



**STATE OF HAWAII
ELECTIONS COMMISSION**

MINUTES

WILLIAM B. MARSTON
ELECTION COMMISSION CHAIR

**REGULAR MEETING OF THE
ELECTIONS COMMISSION**

**NOVEMBER 14, 2014 @ 10:00 AM
STATE OFFICE TOWER
235 SO. BERETANIA STREET, ROOM 203
HONOLULU, HAWAII 96813**

Commissioners in Attendance:

Mr. William Marston, Chair
Ms. Patricia Berg
Mr. Charles King
Ms. Terry Lynn Moore
Ms. Zale Okazaki
Mr. Warren Oriksa
Mr. Victor Vierra

Technical Support Staff in Attendance:

Ms. Valri Kunimoto, Department of the Attorney General
Mr. Scott Nago, Chief Election Officer
Ms. Nedielyn Bueno, Office of Elections
Ms. Judy Gold, Office of Elections
Ms. Carolyn Roldan, Office of Elections
Mr. David Rosenbrock - Office of Elections
Mr. Rhowell Ruiz, Office of Elections
Mr. Aaron Schulaner, Office of Elections
Ms. Aulii Tenn, Office of Elections
Ms. Kristen Uyeda, Office of Elections

Guests in Attendance:

Ms. Anna Bain
Ms. Nancy Bernol - Office of Senator Donna Mercado Kim
Ms. Rina Chung - House Minority Staff Office
Ms. Shirley Magarifuji - County of Maui
Ms. Janet Mason - League of Women Voters

Mr. Josiah Nishita - County of Maui
Ms. Tisha Panter - Senate Minority Research Office
Mr. Dan Purcell
Mr. B.J. Reyes - Star Advertiser
Senator Sam Slom
Mr. Lyndon Yoshioka – County of Kauai

PROCEEDINGS

I. Call to Order

Chair Marston called the meeting to order at 10:00 a.m. on November 14, 2014 at the State Office Tower, Room 203.

II. Swearing in of new Commissioner Terry Lynn Moore

New Elections Commissioner Terry Lynn Moore was sworn in by Deputy Attorney General Valri Kunimoto.

III. Roll Call and Determination of a Quorum

Elections Commission Secretary conducted roll call. Commissioners Kitaoka and Young were not in attendance. All other Commissioners were in attendance and the Commission had a quorum.

IV. Approval of Minutes for the October 3, 2014 Elections Commission Meeting

Commissioner Berg noted that on page 4 of the minutes, paragraph 3 of Senator Ruderman's testimony seemed redundant. Paragraph 3 repeats statements he made in paragraphs 1 and 2. Commissioner Orikasa recalled that Senator Ruderman's testimony was redundant. Commissioner Okazaki asks if the minutes be left as is since his testimony was redundant.

Commissioner Orikasa moved that the minutes be approved. Motion was seconded by Commissioner Okazaki and approved by the remaining Commissioners.

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

Tisha Panter - Ms. Panter states that under agenda item Executive Session, she sees that the Commission has complied with the first element of 92-5 by giving a reason for evaluating the Chief Election Officer. However, 92-5(a)(2) also

involves matters affecting privacy and a reason for privacy must be cited and it needs to be statutory or a constitutional right to privacy. Since the CEO is an appointee and not covered by civil service statutes, his salary is not a privacy issue and the salary range may be disclosed. The privacy issue will also have to be Mr. Nago's personal issue and not the Commission's. She further notes that under 92-5(b) the board cannot make a decision or deliberate towards a decision in executive meeting on matters not directly related to purposes as specified in subsection (a).

Chair Marston asked Deputy AG Kunimoto if she had any response to this. Deputy AG Kunimoto responds that the Commission's position is that it affects Mr. Nago's privacy rights as it relates to personnel issues and his evaluation. His salary is a separate matter and is not a privacy issue. If CEO Nago waives his personal rights the Commission can address it then.

Chair Marston explained to Ms. Panter that the agenda phrases are given to the Commission by its legal counsel. He further notes that the Commission will still go into Executive Session and perhaps she can discuss her concerns with the Commission's legal counsel.

