



**STATE OF HAWAII
ELECTIONS COMMISSION**

MINUTES

WILLIAM B. MARSTON
ELECTION COMMISSION CHAIR

**REGULAR MEETING OF THE
ELECTIONS COMMISSION**

August 21, 2013 @ 10:00 AM
STATE OFFICE TOWER
235 SO. BERETANIA STREET, ROOM 204
HONOLULU, HAWAII 96813

Commissioners in Attendance:

Mr. William Marston, Chair
Mr. Charles King
Ms. Carol Kitaoka
Ms. Xara Marshall
Ms. Zale Okazaki
Mr. Warren Orikasa
Mr. Victor Vierra
Mr. Danny Young

Technical Support Staff in Attendance:

Ms. Robyn Chun, Department of the Attorney General
Ms. Valri Kunimoto, Department of the Attorney General
Mr. Scott Nago, Chief Election Officer
Ms. Judy Gold, Office of Elections
Ms. Kristen Oka, Office of Elections
Mr. Rex Quidilla, Office of Elections
Ms. Carolyn Roldan, Office of Elections
Mr. David Rosenbrock, Office of Elections
Mr. Aaron Schulaner, Office of Elections
Ms. Auli'I Tenn, Office of Elections

Guests in Attendance:

Ms. Julia Allen – Office of Sen. Sam Slom
Mr. Rick Daysog – Hawaii News Now
Ms. Rosana Fukuda – DOE
Ms. Shirley Magarifuji – County of Maui

Ms. Joy Marshall – League of Women Voters
Mr. Josiah Nishita – County of Maui
Mr. Michael Palcic
Ms. Tisha Panter – Office of Sen. Sam Slom
Senator Sam Slom
Ms. Melissa Vomveris – Office of Sen. Ihara
Mr. Lyndon Yoshioka – County of Kauai
Ms. Malia Zimmerman – Hawaii Reporter

PROCEEDINGS

I. Call to Order

Chair Marston called the meeting to order at 10:00 a.m. on August 21, 2013, at the State Office Tower, Room 204.

II. Roll Call and Determination of a Quorum

Elections Commission Secretary conducted roll call. Commissioner Pat Berg was not in attendance.

III. Approval of Minutes for the May 15, 2013 Elections Commission Meeting

With no additions or corrections to the minutes, Chair Marston asked for a motion to approve the minutes. Commissioner Young moved that the minutes be approved, Commissioner King seconded the motion and the minutes were approved unanimously by the remaining Commissioners.

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

Malia Zimmerman from the Hawaii Reporter testified that she understood a salary increase for CEO Scott Nago will be discussed at today's meeting. As a member of the media and public, she asks that the Commission keeps this discussion transparent. She noted that in the past, OIP ruled that contract discussions for June Jones and Evan Dobbelle be kept public.

Hawaii News Now reporter Rick Daysog seconded this request.

Commissioner Marshall asked why other executive salaries were discussed openly and why this discussion will be held in Executive Session. Deputy AG Robyn Chun responded that under the HRS, discussions of personnel matters

such as hiring, firing, salaries and disciplinary action are done in private discussion and is confidential. However, the actual salary is for public disclosure. Commissioner Marshall asked what the difference was between this discussion and the discussion held for June Jones and Evan Dobelle. Deputy AG Robyn Chun stated that she was not involved with those discussions so she could not answer to what considerations were made.

Sen. Sam Slom testified that he had previously given testimony and was waiting to see what action or disciplinary action would be taken. He noted that public employee's salaries are public information and are posted on line. However, he feels that when the Office of Elections comes up, salary discussions are kept private. He would also like to protest this private discussion and interprets the HRS differently. He noted that he plans on introducing legislation during the next session to have discussions such as these be made public.

He also stated that he was not notified of this meeting and had to go online to get the information. He states that he receives 15 – 20 notices a day from all agencies but has not received one from the Office of Elections. He suggests that since the Commission has the power, they should consider making changes. He also asked that the Commission confirm for him the current salary of the Chief Election Officer and was told by Chair Marston that the salary is \$80,004. He then asked what the maximum salary was for the CEO as set by the Salary Commission and was told that it is \$116,172.

