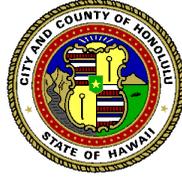


ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

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MAYOR



CHARLES W. TOTTO
EXECUTIVE DIRECTOR & LEGAL COUNSEL

ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

Date and Place: March 9, 2016
Standard Financial Plaza
Conference Room, Suite 211

Present: Hon. Victoria Marks (ret.), Chair
Michael Lilly, Esq., Vice Chair
Stephen Silva, Commissioner
Stanford Yuen, P.E., Commissioner
Hon. Riki Amano (ret.), Commissioner
Hon. Allene Suemori (ret.), Commissioner
Laurie A. Wong, Associate Legal Counsel (ALC)
William Shanafelt, Investigator III
Geoffrey Kam, Deputy Corporation Counsel,
Department of the Corporation Counsel
MaryJean Castillo, Commissioner, Honolulu Fire Commission
Robert H. Lee, President Honolulu Fire Fighters Association (HFFA)
Aaron Lenchanko, Secretary-Treasurer, Honolulu Fire Fighters
Association (HFFA)
Andy Fukuda, Oahu Division Chairman, Honolulu Fire Fighters
Association (HFFA)
Max S. Y. Hannemann, Nominee for Fire Commissioner,
Honolulu Fire Commission

Absent: Charles W. Totto, Executive Director and Legal Counsel (EDLC)

Stenographer: Lisa P. Parker, Legal Clerk III
Kristine Bigornia, Legal Clerk I

MINUTES OF THE MARCH 9, 2016 OPEN SESSION MEETING

I. CALL TO ORDER

Chair Marks called the meeting to order at 11:32 a.m. and asked that the record reflect that all Commissioners and Staff were present, including Deputy Corporation Counsel, Geoff Kam, as well as the members of the public, who identified themselves.

II. NEW BUSINESS

- A. For Decision: Whether Max Hannemann, Mayor's appointee to the Fire Commission, has a conflict of interest that would interfere with his duties as a Fire Commissioner or otherwise be in violation of Article XI, Standards of Conduct, Revised Charter of Honolulu.

Chair Marks asked the ALC to present her position on the Decision and that a Memorandum was distributed to the Commissioners.

The ALC informed the Commission that basically her Memo laid-out all the facts, and that she interviewed several people, including Mr. Hannemann, Mr. Lee, the President of HFFA and that she also received testimony from Ms. Castillo.

Based on the fact that Mr. Hannemann had no ongoing social relationship or never had any social relationship with Union members in the past (2 ½ - 3 years since he worked for the Union), and that he had no financial interest in the Union and also resigned as President of the Hawaii Professional Fire Fighters Foundation, the ALC stated that she found no "formal" advisory opinion regarding his particular matter and that Mr. Hannemann's current interests were not enough to cause a conflict of interest since those interests were past interests.

The ALC explained in further detail the Hawaii Supreme Court case on point, Sussell v. City and County of Honolulu Civil Service Commission, in which the court held that in order to be on the civil service commission and to not have any sort of violations, they would hold the standard to be an "appearance of impropriety," and that several commissioners recused themselves because one of them had an actual conflict of interest and the other had an "appearance of impropriety," and that the Commissioner who had an "appearance of impropriety," had been a friend to Mayor Fasi for many years, had an ownership interest in the company that provided the bus service, and had also made numerous campaign donations. The ALC also stated that in comparing those types of interests which created an "appearance" in that State case, to what Mr. Hannemann has, he would be further removed and that there would most likely be no appearance of a conflict of interest, even with his former relationships with HFFA and the Foundation on the one hand and his duties as a Fire Commissioner on the other. The ALC also researched an informal Advisory Opinion by the EDLC in the past, and in that situation the deputy director was given the advice that if something came up where he participated, he should recuse himself and delegate it back up to his director to find someone else.