Janet Mason - Ms. Mason testified that the League of Women Voters is very pleased to see that the Commission is considering video-conferencing Commission meetings. She states that the League feels this would help the public better understand election operations and would also give the public the opportunity to participate with the Commission. She also notes that the Big Island League suggests having webcasts.

Ms. Mason thanks the sub-committees for their continued monitoring of operations in their respective districts and notes that the League is especially looking forward to the report for the Big Island - District 4.

Ms. Mason testifies that the League had volunteers working in the Control Center, Counting Centers and various polling places and they did not see any operational problems for the General Election. The League did notice that the volunteer turnout was disappointing and there were those who had signed up to volunteer and were no shows. She notes that it may be time to reconsider split shifts so those who cannot work 13 hour shifts could work shorter shifts. She understands that it is not ideal but it may be one way of getting around this problem.

Ms. Mason notes that there was still some confusion with the volunteers when it came to the use of provisional ballots. She also notes that the new Wiki-Wiki voter registration pamphlet is excellent and the League was pleased to see a permanent absentee application included in this pamphlet. She further states

that there was insufficient education when it came to ballot measures and also felt that the amendment language was confusing for most voters. The League would also like to know how many questions were left unanswered in the General Election.

She notes that the media did cover ballot and charter amendments but this did not substitute good voter education. She feels that while there is a cost for mailing voter education to each household, there is little or no cost for putting the material on the website. She does understand that in the recent past, the Office of Elections did provide a pro/con analysis of measures but this was stopped due to a lawsuit which alleged that the analysis was not objective.

The League is very concerned with the low voter turnout. Ms. Mason notes that the 35% voter turnout is very serious and wonders if it is possible that the number of eligible voters in Hawaii is overstated. The League will renew its efforts in researching why eligible voters don't vote since this is a very important question.

Ms. Mason states that for the 2015 Legislative Session, the League will support legislation for statewide voting by mail by 2020 with limited in-person voting at early vote sites. She also asks if it is possible for voters to be involved in the RFP process for future new voting machines. The League would also like clarification on the Chief Election Officers authority during an emergency and lastly, will support getting an adequate operating budget for the OE.

Ms. Mason states that the League is happy to see that the Public Forum item has been added to the agenda, giving the public the opportunity to comment on agenda items. They would like to see other State Boards and Commissions would follow this practice.

Commissioner Berg asks CEO Nago if the number of blank votes for ballot questions are available and if they could be given to the League. CEO Nago responded yes and that the numbers are available on the election results report that is posted on our website.

Commissioner King asked Ms. Mason if, with regards to the pro/con analysis, the report should be prepared by the Office of Elections. Ms. Mason responded that the report should be distributed to voters by the OE. Commissioner Okazaki asked who should author the report and Ms. Mason stated that the OE could decide that.

Dan Purcell - Mr. Purcell testifies that you cannot have a permitted interaction group of one. The minimum for a permitted interaction group is two. He states that for the Big Island, it was misleading to the public to say that there was a

committee appointed and yet there was only one person on this committee. He also noted that there were no notices posted for any committee meetings that were held. Chair Marston clarified that these were subcommittees that were assigned to investigate the Primary Election issues.

Mr. Purcell noted that the Board of Registration is administratively attached to the OE. He states that he had problems with their meetings. The meeting room was inaccessible to the public with disabilities and no notice offering assistance was printed on the agenda.

He also added that it is the responsibility of the Chief Election Officer to work on increasing voter turnout. It is in the statutes and it should be considered when the CEO is evaluated. He also suggested that the polls give out "I Voted" stickers to the voters after voting at the polls.

Anna Bain - She noted that she would like to give her testimony after the video conferencing agenda item is discussed.

VI. Discussion of Video Conferencing Elections Commission meetings, discussion and action, if appropriate

Chair Marston reported that he consulted with David Rosenbrock from the Office of Elections regarding the scheduling of video conferencing future Commission meetings. He reports that there are three (3) State video conferencing sites on Oahu. One is at Kapolei with a capacity of 46 people. There's also one at Kalanimoku with a capacity of 20 people and lastly, one at the Capitol which is not set up to video conference to the counties. The video conferencing from the Capitol must be bridged. For the neighbor islands, there is one state site for each county. However, the site for Kona needs to be bridged like the Capitol.

