



**STATE OF HAWAII
ELECTIONS COMMISSION**

F.M. SCOTTY ANDERSON
ELECTIONS COMMISSION CHAIR

MINUTES

**REGULAR MEETING OF THE
ELECTIONS COMMISSION**

**JUNE 27, 2016 @ 10:00 AM
STATE OFFICE TOWER
235 SO. BERETANIA STREET, ROOM 204
HONOLULU, HAWAII 96813**

Commissioners in Attendance:

Mr. F.M. Scotty Anderson, Chair
Mr. Kenneth Hiraki
Mr. Charles King
Ms. Carol Kitaoka
Ms. Terry Lynn Moore
Mr. Victor Vierra

Technical Support Staff in Attendance:

Ms. Valri Kunimoto, Department of the Attorney General
Mr. Scott Nago, Chief Election Officer (CEO)
Ms. Ruthie Ah Hee, Office of Elections
Mr. Joseph Bird, Office of Elections
Ms. Nedielyn Bueno, Office of Elections
Ms. Judy Gold, Office of Elections
Ms. Jaime Kataoka, Office of Elections
Mr. Jonathan Keen, Office of Elections
Mr. David Rosenbrock, Office of Elections
Mr. Rhowell Ruiz, Office of Elections
Mr. Aaron Schulaner, Office of Elections
Ms. 'Auli'i Tenn, Office of Elections
Ms. Jamee-Lee Toro-Lopes, Office of Elections
Ms. Kristen Uyeda, Office of Elections

Guests in Attendance:

Mr. Bruce Douglas, Community Farmland Council
Ms. Kimberly Ribellia, City and County of Honolulu
Ms. Beth Savitt, The SHAKA Movement/ S.A.F.E. Council
Sen. Sam Slom
Mr. Wayne Yoshioka, Hawaii Public Radio (KHPR)

PROCEEDINGS

I. Call to Order

Chair Anderson called the meeting to order at 10:00 a.m. on June 27, 2016 at the State Office Tower, Room 204.

II. Roll Call and Determination of a Quorum

Elections Commission (EC) Secretary conducted roll call. Commissioners Berg, Orikasa, and Young were not in attendance. All other Commissioners were in attendance and the Commission had a quorum.

III. Approval of Minutes for the Meeting of May 18, 2016

Commissioner King moved that the minutes be approved; the motion was seconded by Commissioner Hiraki and approved unanimously by the Commissioners.

IV. Public Testimony – Any interested person may submit comments or testimony on any agenda item

Senator Sam Slom: Sen. Slom requested that the “Public Testimony” agenda item be placed after CEO Nago’s Status of Operations Report for future meetings. He stated that July 1st is the deadline for CEO Nago’s report to the Legislature regarding the statewide voter registration system, and said that he was hoping to hear about the report at today’s meeting. Sen. Slom also expressed interest in receiving a status update on the voter education program. He noticed on the agenda that the EC would be going into Executive Session to discuss a possible salary adjustment for CEO Nago. Sen. Slom said that he wanted to testify against any salary increase right now, and suggested that the EC wait until after the 2016 elections to make that determination.

V. Status of Operations Report from the Chief Election Officer, discussion and action, if appropriate

CEO Nago reported that the candidate filing deadline was June 7, 2016, and that there were a total of two candidate challenges. One challenge was determined invalid, and the other is currently being disputed in court. Following candidate filing, the paper ballots have been proofed and are currently being printed. The Office of Elections (OE) received the UOCAVA ballots, and the deadline to mail them is June 29, 2016, which is 45 days prior to the election.

CEO Nago explained that OE is required to provide a report to the Legislature regarding the new statewide voter registration system via SCR 70, SD 1 and SR 41, SD 1. A draft is due no later than July 1, 2016, and a final status update is due by December 29, 2016. The new voter registration system is currently being used in bits and pieces; it will undergo testing in 2017 so that it can be implemented by the 2018 elections.

Chair Anderson asked CEO Nago what would happen if the candidate challenge currently in court does not get settled by the June 29th deadline to mail the UOCAVA ballots. CEO Nago said that if that were to occur, or if someone were to resign after the deadline, he would need to issue a proclamation stating that the individual is not a qualified candidate on the ballot.