The Chair asked the ALC for her conclusions and recommendations, and the ALC responded that Staff recommended that the Ethics Commission approve Staff to draft an Advisory Opinion that would coincide with her Confidential Memorandum, subject to the

approval of Chair Marks, and that, specifically, the Advisory Opinion should contain the line items listed on pages 8 and 9 of the Confidential Memorandum.

Chair Marks asked that the record reflect Commissioner Suemori's attendance at 11:39 a.m.

Chair Marks asked if there were any questions for the ALC, and Commissioner Amano asked for clarification of the ALC's specific request to give an opinion about whether there was a conflict if the Commission would not be the confirming or appointing authority. The ALC confirmed that the City Council was the confirming authority for confirmation and that it had already gone before the full council once, but then it got referred to the Public Health Safety & Welfare Committee with Chair Menor, and that the issue came up during Mr. Hannemann's hearing because of the history with the Fire Union and that Chair Menor requested that the Commission provide a formal opinion in order for City Council to proceed with the confirmation process. Commissioner Amano reiterated that the Commission's meeting was about whether or not to issue that opinion based on the ALC's recommendation and only regarding the conflict of interest, and the ALC confirmed.

Chair Marks asked if there were any other questions and since there were none, asked for the public's testimony.

Testimony by MaryJean Castillo:

Ms. Castillo greeted Chair Marks, Vice Chair Lilly and the Commissioners. Ms. Castillo stated for the record that her appearance was to give personal testimony and was not attending on behalf of the Fire Commission.

Ms. Castillo referred to her submittal of a "concerned citizen's petition," with 155 signatures, and stated that serving as a Fire Commissioner for the City and County of Honolulu was truly an honorable service since it was a volunteer job with conviction, pride and dedication and believes that among their duties, the main duty as a Fire Commissioner was to also uphold the integrity and fairness in City government by selecting and evaluating the Fire Chief in a fair and unbiased manner, which would be in the best interests of the community.

Ms. Castillo further stated that she did not know Mr. Hannemann and that she did not have anything against him, however, she was offended when she heard that he said she made a remark about him. Ms. Castillo continued about Mr. Hannemann's impressive qualifications and that anybody who would endorse him would take pride with his resume, and since there might be no conflict of interest, as was previously stated, and that all his associations were in the past, she believes that the past does still affect the future.

Ms. Castillo identified the two (2) Union members sitting in the meeting and that she specified in her letter that if James Wataru is Chair of the UPW and Arnold Wong was appointed by the Mayor, and is also the Director of Government Affairs for the Ironworkers, that adding one more, even if not related to the Union but had a past relationship, in her opinion, it would be

a mistake even without a conflict, since there would be a three (3) to five (5) vote, and therefore, believes the community would not be well represented.

Ms. Castillo further stated that in 2014, the population in Honolulu alone was 992,000, and therefore, questioned why the Mayor couldn't have picked another commissioner from the community. For example a teacher or a banker, in order for the community to be well represented. She added that because of Mr. Hannemann's past HFFA relationships, how could Mr. Hannemann be unbiased. People would always question his impartiality since it's a matter of perception even if he was given the benefit of the doubt.

Ms. Castillo informed the Commission that when former Mayor Peter Carlisle appointed her, she took on the responsibility and could not close her eyes and ears, since she represented the community and not just one organization and that together with her community background and volunteer work, she truly became a grassroots community worker. She also informed the Commission that she had nothing personal against Mr. Hannemann.

Chair Marks thanked Ms. Castillo and asked if anyone had any questions. Commissioner Amano thanked Ms. Castillo for her public and community service, and Ms. Castillo acknowledged that it was a thankless job and that her objections were not personal.