He continues to report that there are two options when scheduling video conferencing. One is that Commissioners can stay on their respective islands and attend the meeting through video conferencing. The problem with this is that if a site is cut off for 15 minutes or longer or if the connection cannot be restored, the meeting is considered over. This information was relayed to him by OIP. Commissioner Okazaki asked if this was true and General Counsel Aaron Schulaner responded that one of the problems is that if a site with Commission members is cut off, you are impacting quorum. Commissioner Okazaki asked if this was a technical issue as opposed to a listening or verbal issue. General Counsel Schulaner responded that he wasn't sure but the idea is that if a site is cut off, you are no longer able to have a meeting so the meeting should be cancelled. Commissioner Okazaki then asked about having a webinar. General Counsel Schulaner asked if this would be in concert with having the video conference and she responded yes. General Counsel Schulaner responded that

he feels the same concepts would apply. Once a site with Commissioners is cut off, you no longer have a quorum and the meeting will need to be cancelled. The other issue is that if a site is cut off, you are no longer meeting the notice of meeting which indicated to the public that the site would be available to them. Another option, which he thinks the Chair will discuss, is offering the public courtesy sites. This will allow the Commission to hold a meeting at one location and have the public attend at other locations as a courtesy. This will meet the notice of meeting where the meeting is technically being held at a specific location and courtesy sites are made available to the public.

Commissioner Okazaki stated that we must not be the only Commission trying this. Have other Commissions had these issues? General Counsel responded that other major Boards and Commissions do not do video conferencing because of the concerns such as meeting quorum and so forth. They may have courtesy sites on occasion but they do not routinely have these types of meetings due to the concerns involved.

Chair Marston stated that the second option he was going to present would be to hold the Commission meeting here in Honolulu and have courtesy sites opened on the neighbor islands as previously mentioned by General Counsel. This would require the OE to provide staff to monitor these sites during the meetings. The other issue is the Commission providing multiple meeting dates so that there are options when trying to schedule multiple sites. Another option he presented was having OLELO come to live stream the meeting, but this would not allow for interaction between the groups and would not meet the purpose of trying to video conference the meetings.

Anna Bain suggested that since video conferencing seems to be difficult teleconferencing should be considered. Chair Marston said that he will look into the possibility of doing that and report back to the Commission.

Commissioner Vierra noted that the County of Hawaii experienced a similar situation with the Council meetings since the residents of Kona could not make it into Hilo to attend the meetings. He noted that they conducted video conferencing for the citizens but the Council all met in one location to avoid the situation covered by General Counsel.

- VII. Discussion of reports given by subcommittees for the Primary Election
 - a. Report given by Commissioner Vierra regarding the Big Island Primary Election for precincts affected by weather conditions in District 4, discussion and action, if appropriate

Commissioner Vierra stated that he reported the findings of his investigation at the last Commission meeting. He reported that he spoke with Molly Stebbins, Hawaii County Corporate Counsel, Pat Nakamoto, Hawaii County Election Administrator and Stewart Maeda, Hawaii County Clerk, to confirm the information that was provided to the Commission by Chief Election Officer Nago. He was unable to speak with Darryl Oliveira from Civil Defense because Mr. Oliveira was busy with the lava flow. As he reported previously, all the information provided by CEO Nago was confirmed by the individuals he interviewed.

Commissioner Vierra states that since giving his report at the last meeting, he has been approached by several individuals including politicians, to ask CEO Nago additional questions. They would like these questions and answers on the record. Commissioner Vierra begins his questioning.

Q: (Vierra):

You discussed at length in your August 21st report that “the conduct of an all absentee mail election is an extraordinary remedy”. Why did you then issue a proclamation hastily authorizing the use of absentee ballots pursuant to HRS 15-2.5 for the postponed election?

A: (Nago)

To go back, the hurricane happened the day before the election which was Friday and the Primary Election was on Saturday. When we talked to the Civil Defense, Corp Counsel and the County Office on Thursday mid-day, it was told to us that the roads were not accessible and there was no guarantee when those roads could be made accessible. Also, there was no timeline when those roads could be made accessible. So the only option we had was to issue the proclamation authorizing the use of absentee ballots.

