

**MINUTES
OF THE
REGULAR MEETING OF THE
ELECTIONS COMMISSION**

JULY 31, 2008

10:00 A.M.

**STATE CAPITOL, ROOM 309
415 SOUTH BERETANIA STREET
HONOLULU, HAWAII 96813**

Commissioners in Attendance:

Mr. John Chan
Mr. William Marston, Chair
Mr. Harold Nelson
Ms. Zale Okazaki
Ms. Susan Russell
Ms. Donna Soares
Ms. Yuki Lei Sugimura
Mr. Richard Swift

Technical Support Staff in Attendance:

Ms. Robyn Chun, Department of the Attorney General
Mr. Kevin Cronin, Chief Election Officer
Ms. Ciress Cuevo, Office of Elections
Mr. David Rosenbrock, Office of Elections
Mr. Russell Suzuki, Department of the Attorney General

Guests in Attendance:

Mr. Melvin Ahching, Office of Senator Sam Slom
Ms. Barbara Annis, Department of Accounting and General Services
Ms. Jean Aoki, League of Women Voters
Mr. Richard Borecca, Honolulu Star Bulletin
Ms. Elizabeth Connelly, AHFI
Mr. Dennis Chu, Honolulu Star Bulletin
Mr. Bart Dame, Democratic Party of Hawaii
Ms. Cira de Castillo, Election Systems & Software
Mr. Adam Deguire, Hawaii Republican Party
Ms. Chrystn Eads
Ms. Florence Kong Kee, Democratic Party of Hawaii
Mr. Willis Lee, Hawaii Republican Party
Mr. Keoki Leong, Senate
Ms. Maureen Muraoka, Board of Registration

Mr. Rick Pike, KGMB
Mr. Tim Sakahara, KGMB
Ms. Joan Shin, House
Mr. Sam Slom, Senate
Ms. Janice Tanouye

PROCEEDINGS

I. Call to Order

The meeting was called to order by Chair William Marston at 9:59 a.m. on July 31, 2008 at the State Capitol in room 309.

II. Roll Call and Determination of a Quorum

Ms. Ciress Cuevo, Elections Commission Secretary conducted roll call. All Commissioners were in attendance.

III. Approval of Minutes of Meeting of June 17, 2008

Ms. Donna Soares moved to approve the minutes of the meeting of June 17, 2008. Ms. Susan Russell seconded, and the motion carried unanimously.

Mr. Richard Swift moved that the Commission place on its agenda an executive session pursuant to Hawaii Revised Statutes § 92-5(2) and 92-5(4), to consider personnel matters relating to the Chief Election Officer and to consult with the Commission's counsel on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities relating to candidate disqualifications, candidate withdrawals, and candidate challenges to candidate nominations. Ms. Donna Soares seconded. The motion passed, 1-7 (No: Mr. Nelson; Yes: Mr. Chan, Ms. Okazaki, Ms. Russell, Ms. Soares, Ms. Sugimura, and Mr. Swift).

In response to Mr. Nelson's inquiry whether the executive session is concerning the Chief Election officer, Mr. Swift stated that it is a personnel matter.

IV. Public Testimony – Any interested person may submit data, views or arguments on any agenda item

Ms. Jean Aoki, League of Women Voters inquired whether the item added to the agenda would be discussed in executive session. Chair Marston noted that the item would be discussed in executive session because it is a personnel matter. Also, Ms. Aoki provided oral testimony regarding her reaction to the items being covered in the media. Ms. Aoki expressed the need for the Elections Commission,

Legislature, League of Women Voters, and others to bear responsibility for its duties and actions.

Mr. Bart Dame, Democratic Party of Hawaii questioned why the agenda item relating to candidacy withdrawals is not discussed openly. Ms. Susan Russell responded by asking the Chair whether the item needed to be addressed in this fashion because it was advised by legal counsel. Chair Marston stated yes.

Mr. Russell Suzuki, Department of the Attorney General clarified Mr. Swift's motion. The purposes of the executive sessions are to provide legal advice to the Commission and to address personnel matters that Mr. Kevin Cronin, Chief Election Officer (CEO) wishes to keep confidential.

V. Update on Election Planning Status – Chief Election Officer

The CEO provided an update on the preparations for the upcoming elections regarding precinct official training and recruitment status, counting center training, logic and accuracy tests for the voting machines, ballot printing, communications, State Capitol setup for the Election Day, logistical arrangements for transportation on the Neighbor Islands, voter registration services for the Hawaii Army National Guard, and voter education initiatives.