Testimony of Max S. Y. Hanneman:

Mr. Hannemann greeted the Commissioners and stated that he was new to the process and this appointment was his first. Mr. Hannemann stated that he was happy to serve and was also happy the Mayor appointed him. Mr. Hannemann further stated that he read through the Charter, especially the duties of a Fire Commissioner and with the assistance of the ALC, he submitted testimony, stating that he would be objective and committed and would make sure that his duties and obligations as a Fire Commissioner would be met. Since there would be five (5) Commissioners, he assumes that he would not have the power as one (1) Commissioner to make the overall decisions. Mr. Hannemann summarizes that he was confused about his fellow Fire Commissioners, and their testimony was about grouping the commissioners as either union or management. He found nothing in the Charter or the duties that said you needed to be one or the other, but thinks it said you needed to be objective as a Fire Commissioner, and that to say you need to be on either the management or union side is the wrong way to look at it. For the past two (2) to three (3) years he worked at Hawaiian Electric, he worked in labor relations, representing management, and that he was going against the union on a daily basis and oversaw the discipline for all union employees' terminations, as well as sat with union presidents, making informed objective decisions, and that he would do the same as a Fire Commissioner. Mr. Hannemann continued that he would look at different policies, conducts or practices of the chief and that he would be objective by giving a fair assessment, while working alongside the other Commissioners.

Mr. Hannemann asked the Commissioners if there were any questions for him and that he would supplement any requested information, to what he already submitted in his written

testimony. Mr. Hannemann reiterated and made it very clear that he would be very committed to being objective in working with the other Commissioners within the capacity of those duties.

Chair Marks asked if there were any questions for Mr. Hannemann, and Commissioner Amano stated that the question before the Commissioners was whether he had a conflict of interest that would preclude his appointment by the Mayor and approved by the City Council which of course, would be decided by the Commission. Commissioner Amano further informed Mr. Hannemann that their counsel advised them that there was no existing conflict, but also examined whether there was an appearance of conflict, based on his history. The ALC's analysis gave them an opinion that there was nothing that would preclude the appointing authority, based on conflict of interest, and also advised that going forward, he would need to be aware of things that may come up, and that when it happens, or if it happens and he's appointed, he should take it seriously, make disclosures and that it was a position of public confidence. Commissioner Amano further stated that he would be given an oath, if appointed, and that the oath is a promise to do certain things, and that at the end of his term, "the face in the mirror had better say that he made that promise and kept it," and Mr. Hannemann agreed with Commissioner Amano.

Chair Marks asked if there were any other questions and since there were none, asked if Mr. Lee wanted to testify.

Testimony of Robert H. Lee:

Mr. Lee greeted the Commissioners and stated that he was the President of the Hawaii Firefighters Association since 1998, and that he also retired from the Fire Department in 2010, with 36 years of service.

Mr. Lee stated that he did not have a clear understanding of why he needed to testify and how the matter got that far and why there was even a conflict. Mr. Lee testified that he did not know Mr. Hannemann prior to hiring him. Mr. Hannemann worked at the union approximately three (3) years and left on his own to get a better job and that he was very sad when he left since he was a very good and smart employee and did a lot for the union. As much as he didn't want Mr. Hannemann to leave, he was very happy for him, finding a position at Hawaiian Electric in management, and that it had been a few years since he left the Foundation. Mr. Lee further stated that Mr. Hannemann had followed the proper rules after leaving his position and again reiterated his confusion about the conflict, but believes that the issue of their Foundation may have started the conflict.

Mr. Lee continued that the Attorney Mr. Brian Ezuka helped to form their nonprofit, and that Mr. Ezuka made it very clear that the union could not control the Foundation and that they had to find individuals that were not affiliated with the union in order to run the foundation and that they could have a presence on the Foundation but they would not be the controlling factor. Thereafter, Mr. Hannemann's name came up and they asked him to be on the Foundation, and now that he left, it seemed that just his appearance from being on the Foundation was totally contrary to the reasons why they asked him to join the Foundation in the first place. After Mr. Hannemann decided to resign, it seemed that the focus was on the union, which is the

reason for his testimony, and that the conflict seemed to be more antiunion or based on Mr. Hannemann's past association with the union.