Q: (Vierra)

Your report states that “administrative steps associated with conducting an absentee mail postponed election have the potential to take up the bulk of the 21 day postponement period”. Question is, shouldn't you have thought of this before making the proclamation? Then, 2 days later you issue another proclamation establishing that the postponed election would be conducted on August 15th at the Keonepoko Elementary School between normal polling hours despite the fact that you had issued a proclamation two days earlier declaring the use of absentee ballots.

A: (Nago)

As I stated earlier, when we spoke with the Civil Defense, Corporate Counsel, and the County Clerk's Office, we were told there was no timeline on when the roads would be accessible so we decided on Absentee Mail.

Subsequently, on Monday afternoon after the election, we spoke with Civil Defense to determine accessibility and we were told that the roads were now clear. Holding an election by mail is not something that you do lightly. That's why when the roads were clear, and since it is our duty to make sure the election is held as soon as it is practical, we held it as a polling place election.

Q: (Vierra)

Did you consider the consequences of making the decision to proclaim the use of absentee ballots and two days later change that proclamation?

A: (Nago)

When the proclamation was issued, we used information that we received from the Big Island people that were very familiar with the situation and knew best what was going on at the time. They were unable to tell us when the roads would be accessible. When the proclamation was issued, we needed to give a reason and at that time the roads were not open and there was no accessibility.

Q: (Vierra)

Did you consider that voters would get confused after hearing and anticipating that they would receive mail in ballots, only to find out two days later that it was changed?

A: (Nago)

We did. However, it is our duty to hold the elections as soon as practical so one of the things we did was mail out letters notifying voters that the election will be held Friday at Keonepoko Elementary. The letters informing them of the change were sent to those voters that had not yet voted.

Q: (Vierra)

You state that "our office does not have the authority to take action regarding the polls once they open on Election Day". With this in mind, when was the last time you checked with the Big Island officials regarding the condition of the roads and the ability of the voters to get to the polls? According to the report it was on August 8th, the day before the election.

A: (Nago)

It was the day before the election. We relied on them to inform us of any changes and the status of the polling places prior to them opening. We did not receive that. When we found out on election day that the roads were closed, we contacted Civil Defense to collect information to pass on to the Governor's Office since he is the only one that can do anything once the polls open. Civil Defense told us that they were not receiving calls that the roads were closed. We relied on their expertise.

Q: (Vierra)

Did you fly up to Puna the days following the election prior to making the second proclamation to hold the election within 6 days, to observe the situation first hand?

A: (Nago)

No. We relied on the experts of the subject matter which is Civil Defense and secondly, the County Clerk's Office who were there on the ground.

Q: (Vierra)

Why were you not proactive and on top of this by arranging for Big Island officials to check in with you at least an hour before the polls opened to make one last assessment?

A: (Nago)

That is something in the future that we could do. What we did was rely on them to tell us of any status changes and we didn't receive any. I'm not even sure if they were aware of any changes like roads being closed prior to the polls being opened. Election day starts at 3:00 am for us. I'm not sure if they were even aware of any changes or they would have called us.

Q: (Vierra)

In your report you say, "The State must work cooperatively with the counties, this includes consulting with the counties in regards to how a postponed election due to a natural disaster will be best addressed and that it must consider the input of and work cooperatively with all impacted state and county governmental agencies". The question is why did you not return the

call to Senator Ruderman's when he called to discuss with you the postponed election plans?

A: (Nago)

He called on election day. Election morning is very chaotic for us. I did get the message and had our General Counsel return the call. Our General Counsel left a message and Senator Ruderman did not return our call. I did speak to him, I believe it was on Monday, and basically he told me that he tried to call and discuss that the roads were blocked. I told him that we did relay his message to the Governor and we explained that only the Governor can extend the polls once the polls are open on election day.

Q: (Vierra)

You stated, "our office has a duty to conduct elections in a timely manner without unjust delay." The question is what do you consider an unjust delay? Is it 6 days, 7 days, 21 days? What is your interpretation?

A: (Nago)

As soon as practicable. So, once the roads were open and there was access, we held the election.

Commissioner Vierra stated that these were the questions that his people wanted asked and answered. He thanked CEO Nago for his responses.