In response to Mr. Nelson's inquiry whether the Hart voting equipment meets the Help America Vote Act, as well as all Federal requirements, Mr. Cronin said yes.

Mr. John Chan asked how ballots are sent to the Neighbor Islands and expressed his concern about security of the ballots. Mr. Cronin explained that ballots are shrink wrapped in bundles and that tampering of ballots can be detected.

Mr. Nelson brought to attention a follow up item from the last meeting regarding the method of election night results reporting. The CEO informed the Commission that the Office of Elections will not be solely releasing the election results as planned. Instead, the results will be released mainstream via the media.

Ms. Soares inquired whether the results will be available online and in response the CEO noted that results will be released in the same manner on the Neighbor Islands and Oahu. However, Oahu will not be providing paper results.

In response to Senator Sam Slom's inquiry whether ballots could be printed while pending issues are unresolved, Mr. Cronin said yes and deferred to legal counsel. Mr. Suzuki opined that statute allows ballots to be printed.

Ms. Aoki expressed that the public's interest in the personnel matters relating to the Chief Election Officer overrides the privacy of Mr. Cronin.

Mr. Suzuki recommended that the Commission report on the facts of the executive sessions in the open meeting. As such, Chair Marston stated that public announcements will be made after the executive sessions.

Ms. Florence Kong Kee, Democratic Party of Hawaii noted that the Democratic Party was involved with reviewing the ballots in the past and that this year the party was not involved. In response, the CEO explained that there would be a slight risk that ballots would not be available in time for overseas voters if ballots were not printed, so Mr. Cronin authorized the printing of the ballots.

- VI. Executive Session pursuant to Haw. Rev. Stat. §92-5(4). Consult with counsel re: protest of notice of award issued to Hart in RFP-06-047–SW [confidential attorney/client communication]

Ms. Soares moved for the Commission to go in to executive session. Ms. Zale Okazaki seconded. The motion passed, 1-7 (No: Mr. Nelson; Yes: Mr. Chan, Ms. Okazaki, Ms. Russell, Ms. Soares, Ms. Sugimura, and Mr. Swift).

Mr. Nelson sought clarification on this agenda item and changed his vote to yes.

The Commission resolved to executive session at 10:38 a.m. and reconvened in open meeting at 11:17 a.m.

Chair Marston announced that the Commission conferred with legal counsel about the status of the procurement protest filed by Election Systems & Software. The hearing officer has not made a final decision and there is no deadline for the hearing officer to issue his decision. The Commission made no decision and took no vote on this item because none was required. No further statement will be made since the matter is still in litigation.

- VII. Executive Session pursuant to Haw. Rev. Stat. §92-5(4). Consult with counsel re: Maui lawsuit regarding electronic reporting of election results [confidential attorney/client communication]

Ms. Soares moved for the Commission to go in to executive session. Ms. Yuki Lei Sugimura seconded, and the motion carried unanimously.

The Commission resolved to executive session at 11:19 a.m.

- VIII. Executive Session pursuant to Haw. Rev. Stat. § 92-5(2) and 92-5(4), to consider personnel matters relating to the Chief Election Officer and to consult with the Commission's counsel on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities relating to candidate disqualifications, candidate withdrawals, and candidate challenges to candidate nominations.

The Commission held a dual executive session and reconvened in open meeting at 12:29 p.m.

With respect to item VII, Chair Marston stated that the Commission conferred with legal counsel about a lawsuit filed in the Second Circuit Court against Mr. Cronin and the State. The Commission was apprised of the claims that were asserted and the State's defense. Insofar as the litigation is on-going, the Commission has no public comment on this matter. The Commission made no decision and took no vote on this item because none was required.

Regarding item VIII, Chair Marston reported that Mr. Cronin apologized to the Commission for his failure to register to vote until last Friday. The Commission accepted Mr. Cronin's explanation and apology. Mr. Cronin has the Commission's continued support in his efforts to prepare for clean and honest elections.

In reference to the second matter in item VIII, Chair Marston announced that the Commission consulted with legal counsel regarding the recent candidate filing challenges. These issues have not been fully resolved and therefore would not be appropriate for the Commission to comment on the issues because of pending or potential litigation.

IX. Adjournment

In response to Ms. Kong Kee's inquiry regarding the opportunity to view the ballots, the CEO referred to Office of Elections staff member, David Rosenbrock, who noted that the Ballot Operations Section will have the ballot package available by today or tomorrow.

Chair Marston adjourned the meeting at 12:35 p.m.

Respectfully submitted,
Ciress Cuevo
Elections Commission Secretary