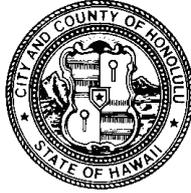


ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR



CHARLES W. TOTTO
EXECUTIVE DIRECTOR &
LEGAL COUNSEL

ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

Date and Place: April 25, 2014
Standard Financial Plaza
Conference Room, Suite 211

Present: Charles W. Gall, Esq., Chairperson [For all items except V.E and F.]
Katy Chen, Esq., Vice Chair
Michael A. Lilly, Esq., Commissioner
Jeffrey Burroughs, Ph.D., Commissioner
Stephen Silva, Commissioner
Stanford Yuen, P.E., Commissioner [For all items except V.E and F.]
Charles W. Totto, Executive Director and Legal Counsel (EDLC)
[For all items except V.C]
Laurie A. Wong, Associate Legal Counsel (ALC)
[For all items except V.C]
Letha A. S. DeCaires, EC Investigator
Darlene Nases, Po'okela Intern EC
Geoffrey Kam, Deputy Corporation Counsel, COR
[For all items except V.D]
REDACTED[Item V.E and F only]
REDACTED
[Item V.E and F only]
REDACTED, Respondent [Item V.B only]
Sophie Cocke, Reporter – Civil Beat [Open Session only]

Absent: Rachael S. Wong, Dr.PH, Commissioner

Stenographer: Lisa P. Parker, Legal Clerk

I. CALL TO ORDER

The 479th meeting of the Ethics Commission (“Commission” or “EC”) was called to order at approximately 11:33 am by Chair Gall, and since there were several guests in attendance, he asked them to introduce themselves.

The Commission had before it the memorandum regarding the Agenda Items for the April 25, 2014 Meeting, Open Session, dated April 17, 2014.

II. FOR ACTION: REQUEST FOR A MOTION TO APPROVE THE MINUTES OF THE OPEN SESSION OF THE MARCH 17, 2014 MEETING

Vice Chair Chen and Commissioner Lilly requested several non-substantive changes to the minutes. Chair Gall requested that the minutes be more streamlined. Chair Gall requested additional edits.

Chair Gall moved that staff revise the minutes per the Commission's requests and that the minutes be brought back before the Commission for review and approval at the next meeting. Commissioner Silva seconded the motion. The motion passed unanimously.

In regard to the confidential section of the minutes, Chair Gall stated that it was provided that morning and that it should be reviewed at the next meeting.

III. OLD BUSINESS

- A. The following meeting of the EC was confirmed for Friday, May 30, 2014 at 11:30 a.m.
- B. The subsequent meeting of the EC was confirmed for Wednesday, June 26, 2014, 11:30 a.m.

IV. NEW BUSINESS

A. Administrative News

The EDLC reported that the Commission has received more complaints this year than the same time last year. He also reported that the Commission has received fewer requests for advice this year than at the same time last year. The EDLC stated that this year's trend is an increase in alleged violations and requests for contested hearings.

In regard to the website, the EDLC stated that the new statistics program being used shows that there are more website hits.

In regard to education and training, the departments appear on track to complete ethics training for all City employees by the end of June 2014. There are just a few departments that are behind (e.g., HFD, HPD). In regard to HPD, the EDLC initially believed that they were conducting their own ethics training, but after review, of their ethics training the EDLC determined that the content was inadequate. The EDLC and Investigator DeCaires worked with them to create new content for their on-line training which went live a week ago. The EDLC

expects HPD to train all or their employees on time. HFD has completed training for about half of their employees to date.

In regard to the fiscal years 2014 and 2015 budgets, staff is trying to utilize all the remaining funds from FY14 by making needed purchases and contracting for needed services and support. The EDLC stated that Council has not added any of the FY15 budget amount requested, above what the administration allowed. In fact, the Budget Committee deducted \$4,000 from the proposed FY15 budget request in category for hearings officers and transcription services.

The EDLC informed the Commissioners that the Managing Director has notified the office that the administration is planning to move all the boards and commissions to the Sprint building on Dillingham Boulevard. The EDLC stated that he has requested that the office stay on “campus” to be near working City offices. Although there would be a rental cost saving to the City, there are concerns about parking and location. Further, the office would share a common meeting room with all the other commissions, which may be difficult because of the high usage. The EDLC stated that he will keep the Commissioners updated.

In regard to the status of Department Corporation Counsel (COR) opinions, there are still outstanding requests for the following:

- COR’s legal authority over the control of the ethics budget; and
- COR’s legal authority to give ethics advice given that the State Constitution mandates that the ethics code for each county shall be “administered” by the county’s ethics agencies; our argument is that administration includes interpretation, training and not just xeroxing copies.

These issues may be asked of COR by the EC staff:

- what the term administratively attached means; and
- language changes to the ordinance that will require ethics laws to include OTS, and for OTS to include definitions that would not interfere with the language for the Teamsters’ contract.