Anna Bain was allowed to testify. She testified that she has worked as a precinct chair, poll worker, and in the Control Center. As an outsider, she will give her observations and recommendations. She started with the Office of Elections mission statement. She states that the mission statement says that the Office of Elections is charged with conducting an election in an orderly, auditable and legal manner. They are to collect the votes, tally, audit, and publish the votes. She states that she disagrees with this and feels that the mission statement should be to defend the constitution and to allow everyone who wants to vote, to vote and have a say in their government. She feels that voting should be made easier for the voters to improve voter turnout.

Ms. Bain states that there needs to be a change in the policy which now only gives the Governor the authority to implement any changes after the polls open. She feels the Governor could possibly be a candidate during the election and no candidate should be given that authority so this task should be given to the Chief Justice. She also feels that the Commissioners should be given the authority to make decisions during an emergency on their

respective islands. She also feels that a grant writer and a chief of staff should be hired by the Office of Elections to assist the Chief Election Officer.

- b. Report given by Commissioner Orikasa regarding the Maui County Ballot Counting issue which occurred during the Primary Election, discussion and action, if appropriate

Commissioner Orikasa stated that he submitted his report at the last Commission meeting and feels that the deficiency was addressed and corrected. He had nothing further to report and thanked staff for doing a good job.

- c. Report given by Commissioners Young and Okazaki regarding the Office of Elections' conduct during the Primary Election, discussion and action, if appropriate

Commissioner Okazaki stated that she had nothing more to add to the report given by Commissioner Young at the last meeting. She did comment that she was very disturbed with the vendor for not even considering talking to CEO Nago before making decisions regarding the Maui County vote situation. It also disturbed her that the vendor did not consider the consequences of his actions and how it would impact CEO Nago. Chair Marston asked how long the current contract is for and CEO Nago responded that it's good for 2016, 2018, and 2020.

- VIII. Chief Election Officer report on the General Election regarding the problems encountered during the General Election, discussion and action, if appropriate

CEO Nago reported that the usual start up issues were experienced during the General Elections and these issues were resolved quickly. For the Office of Elections it was a fairly smooth election. There were enough ballots since the office is using the new equations. The audits for Oahu are still on going and the deadline for filing an election contest is November 24th.

CEO Nago continued to report that the office will begin working on the next election with the implementation of the new statewide voter registration system which will allow voters to register on line in 2016. Same day voter registration will also be implemented in 2016.

Commissioner Okazaki asked what things are being done to address the League of Women Voters concerns regarding voter education. CEO Nago responded that previously it was in the statute that the Legislative Reference Bureau provide voter education for ballot measures. They would put together the pamphlet and the Office of Elections would distribute it. However, the State and the Office of

Elections was sued based on the interpretation of a question. Since that lawsuit, the Legislature changed the law dropping the requirement. Commissioner Okazaki stated that the League of Women Voters has a good point when it comes to the Office of Elections providing voter education for ballot measures and it is something OE should explore. CEO Nago noted that the OE will explore other jurisdictions to see how ballot measure education is handled.

Commissioner Berg asked CEO Nago how signatures will be validated for online voter registration. CEO Nago responded that one of the requirements for online voter registration is that the individual has to have either a driver license or a state ID. The signatures will be verified with those on these two forms of ID. Commissioner Berg then asked for any feedback on the agreement the OE had with a non-profit group. She wanted to know how many people they actually reached and registered and how many of these newly registered people actually voted. CEO Nago responded that unfortunately, the group was unable to follow through on registering people in the targeted areas so the OE sent voter registration forms to the residents in these areas. He said that he will get the number for the amount of people that were registered but will not be able to get the number of people that voted yet. When that number is available, he will give it to the Commission. CEO was asked if there was any payment or resources given to the non-group and CEO Nago responded no.

Commissioner Vierra asked if there were any problems with the Puna area during the election and CEO Nago responded no. Precinct 04-03 was split in an effort to be more pro-active in giving the residents more polling place options.

Commissioner King asked CEO Nago if he had any thoughts regarding voter turnout. CEO Nago responded that aside from the new online voter registration and same day voter registration, a decline in voter turnout is a nationwide trend. It is an issue that will take more than the Office of Elections to solve. As an example, it will take civic education in schools which we will be working on with the DOE. Issues and interest in candidates also spark interest in voting. The office has tried to make it as easy and convenient as possible. One is by combining voter registration forms with permanent absentee applications. It will take more than just the Office of Elections to address and correct this issue.

