 2013 Annual COGEL Conference will be held in Quebec City, Quebec, Canada, December 8 through 11, 2013. The EDLC recommended that the Commissioners attend this conference, and that it would be helpful to them to understand our issues and procedures relative to other jurisdictions. Vice Chair Wong asked if there was any interest in going to Canada in December, and 3 Commissioners informed the EDLC that they would be interested (Vice Chair Wong, Commissioners Chen and Lilly).

B. For Information: Status of Bill 32 (2013)

This Bill raises the question whether the employees of the Oahu Transit Service (OTS), should be brought under the Ethics Commission's jurisdiction. The City Council is more likely to require in an ordinance that the transit service provider develop standards of conduct substantially similar to the City's and implement them internally.

The Department of Transportation (DTS) has the ability to audit OTS, but those tend to be very general reviews and are not focused on particular problems. The EDLC noted one question would be whether OTS simply adopts the laws from the City as OTS policy or will it also adopt the process used to enforce the laws.

Vice Chair Wong stated that she thinks it's great to say that we support and applaud this voluntary effort, but our concern is this—will there be organization within OTS to which employees can anonymously register complaints and that can and will conduct audits or investigations. Such an enforcement unit will lend that much more power to the ethics standards. The EDLC has no problem with that approach, which is a very valid approach.

The EDLC stated he spoke with Jan Kemp, the Compliance and Ethics Officer for HECO, and asked what HECO would do if there's a complaint about somebody in the highest level. Ms. Kemp responded that there's an audit committee that will handle the case, which provides for review at the highest level.

Commissioner Silva commented that OTS officers and employees are in positions to affect the use of taxpayer funds and should be held accountable.

Commissioner Burroughs asked if the strong inclination of the Council is to adopt a volunteer approach. The EDLC responded that he was not sure, but Corporation Counsel is recommending that the ordinance require ethical standards of conduct be adopted by OTS that are substantially similar to the City's. But he doesn't know whether the ordinance language will cover the method of implementation.

Commissioner Burroughs asked if there is another model, and the EDLC responded that there are other models for enforcing a municipality's standards of conduct through vendors to the government. Also, in theory, the City's anti-sexual harassment code requires any contractor to the City to follow City law. A vendor who violates the law could lose a contract or an individual could be disciplined, but the City has not tested the law. The EDLC responded that there is no requirement in City contracts requiring vendors to follow ethics policies. The EDLC further stated that a number of jurisdictions have such language in their form contracts.

Commissioner Burroughs stated he felt it is important to make the Council very aware that the Commission believes the transit provider personnel should be within the jurisdiction of the ethics laws. Commissioner Silva agreed because of the taxpayer funds used to support OTS.

Vice Chair Wong stated that it sounds like the Commissioners are comfortable with the EDLC stating that the Commission believes that the best approach is to have the transit personnel come within the Commission's jurisdiction. If the Council decides to require OTS to follow its own policies, the Commission will also offer guidance to OTS.

The EDLC has informed the Managing Director that he presents the position of the Commission, not of the Administration.

**Vice Chair Wong asked for a motion to move into executive session. Commissioner Silva so moved, Commissioner Chen seconded and all were in favor.**

#### V. SUMMARY OF EXECUTIVE SESSION MINUTES

A. For Decision: Request for a Motion to Approve the Minutes of the Executive Session of the May 15, 2013 Meeting.

The executive session meeting minutes for May 15, 2013 were unanimously adopted, with the Vice Chair abstaining.

B. For Discussion: Whether the Use of Private Funds is a Gift for the Benefit of a City Officer.

The Commission requested that staff draft a proposed advisory opinion consistent with the staff's report and the Commission's comments to the report.

#### VI. ADJOURNMENT

**A motion to conclude the executive session was made by Commissioner Lilly and seconded by Commissioner Silva. All were in favor**

**Commissioner Burroughs moved to adjourn the meeting and Commissioner Silva seconded. All were in favor.**