In regard to specialized training, the office has trained 35 Administrative Services Officers in the process of an ethics investigation relating to the “7 Steps of Just Cause”. This training session was very helpful to inform about the due process requirements in a pragmatic way so that civil service employees are treated fairly while departments can use the ethics investigation to make their own investigations more efficient.

The EDLC stated that staff met with the Purchasing Division, Department of Budget and Fiscal Services, as well as the State Procurement Office, because procurement violations often result in ethics violations due to the nature of the special or preferential treatment to vendors. Procurement is a complex area, and we are not claiming to be experts, but we are building expertise.

In regard to social media, ALC stated that she made a soft launch of the Ethics Commission Facebook (FB) page. The FB page has been set in broadcast mode, with no comments allowed from the public for now. She stated that she posted a disclaimer stating that the Commission would not receive complaints via FB. Relevant articles about local and national events, meeting information, and other updates are posted. ALC requested photos and bios of the Commissioners for posting. She stated that there is a link to FB from the ethics website. She explained that the benefit to having FB is to communicate quickly with the community and bring their attention to new content on the ethics website.

ALC also reported that the whole City will be required to use a new website content manager shortly and she and Po'okela Intern, Darlene Nases, are attending classes in the next week to renovate the Ethics Commission website

The EDLC stated that this is the first time that the Office of the City Auditor released the National Citizen Survey for Honolulu. The results were saddening. Our citizen responses were compared to other citizen responses from 15 other unknown benchmark cities of populations over 300,000. As noted in the open session memo:

- Confidence in city government: 23%
- City government acts in the best interest of the community: 25%
- City government is honest: 24%
- City government treats all residents fairly: 22%

All of these Honolulu ratings were ranked "lower" (meaning that Honolulu had at least a 10% lower rating) or "much lower" (at least a 20% lower rating) than the benchmark communities from around the country. Commissioner Burroughs stated that he believed that this is a good baseline and would be good to track for trends in the future.

In regard to the FBI Citizen's Academy, the ALC reported that she has been attending the Academy after being nominated by one of the local special agents we met through our case interactions. She stated that the 8 week long session is held at the Kapolei office with 25 other community members, public and private sector, including other city and state officials, local business owners, members of the hotel industry and financial institutions. She reported that the curriculum is varied.

B. For Action: Request for a Motion Approving Memorandum to Mayor and City Council regarding Expanding Ethics Commission Jurisdiction to Instrumentalities of the City, Secured Employees and Independent Contractors.

The ALC stated that this matter has been on the agenda for the past two or three meetings. In the past several years, there has been an increase in the number of complaints and questions received relating to ethical misconduct by "Uncovered Individuals," those who are not included within the City's ethics laws. These parties have come to our attention because of their

discretionary authority and/or financial power to make decisions about City resources. At that last meeting there was a request to limit the language regarding independent contractors.

Based on the Commission requests, we have limited the term to: “those contractors that have significant involvement with city works, fiscal authority, and discretionary power.” This is just a very general memo that we would like the backing of the commission to send to the City to open a dialogue in the City.

Chair Gall stated that he still felt strongly that it was not appropriate to include independent contractors within the purview of the Commission. He felt that to do so would open too many issues as to the Commission’s authority and who is covered. Chair Gall stated that he cannot support that. He stated that it made sense to bring an entity like OTS within the purview of the ethics laws, but using the term “independent contractors” is too broad, and there is no basis for the Ethics Commission’s jurisdiction over them. The ALC asked if the added language sufficiently limited the term. Chair Gall stated that even with the limiting language, he still could not support using the term “independent contractors.”

Chair Gall suggested deleting certain overly broad language.

Commissioner Lilly stated that he was concerned that a person who is an independent contractor can make City fiscal decisions and should be held accountable for their decisions, because there is now a blurred line as to their responsibility to the tax payer and their own company. Commission staff is pointing out that there is a category of people who are not accountable but have fiscal authority and are not city employees.

Chair Gall stated that he believed that the category of people who Commissioner Lilly is concerned about were already covered in the general language of the memo.

Commissioner Yuen stated that ultimately there is someone at the city who contracted with the independent consultant, so it is the City’s responsibility to ensure that the contractor is using the government resources properly. The person making the decision of oversight or contracting should be held accountable.

In response to Commissioner Yuen’s concern, the EDLC stated that there are situations such as in HART where there is a subcontractor, working for a contractor, who was contracted by the director of HART. In those situations it would be hard to tell the head of HART that he is responsible for what the subcontractor did. The EDLC told Commissioner Yuen that in theory he is correct, but staff has already tried that route and people are not held accountable in practice.