Commissioner Vierra mentioned the tropical storm that had hit Hawaii Island on Primary Election Day in 2014, and asked CEO Nago what he had learned from that experience. CEO Nago explained that if they had initially informed the public that the postponed elections would be at a specific polling place location rather than an all-mail election, there may have been less confusion.

VI. 2016 Legislative Session

a. Senate Concurrent Resolution 70 / Senate Resolution 41

Commissioner King asked if CEO Nago would like to provide more information on TotalVote, the new voter registration system. CEO Nago explained that the report to the Legislature expands on what he reported at the last EC meeting. He reiterated that the “old” voter registration system is still in use, in conjunction with bits and pieces of the new system (e.g., online voter registration). CEO Nago stated that they will completely migrate over to TotalVote in 2018, at which time the system will have a lot more functionality, including the ability to track absentee ballots.

Commissioner King said that in reading the report, it seems as though there might be a problem with the City and County. CEO Nago clarified that their original intent was to run the two systems in parallel to test functionality, and they were initially told that it would be possible to do so. After they had decided to pursue this path, they were then told that the systems could not retrieve the data in a timely manner and therefore could not run in true parallel. Thus, the testing will commence in 2017 prior to the 2018 elections. Commissioner King asked if the other counties are running the systems in parallel, and CEO Nago said they were not. Commissioner King requested that the EC receive a copy of the list of questions and tasks from the Legislature after CEO Nago provides the report to them, and CEO Nago agreed to provide any feedback to the EC.

VII. Update on ADA Accessibility Concerns – Expressed by Mr. Peter Fritz at Elections Commission Meeting on May 18, 2016

CEO Nago stated that OE provided a response to Mr. Fritz addressing his concerns but some concerns could not be addressed for security reasons according to the Office of Enterprise Technology Services (OETS).

Commissioner Vierra asked if OE's refusal to make these changes interferes with ADA standards, to which CEO Nago replied that he does not think so.

Commissioner Moore asked if there is an authority that can confirm this. CEO Nago explained that the Disability and Communications Access Board (DCAB), the state agency responsible for ADA related matters, had no concerns with OE's websites.

Chair Anderson asked if OE has heard back from Mr. Fritz, to which CEO Nago answered that they did not receive a further response from Mr. Fritz.

Commissioner Moore commented that she appreciated the detail of CEO Nago's response to Mr. Fritz. CEO Nago thanked her, and said that OE appreciated that Mr. Fritz brought his concerns to their attention so that they could improve the website.

VIII. 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.

Ms. Beth Savitt: Ms. Savitt introduced herself as the President of the SHAKA Movement and the Vice President of the Agricultural Fund for the Environment (S.A.F.E.). She acknowledged that some of the EC members have completed

their terms and thanked them for their service. Ms. Savitt said that she had heard that the EC would no longer hold teleconferenced meetings with sites on the neighbor islands, and expressed concern the public will be denied the ability to participate and the right to transparency. She shared that she flew over from Maui to attend today's meeting, and expressed worry that others who cannot afford a plane ticket will be excluded from participating. Ms. Savitt explained that the SHAKA Movement fought hard and won the vote on the Moratorium, which was ultimately deemed uncertified. She presented the EC with three questions:

1. The Moratorium on Maui has never been certified by either the State (which actually can't) or County (which is supposed to). Is this a correct statement?
2. Was the rest of that election certified?
3. Who pulled the Moratorium from certification? What are the steps taken to do this?

Chair Anderson asked CEO Nago if he is able to answer any of these questions. CEO Nago stated that OE certifies the accuracy of the counts, however the counties determine whether or not the amendments pass. Ms. Savitt disclosed that when she spoke with Maui County Clerk, Mr. Danny Mateo, he said that the certification was pulled out by the State. CEO Nago and Commissioner Moore agreed that this statement did not sound accurate.

Commissioner Moore apologized to Ms. Savitt for having to fly from Maui to attend today's meeting. She expressed her support for teleconferenced meetings at least through November of this election year, as it is important that people are able to participate easily. Commissioner Moore stated that she does not understand why the Moratorium was not certified, and that she had thought that the tie up was in the legal process. She asked Deputy AG Valri Kunimoto if she is able to answer any of Ms. Savitt's questions.