Mr. Lee further explained that since we live on an island, there tends to be many instances that you could be associated with a lot of people in government that used to work for the union. Mr. Lee concluded that the Fire Department is a one hundred percent (100%) unionized work force, which represents 2,000 firefighters across the State, as well as the Honolulu firefighters, and that all they ask of the Fire Chief and the Administration is to respect their unionized workforce and the rules that are in place. Mr. Lee continued that they have conflicts with the Fire Chief, as well as Fire Chiefs across the State at times, but it's a "check and balance" system between union and management. They are tasked to finding fair, objective and quality candidates that could sit on the Fire Commission, who would therefore be able to treat the union members fairly.

Chair Marks asked if there were any questions and Vice Chair Lilly commented that he did not perceive that there was a conflict, and that in the confirmation process, City Councilman Ron Menor raised the question of whether there was a conflict, so it caused Mr. Hannemann to ask the Commission whether he would have a conflict. Vice Chair Lilly further stated that the Commission issues advisory opinions on whether there might be a conflict, and that in no way had there been a determination or allegation that there was a conflict, and that it was merely a question.

Vice Chair Lilly continued that the Commission's counsel recommended that there was no actual conflict since Mr. Hannemann did not have any current relationship with the Union, nor was there any appearance of a conflict, which is a standard from the public that states, "what would a reasonable person from the public say," after looking at the facts and concluding that Mr. Hannemann, being on the Fire Commission would be a conflict of interest. Vice Chair Lilly concluded that being union or nonunion wasn't the issue.

Mr. Lee responded and reiterated that there didn't seem to be a conflict, but that there was concern about Ms. Castillo's testimony and what was stated in her letter, which is public record, that turned the issue into a union/nonunion issue, but more so since she was a Commissioner. Mr. Lee confirmed his agreement with Vice Chair Lilly's comments.

Chair Marks asked if there were any other questions or if anyone else wished to testify, and since there were none, asked for a motion. Commissioner Amano moved to accept the ALC's recommendation on the Advisory Opinion relating to the matter and Commissioner Silva seconded.

Chair Marks asked if there was any discussion, and Vice Chair Lilly wanted confirmation that they were addressing the facts on the case, because they would not know if other facts in some future case might come closer to the Sussell case, and Chair Marks agreed.

Chair Lilly confirmed his agreement that he didn't see any conflict, but he also did not want the opinion to be too broad, so that in other cases, which may have an appearance of conflict, would not be addressed at present, but could be addressed in the future.

Commissioner Amano complimented the ALC for doing a good job by using the Sussell case which sets standards or guidelines for them to evaluate appearance that is very difficult to evaluate, but looking at the standards of remoteness of time and the actual job duties, it would have to be case by case, and therefore agreed with Vice Chair Lilly.

The ALC confirmed that she could add-in some limiting language, stating that the opinion is limited to the specific facts of the case, and Vice Chair Lilly agreed. Commissioner Amano reiterated that not only in the present opinion, but in every situation, the evaluation of appearance needs to be case by case, and Vice Chair Lilly interjected, “factor of the case.”

Commissioner Yuen stated that “conflict of interest” did not only apply to Mr. Hannemann, but it applies to any Board of Directors, which is incumbent on that person to use his good judgment to determine if there is a conflict of interest, and that it should be asked of all Commissioners, including the Commission. Commissioner Yuen further stated that what may be perceived by him may be different from the Commission and the public, so that person would need to be mindful.

Chair Marks called for the vote, and since there were neither oppositions nor abstentions, the motion carried unanimously.

IV. EXECUTIVE SESSION SUMMARY

None.

V. ADJOURNMENT

Chair Marks asked if there was any other business, and since there were none, asked for a motion to adjourn. Commissioner Yuen so moved, Commissioner Silva seconded and all were in favor.

The meeting adjourned at approximately 12:05 p.m.