Commissioner Moore asked CEO Nago if the OE receives monies from HAVA or any other organization for training and voter education. CEO Nago responded that voter education is primarily funded by HAVA funds. The radio and TV ads are paid for by federal funds. Commissioner Moore asked if OE is taking in the maximum amount of funds. CEO Nago responded that there are no more new HAVA funds coming in so we are relying on and using whatever funds we received years ago. Commissioner Moore asked if the funds are to be spent for specific purposes or does he have discretion on how he spends it. CEO Nago

responded that a plan had to be developed and submitted in order to receive the HAVA funds and any HAVA monies spent need to be tied into that plan. Commissioner Moore asked if monies can be used for educating candidates. CEO Nago answered that there are restrictions and he will check into whether that is allowed. Commissioner Moore noted that she mentioned this because of the feedback she received from candidates on Maui.

Commissioner Okazaki asked CEO Nago how he felt the election went. CEO Nago responded that the election went smoothly and there were no major issues throughout the day. There were a few start up issues but they were addressed right away. Commissioner Okazaki suggested that the OE look at the states that had decent voter turnouts and use their practices as a model to improve our voter turnout.

Commissioner Berg noted that she visited a polling place on Kauai and noticed a poll worker who had just started that day and had not received any training. She inquired if that was normal and was told yes, it is common. So it is important, as mentioned earlier by Ms. Mason, to recruit and train workers and perhaps call them to follow up and make sure they work and are available on election day. Commissioner Okazaki asked if OE was in charge of this, CEO Nago responded no but the OE works with Kauai County and asked Commissioner Berg for the list so that he could follow up with them.

Commissioner Vierra asked if anyone participated in doing split shift work at the polls. CEO Nago said that he was not aware of any non-profit that took advantage of split shifts but it is something that the OE will try doing again in the upcoming election. The biggest concern with doing split shifts is the second shift worker not showing up. So a plan needs to be developed to make sure if this happens, the polling place can still be properly staffed. Commissioner Berg asked that we try to contact Ms. Magoun from Kauai and revisit her original pilot program.

Commissioner Moore asked if anything could be done to improve things for the Precinct Trainers such as better pay and being paid on time. CEO Nago said that he would check into it.

- IX. Open Forum: Public comments on issues for the Commission's consideration for the next Commission meeting and action, if appropriate. Presentations limited to three minutes.

Dan Purcell commented the he has attended several County Council meetings and remembered them working very well. He stated that there are several more video conferencing sites on the island besides the ones that were mentioned. David Rosenbrock responded that the three sites mentioned were DAGS sites.

Dan Purcell also noted that the state of California provides good ballot measure information for voters.

Chair Marston asked for a motion to enter into Executive Session. A motion was made by Commissioner Vierra and seconded by Commissioner King and approved by the remaining Commissioners.

The Commission resolved into Executive Session at 11:41 am

X. Executive Session

Pursuant to Section 92-5(a)(4), HRS, to consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities.

Pursuant to Section 92-5(a)(2), HRS, to consider evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of matters affecting privacy will be involved, provided that if the individual concerned requests an open meeting, an open meeting shall be held.

Evaluation of Chief Election Officer's actions during the Primary and General Election, discussion and action, if appropriate

The Commissioner resolved into open meeting at 12:24 pm.

XI. Adjournment

Chair Marston made the following statement:

The Commission finds that while there were problems during the Primary Election, the actions of the Chief Election Officer and the Office of Elections conform to existing statutes covering the election process and the actions taken were only done after consulting with the State's authorities including the Attorney General. In addition, no significant issue arose during the General Election and proceeded without incident. While the Commission will continue to evaluate the actions of the Office of Elections, the Commission has opted to take no further action as it applies to the 2014 elections.

Chair Marston also noted that the Commission feels that it would be appropriate for the Legislature to look into the current statutes as it applies to natural disasters and recommends that it happen.

With no further business before the Commission, Chair Marston asked for a motion to adjourn the meeting. Motion was moved by Commissioner Vierra,

seconded by Commissioner Okazaki and approved unanimously by the remaining Commissioners.

Next meeting date to be announced.

Elections Commission meeting was adjourned at 12:26 p.m.

Respectfully submitted,



Carolyn L. Roldan
Elections Commission Secretary