Deputy AG Kunimoto explained that the only contact the AG's Office has had regarding the GMO issue was a hearing before Judge Rhonda Loo during which she issued a ruling at the State court. She said that the State has not been involved in the litigation, and that the cases were just heard by the 9th Circuit Court last week. Deputy AG Kunimoto stated that the county would be responsible for the certification, as it is a county charter provision and part of a county election. She suggested that Ms. Savitt ask for clarification from their lawyers, acknowledging that the SHAKA Movement has very good representation. Ms. Savitt replied that their lawyers have not been able to answer her questions adequately.

Commissioner Moore asked Deputy AG Kunimoto for her legal understanding of the issue, and expressed concern that the responsibility rests with the EC to find

a solution. Deputy AG Kunimoto clarified that the county operated under the direction of the court. Ms. Savitt asked if the Moratorium was pulled from certification because the judge made a court order. Deputy AG Kunimoto agreed, and said that she thinks it was a state court proceeding, rather than a federal court proceeding.

Commissioner Moore asked CEO Nago if he could try to find an answer for Ms. Savitt, to which CEO Nago agreed. Commissioner Moore stated that she would personally follow up with Mr. Mateo, as well. Deputy AG Kunimoto suggested that Ms. Savitt also raise her concerns with her counsel. Ms. Savitt thanked the EC, and announced that The SHAKA Movement will be doing a nonpartisan ballot informational handout targeted toward encouraging first time voters.

Mr. Bruce Douglas: Mr. Douglas introduced himself as a representative of the Community Farmland Council on Maui. He explained that this is the second time that Maui's group has gathered a sufficient number of signatures for a ballot initiative for farmers, however, the county had a couple of issues with their petition. The county clerk's office claimed that nearly 1,100 signatures were invalid because they were not notarized, and they counted a total of 1,600 less signatures than Mr. Douglas' group counted. Mr. Douglas cited the Freedom of Information Act to request copies of their petition sets, in order to examine the discrepancies themselves. He stated that Maui County is the only county in Hawaii that requires these forms to be notarized, which he believes is a misinterpretation of the requirement. Mr. Douglas went on to say that the deadline has passed to get their initiative on the 2016 ballot, however, he hoped that the EC could assist as it is their responsibility to ensure fair and honest elections. Mr. Douglas added that he would like to settle this issue without having to go to court, if at all possible.

Chair Anderson asked CEO Nago if he would like to comment on Mr. Douglas' issue. CEO Nago explained that OE only puts questions on the ballot proposed by the Legislature. The petition process for ordinances and charter amendments such as Mr. Douglas' are handled exclusively by the counties.

Commissioner Vierra asked who is responsible for settling issues when there are disputes. CEO Nago replied that OE would not be notified of these issues, but instead the county clerk's office would handle them through their judicial process.

Chair Anderson asked Mr. Douglas if their petition sets were taken to the county clerk and received by someone. Mr. Douglas confirmed that they were, and stated that he waited at the clerk's office while each page was timestamped and the number of pages was certified. Mr. Douglas shared that they had not counted the pages of the petition sets before submitting them. He added that the

county clerk told him that if there is a dispute, the Community Farmland Council would need to get a lawyer and settle it in court.

Commissioner Vierra asked Deputy AG Kunimoto if the EC would have any involvement in this issue. Deputy AG Kunimoto told Mr. Douglas that his is a county issue, therefore the state or the EC would not have any jurisdiction over it. She went on to say that she understands that while Mr. Douglas prefers not to go through any legal proceedings, that may be his only option at this point.

Commissioner Moore asked Deputy AG Kunimoto if the EC would be responsible for investigating these types of issues or providing a forum for the discussion. Deputy AG Kunimoto explained that the EC has the authority to hold hearings, but they should only be related to matters within the EC's jurisdiction. She reiterated that this is an issue that should be taken up and settled with the county.

Commissioner Moore asked CEO Nago and Deputy AG Kunimoto if they could comment on the notary requirement for the petition sets. Deputy AG Kunimoto stated that the requirement would fall under the county's jurisdiction. CEO Nago said that he was not aware of the notary requirement, but maintained that the state has no involvement with regard to the charter amendments.