Commissioner Burroughs asked if footnote 2 in the draft memo reflects the language in the Revised Charter in which “independent contractor” is used in conjunction with “instrumentality of the city” when defining OTS? The EDLC confirmed. Commissioner

Burroughs told Chair Gall that it would be difficult to get away from the term “independent contractor,” given the Charter’s description of OTS.

Commissioner Lilly stated that when this issue came up before in the prior meeting, that the concern was including independent contractors that had nominal contracts with the city. Commissioner Lilly stated that the Commission asked staff to narrow the language, which they did. He asked Chair Gall if the language was not narrow enough.

Chair Gall asked if the memo should come from commission staff instead of the Chair. The EDLC stated that it depends on the level of priority. In the past staff had the memo signed by the Chair because he believed that the recipients listen to the commissioners more carefully than staff.

Commissioner Burroughs asked if other cities have dealt with this issue. The EDLC stated that the Los Angeles Public School District actually required all independent contractors to follow that school system’s ethics code. Vice Chair Chen asked if that was a condition of contracting with the school district. The EDLC confirmed.

Vice Chair Chen, stated that the contractual approach is a different option than expanding jurisdiction to independent contractors. Chair Gall stated that he was more comfortable with the conditional contractual approach.

Commissioner Yuen recalled his experience with the Federal government. He reiterated that somebody at the city is responsible because they are overseeing the work of the contractor. The EDLC restated that for example, although the director of HART is responsible for ensuring the contract is completed correctly, we cannot hold him accountable for any ethics violations such as using city resources to post political blogs of a subcontractor because we cannot say that he knew or should have known. In that situation, the Commission also could not enforce any ethics laws against the subcontractor.

Vice Chair stated that her non-profit organization, PATCH, was required to include this in their bylaws code of conduct as a condition of eligibility for funding. She stated that this is another option that the EDLC referred to in the LA School system. The EDLC reiterated that this memo is only to get the conversation started, not dictate exactly how this will be implemented.

Vice Chair Chen suggested that the independent contractors should have oversight based on a condition of the contractual agreement, but currently there is no oversight.

Chair Gall offered language for the memo: delete the third bullet point and insert “individuals who are not city employees but have significant fiscal authority and discretionary power with respect to city matters.” Chair Gall stated that if staff uses this language, then he would be comfortable, and also to consider what Vice Chair suggested.

Chair Gall asked for a Motion to adopt the Memo subject to his suggested changes. Vice Chair Chen made the Motion, Commissioner Burroughs seconded the Motion. The Motion passed unanimously.

Commissioner Lilly made a motion to enter Executive Session. Commissioner Burroughs seconded the motion. The motion passed unanimously.

V. EXECUTIVE SESSION SUMMARY

- E. For Action: Complainant's Request to Set a Date for Contested Case Hearing Regarding Respondent; Respondent's Motion to Continue Hearing to Set Date for Contested Case Hearing; Complainant's Memorandum in Opposition to Respondent's Motion.**

Respondent and Complainant presented oral argument before the Commission. **Commissioner Lilly moved that the Commission set the contested case hearing in this matter for a certain date and time. Commissioner Silva seconded the motion. The Motion was passed unanimously.**

- F. For Action: Request for a Motion to Find Probable Cause and to Amend the Notice of Alleged Violations of Standards of Conduct (Amended Notice) to Include a Claim for Failure to File Conflict of Interest Disclosures (RCH Sec. 11-103) by Former City Officer.**

Complainant and Respondent presented oral argument before the Commission. **Commissioner Lilly made a motion to approve the Amended Notice. Commissioner Burroughs seconded the motion. The motion was passed unanimously.**

- B. For Action: Motion to Approve and Adopt Stipulation to Settle Case No. 14-031.**

Complainant and Respondent were before the Commission and presented the Motion. **Commissioner Burroughs moved to approve the Settlement Agreement as amended. Commissioner Lilly seconded the motion. The motion passed unanimously.**

- C. For Action: Approve and Adopt Advisory Opinion No. 2014-02.**

After brief discussion, **Commissioner Lilly moved to adopt Advisory Opinion No. 2014-2 with suggested redactions for the published opinion. Vice Chair Chen seconded the Motion. The Motion passed unanimously.**

- D. For Action: Motion to Find Probable Cause that a City Employee Violated RCH Sec. 11-102.1(e) and ROH Sec. 3-8.2(c) (Appearing before City Agency).**

After staff made a presentation before the Commission, **Commissioner Yuen made a motion to find probable cause and to approve the Notice of Alleged Violation. Commissioner Burroughs seconded the motion. The motion was unanimously passed.**

Commissioner Lilly made a motion to exit Executive Session and adjourn the meeting. Commissioner Burroughs seconded the motion. The motion passed unanimously.

VI. ADJOURNMENT

The meeting was adjourned at approximately 12:45 pm.