Sen. Slom stated that testimony should not be listed as an agenda item early in the meeting but listed after the CEO status report. Deputy AG Chun responded that there is an OIP decision that states that it is at the discretion of the Commission to allow further comment on the status report, however, answering questions is not an obligation of the Commission. Chair Marston noted that the Senator's point is well taken and asked the Commission if they had any objections or comments. The Commission responded no.

Mr. Michael Palcic testified that he served as the chair for the Oahu Apportionment Advisory Council. He testified that while serving as the Chair, he submitted receipts for reimbursement for what he felt were expenses relating to reapportionment. He was reimbursed for some expenses and not for others. He asked that the Commission investigate the actions of the Office of Elections in relation to Reapportionment. Commissioner Okazaki asked if he was reimbursed for all of his expenses and he said no. He was told that some of the expenses were not authorized and he would not receive reimbursement.

Commissioner Orikasa asked if the Reapportionment Commission came under the jurisdiction of the Office of Elections and was told by Mr. Palcic that the Office

of Elections and the CEO are responsible for the reapportionment process. The Reapportionment Commission is an appointed board. Commissioner Orikasa asked if the meeting is run by the Office of Elections or is party to the meeting. Mr. Palcic responded that the meetings are run by the Chairperson and the Office of Elections sits on the side and advises.

Commissioner Marshall stated that if she understands correctly, he is concerned about the reimbursement and the conduct of the Office of Elections in how they handled his situation. Mr. Palcic responded yes, he was less concerned about the money and more concerned about the conduct of the Office of Elections and is testifying today to bring the conduct of the Office of Elections to the attention of the Commission. Commissioner Vierra asked Mr. Palcic if he was aware of anyone else having this type of problems with the Office of Elections and Mr. Palcic responded not that he is aware of. Because the Office of Elections prepared the vouchers for the members he was not aware of who got paid and who did not. He rejected the vouchers prepared by the Office of Elections because he felt it did not reflect the amounts he should be reimbursed and therefore prepared his own.

Commissioner Young asked that CEO Nago be able to explain his side. General Counsel Aaron Schulaner stated that he would attempt to address and explain the concerns voiced by the testifiers. He explained that the Chief Election Officer is the Secretary for the Reapportionment Commission and the Office of Elections provides technical and administrative support to the Reapportionment Commission. The Reapportionment Commission has four Advisory Councils of which Mr. Palcic was the chair for the Oahu Advisory Council. The Comptroller ultimately approves reimbursement for authorized expenses. There are State forms and standard operating procedures that are used for these reimbursement requests. For this reason, the Office of Elections prepared the forms for the Reapportionment Commission as they now do for the Elections Commission. There was discussion with the Comptroller about the interpretation of "reimbursement for meetings". Does "meetings" also include extended meetings such as the meeting held by the Neighborhood Board. The Comptroller, with the guidance of the Attorney General's office, interpreted "meetings" as meetings of the Commission and its Advisory Councils. Requests for payment for other meetings were denied. Sometime after Reapportionment, Mr. Palcic submitted to the Office of Elections a request for reimbursement on several other items. The request was forwarded to the Comptroller for his review and approval. Some expenses were denied payment and a letter explaining why they were denied was sent to Mr. Palcic by the Comptroller. If Mr. Palcic disagrees with the decision made, he can submit another request to the Comptroller.

Mr. Palcic stated that there are some inaccuracies with the General Counsel's explanation. General Counsel responded that the Office of Elections did go to the Comptroller for guidance and responded to him as such. Mr. Palcic again stated that he gave up on getting any reimbursement but is testifying about the conduct and performance of the Chief Election Officer and Office of Elections.

Chair Marston questioned the two comments made about meeting notifications. He thought that notices were posted seven days prior to the meetings. He asked the Commission Secretary to clarify how they are posted. Commission Secretary Carolyn Roldan responded that the notices are filed with the Lt. Governor's Office, posted on the State Calendar and the Office of Elections website, which is what she is required to do. If anyone wants notices sent to them, there is a sign up sheet next to the sign in sheet that can be filled out with contact information and notices will be sent to anyone that requests them.

Joy Marshall from the League of Women Voters testified that the LWV has concerns because they have not been able to verify if there is a plan in place to assure that the State is in compliance with Section 7 of National Voter Registration Act of 1993 as it relates to the Patient Protection and Affordable Care Act (ACA).

She testified that there are some 270,000 eligible residents who are not registered to vote and working with the Hawaii Health Connector is urgent and compelling since they will insure up to 300,000 people making them an excellent resource in connecting with unregistered voters.