Mr. Douglas clarified that the question is whether the affidavit needs to be notarized at all, and reiterated that no other county in the State of Hawaii has this requirement. He explained that many affidavits are simply signed and not notarized, and that it is only Maui's interpretation that the affidavits need notarization. Chair Anderson stated that regardless of the fact that Maui County is the only county that requires the affidavits to be notarized, it is their rule that must be followed.

Commissioner Vierra suggested that Mr. Douglas' only option at this point may be to confront the Maui county clerk's office and to bring their issue to court. Mr. Douglas said that if they choose that route, the Community Farmland Council's initiative will not appear on the 2016 ballot.

Commissioner Moore thanked Mr. Douglas for attending today's meeting, and emphasized public access for future EC meetings so that people would not have to pay to fly to Oahu in order to participate actively. She told Mr. Douglas that she will be following up with Mr. Mateo in regards to his petition issue as well.

In regards to broadcasting meetings, Mr. Douglas shared that these types of meetings are conducted in Maui County. At these meetings, individuals are able to go to the county offices on Molokai and Lanai to listen and/or testify via remote or speaker phone. Chair Anderson stated that the last EC meeting did include

video conference sites on the neighbor islands, however the total attendance was zero. Chair Anderson explained that there is a lot that goes into organizing a meeting with video conference sites, including flying staff over to man the neighbor island sites, coordinating the availability of the sites, etc. Chair Anderson said that it would be ideal to have these video conference sites available for every meeting, however, it is not practical due to the costs involved and the low participation. Mr. Douglas stated that he understands.

Commissioner Moore said that she wanted to take the opportunity to thank her fellow commissioners for their service, and commend Chair Anderson for running efficient meetings. She shared that her personal motivation to serve on the EC was prompted by her desire to see greater public access and transparency in their meeting process, while promoting voter education and registration. Commissioner Moore stated that she feels that they have accomplished that through their thoughtful discussions and actions. Based on the four-year election cycle, she went on to say that they will be in peak time over the next four and a half months, and that they may see record numbers due to the heightened interest in the presidential contest. For this reason, Commissioner Moore implored the EC to continue teleconferenced meetings at least through November. She said that she learned a lot from Mr. Peter Fritz who had raised ADA accessibility concerns at the last EC meeting, and because of that, also learned from CEO Nago's detailed response and how our system handles and remedies problems. As the EC continues to work to improve the election process, Commissioner Moore reminded the EC members that the system belongs to everyone, and not to limit the input, energy, or enthusiasm that is created through inclusivity. Commissioner Moore told the rest of the EC that it has been an honor to serve with each of them, and thanked them for the opportunity.

With no further comments, Chair Anderson asked for a motion to go into executive session to discuss a possible salary adjustment for CEO Nago.

The motion was made by Commissioner Vierra, seconded by Commissioner King, and approved unanimously by the Commissioners.

The Commission resolved into Executive Session at 10:46 a.m.

IX. Executive Session

Pursuant to Section 92-5(a)(2), HRS, discuss the salary adjustment of the Chief Election Officer, if any, pursuant to Section 11-1.6(e), HRS, and action, if appropriate.

The Commission resolved into open meeting at 11:01 a.m.

- X. Salary adjustment of the Chief Election Officer, pursuant to 11-1.6(e), HRS, if applicable.

Chair Anderson told CEO Nago that the EC will postpone their decision of a salary adjustment, if any, until after the 2016 Elections.

Chair Anderson asked CEO Nago if he was able to contact the Maui County Clerk's Office. CEO Nago confirmed that he did, and reported that the SHAKA Movement's Moratorium was not certified because of the court order issued. He clarified that when Mr. Mateo was told by the "state" not to certify the amendment, he was referring to the Hawaii State Courts, not OE. Commissioner Moore asked if the court has that authority, to which Deputy AG Kunimoto agreed that they do.

- XI. Adjournment

Commissioner Vierra asked if the EC will be scheduling the next meeting, to which Chair Anderson replied that they will convene as needed.

With no further business before the Commission, Chair Anderson adjourned the meeting.

Elections Commission meeting was adjourned at 11:05 a.m.

Respectfully submitted,



Jaime Kataoka
Elections Commission Secretary