The LWV also feels that lack of registration could be the leading reason for Hawaii's low voter rate. She states that the LWV recognizes that the implementation of Section 7 in Hawaii does have its challenges. She also notes that although the State does not have primary responsibility for registered voters, they do currently serve as the NVRA compliance officer.

Commissioner Marshall asked if these concerns were brought to the Office of Elections. Joy Marshall responded that the LWV has sent a letter to the Office of Elections and was told that since the Hawaii Health Connector is a non-profit organization they may not need to be in compliance.

Commissioner Marshall asked who she was working with in the Office of Elections and Joy Marshall responded that the LWV sent the Chief Election Officer a letter and has not yet gotten a response. Commissioner Marshall asked when the letter was sent and was told that the letter was sent the week prior to the Commission meeting. The Commission Secretary told the Commission that the Office of Elections had just received the letter in the mail.

General Counsel Aaron Schulaner asked if he could respond since this was a legal matter. He stated that the NVRA Affordable Care Act requires that State agencies who provide assistance or services to the disabled need to also provide voter registration forms, assistance in filling out the forms and collect the forms. The question is whether the health exchange agencies are also considered public assistance agencies since they are providing health insurance at a reduced rate. For the State of Hawaii, the Office of Elections has spoken to the Hawaii Health Connector and consulted with the Attorney General's Office and confirmed that the Hawaii Health Connector was created as a non-profit by the Legislature. As a non-profit, it is not considered a State agency and the employees are not considered State employees therefore under the NVRA the Hawaii Health Connector is not considered a mandatory voter registration agency. We cannot control the agency or force them to do anything.

General Counsel Schulaner went on to explain that we have spoken with the Hawaii Health Connector and they do understand that they could provide a vital service. Knowing the technical requirements needed to get the service ready by October 1st they had a discussion with their Board and was told that they won't be able to finalize any agreement with the Office of Elections in time for the October 1st roll out. A letter from the League of Women Voters was received yesterday and a draft response with this information has been done.

Commissioner Okazaki asked General Counsel Schulaner when he expected the program to start and he said it will depend on the Hawaii Health Connector. Both parties want to do the program but the Hawaii Health Connector needs to figure out what their technical situations are.

V. Status report from the Chief Election Officer

CEO Nago reported that most of the Office of Elections focus is on the procurement of the statewide voter registration system which needs to be up and running by the 2016 election. They currently have a consultant who will design the program and is also helping to develop an RFP.

He also reports that the Office of Elections is continuing to prepare for the 2014 election. Polling place and training locations are being finalized. Procedures and manuals are also being prepared.

Staff has been focused on voter outreach in the community. The Office of Elections has had talks with the Department of Education regarding the Young Voter Registration Program (YVRP). This program allows us to deliver voter

information and voter registration forms to seniors who can pre-register at the age of 16.

Commissioner Orikasa asked if the University of Hawaii could also be incorporated into the program. CEO Nago responded that the UH is already covered under another program. Commissioner Orikasa asked if the private schools were also covered and CEO Nago responded that all schools in the State are covered under the program.

Commissioner Kitaoka asked if the pre-registration was only for seniors and CEO Nago responded that anyone 16 years of age or older is allowed to pre-register. CEO Nago also noted that we are considering designating the DOE as a voter registration agency under the NVRA-ACA.

Commissioner Okazaki asked what the cost of time and monies is for this program. CEO Nago responded that it would be time and man power for distribution of forms and the actual cost of the forms.

Commissioner Kitaoka asked if the Office of Elections was working with Sen. Ihara. CEO Nago explained that Sen. Ihara wanted to know why the DOE was not a designee under the NVRA-ACA. CEO Nago explained that if the DOE was designated, there would be requirements that had to be met. Instead, we have notified the DOE that we will provide support and assistance to the DOE on the implementation of the YVRP program which would basically meet the requirements of the NVRA-ACA. Commissioner Kitaoka noted that a representative from the DOE was at the meeting to discuss the YVRP but had to leave early.

Commissioner Marshall asked if there are any other attempts being made to register voters outside of the NVRA requirements. CEO Nago responded that forms are distributed to state agencies, libraries, post offices, and satellite city halls. The form is also available in the phone book and a fillable form is available on the OE website.

Commissioner Marshall asked if there are any other new ideas that are being considered. CEO Nago responded that at the moment the office is concentrating on working with the state agencies that need to meet the NVRA requirements. Once that is in place, we will begin to branch out to other areas.

Chair Marston asked for any comments. Sen. Slom commented that the report from the CEO was brief and he felt he did not get anything out of it. He feels that the Statewide Voter Registration RFP should be discussed since the RFP is being put out at the end of the year. He also feels that resolutions to the

problems which occurred during the 2012 Election should also be discussed because the public is crying out and demanding some type of action. Also noted was that the discussion of a salary increase being done in closed session is outrageous.

Commissioner Orikasa asked if the reports are public. Election Commission Secretary responded that the reports are not posted on line but they are available upon request. Commissioner Orikasa noted that most of the concerns for the 2012 Elections have been addressed and discussed. Perhaps getting and reading all of the previously written reports would give insight to what is being done.

Sen. Slom stated that as a Senator he has a responsibility to answer questions that are being asked. He also feels that if his performance was in question, he has a responsibility to explain it and he does not feel that occurred here. Commissioner Orikasa responded that he was not arguing that point but is saying that there are written reports that respond to the Senators concerns.

Commissioner Young noted for the Senator that the issues he is bringing up were brought up and addressed at the last Commission meeting. The CEO did report to the Commission what steps are being taken to correct mistakes that were made in the 2012 Election.

VI. Discussion on the Young Voter Registration Program (YVRP)

Please refer to YVRP discussion under Agenda Item V.

VII. Discussion on how the Office of Elections handles legislation

CEO Nago explained that the Office of Elections prepares testimony for election related bills. He noted that this discussion was probably a result of the testimony from our office which supported the same day voter registration bill during the last legislative session. He explained that the Office of Elections testimony supported this bill because it would make it easier for the public to register to vote.

Commissioner Marshall stated that it was her understanding that Commissioner Berg's comments at the last meeting were that she was concerned how OE determines the position it takes when developing testimony for legislation. CEO Nago responded that the office will support legislation relating to registration if it fits the mission of the office. The mission being getting more people registered and increasing voter turnout.

Commission Okazaki recalled that Commissioner Berg's concerns were not only testimony development but what bills were addressed because she felt that the Commission was not being consulted. Commissioner Okazaki further commented that she did not want to be consulted because addressing legislation was the job of the Chief Election Officer.

Because Commissioner Berg was not in attendance at this meeting, further discussion of this issue will be done at the next Commission meeting.

Chair Marston asked for a motion to enter into Executive Session. Commissioner Okazaki moved that the Commission move into Executive Session. Commissioner Young seconded the motion and the motion was approved by the remaining Commissioners.

Commissioner Marshall asked if before going into Executive Session, it could be clarified that it was required by law to have the salary discussion occur in Executive Session. Chair Marston responded that the motion to go into Executive Session was already passed and her concerns can be discussed in Executive Session.

Sen. Slom addressed the Chair and stated that the law requires disclosure on why and what will be discussed in Executive Session. Chair Marston responded that the disclosure is on the agenda for this meeting. Sen. Slom stated for the record that he does not believe what is on the agenda is in the scope of the law. He also asked if the Commission was returning after Executive Session with a report on actions taken. Chair Marston responded that a report will be given after today's meeting in Executive Session.

VIII. Executive Session

The Commission resolved into executive session at 10:58 a.m.

Pursuant to Haw. Rev. Stat. 92-5 (a)(4) Consult with the Commission's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities and liabilities and action, if appropriate.

Pursuant to Haw. Rev. Stat. 92-5 (a)(2) Performance evaluation of the Chief Election Officer, conditions for continues employment (report on management training) and consideration of salary adjustment

The Commission resolved into open meeting at 11:23 am.

IX. Adjournment

Chair Marston announced that the Commission decided that a salary adjustment for Chief Election Officer would not be made at this time.

With no further business before the Commission, Chair Marston asked for a motion to adjourn the meeting. Motion was moved by Commissioner Okazaki, seconded by Commissioner Young and approved unanimously by the remaining Commissioners.

Next Commission meeting is scheduled for Thursday, November 7, 2013.

Elections Commission meeting was adjourned at 11:24 a.m.

Respectfully submitted,



Carolyn L. Roldan
Elections Commission Secretary