



**STATE OF HAWAII
ELECTIONS COMMISSION**

F.M. SCOTTY ANDERSON
ELECTIONS COMMISSION CHAIR

MINUTES- DRAFT

REGULAR MEETING OF THE
ELECTIONS COMMISSION

DECEMBER 13, 2018 @ 10:00 AM
STATE OFFICE TOWER
235 SOUTH BERETANIA STREET, ROOM 203
HONOLULU, HAWAII 96813

Commissioners in Attendance:

Mr. F.M. Scotty Anderson, Chair
Mr. Bill Bates
Mr. Michael Curtis
Ms. Carol Seielstad
Ms. Cynthia Takenaka
Mr. Victor Vierra

Technical Support Staff in Attendance:

Ms. Valri Kunimoto, Department of the Attorney General
Mr. Scott Nago, Chief Election Officer (CEO)
Ms. Ruth Ah Hee, Office of Elections
Mr. Marc Arakawa, 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
Ms. Jasmine Ko, Office of Elections
Mr. Rhowell Ruiz, Office of Elections
Mr. Aaron Schulaner, Office of Elections
Ms. 'Auli'i Tenn, Office of Elections
Ms. Kristen Uyeda, Office of Elections

Guests in Attendance:

Ms. Janet Mason, League of Women Voters of Hawaii

Ms. Corie Tanida, Common Cause Hawaii
Mr. Tommy Waters

PROCEEDINGS

I. Call to Order

Chair Anderson called the meeting to order at 10:00 a.m. on December 13, 2018 at the State Office Tower, Room 203.

II. Roll Call and Determination of a Quorum

Elections Commission (EC) Secretary conducted roll call. Commissioners Kuwada, Okazaki, Steffey, and Takenaka were not in attendance. All other Commissioners were in attendance and the Commission had a quorum.

III. Approval of Minutes for the Meeting of September 6, 2018

Commissioner Seielstad moved that the minutes be approved; the motion was seconded by Commissioner Bates, and approved unanimously by the Commissioners.

IV. Status of Operations Report from the Chief Election Officer

CEO Nago reported that over 398,000 people voted in the 2018 General Election, and though it was a smooth day overall, a few issues did arise. A candidate of the Hawaii Republican Party had attempted to appoint poll watchers, however CEO Nago explained that the law states that poll watchers are appointed by political parties, not by individual candidates. Thus, the Hawaii Republican Party was able to appoint poll watchers, but the individual candidate was not.

CEO Nago stated that the Office of Elections (OE) did experience some machine issues on Election Day. He said that OE does have a plan in place to troubleshoot or swap out faulty machines. During these times, voters can either stay and wait for the machine to be fixed, or deposit their ballots in a secured box or emergency ballot bin.

CEO Nago said that in Waianae at District Precinct 44-01, there was an issue with *Registration Affidavit Forms* (RAFs). At 4:30 p.m. on Election Day, the polling place called to report that they were running low on RAFs, which were

replenished by a precinct troubleshooter. At 6:00 p.m., they called to report that they had run out of RAFs again. CEO Nago stated that this incident affected approximately 16 voters who had to wait for the replenishment, however all were able to eventually complete the form and vote.

Regarding absentee mail ballots, CEO Nago explained that the law states that any voter who has an absentee mail ballot can drop it off at any polling place within their county on election day. For the General Election, these totaled approximately 9,000. CEO Nago said that this process involves waiting for the ballots to be delivered from the polling places, verifying the signatures, opening the envelopes, and tabulating the ballots.

CEO Nago stated that OE will be submitting three bills for consideration for the upcoming 2019 Legislative Session. One is to remove the last four digits of a voter's Social Security Number as a requirement when signing a candidate's nomination paper. The second bill is to implement automatic voter registration by requiring applicants to affirmatively decline registration when completing an application for a driver license or state ID. The third bill would allow voters with special needs to request an accessible absentee mail ballot.

CEO Nago thanked the 3,500+ election day officials and the various supporting agencies, and said that the election is not possible without them.

Commissioner Takenaka enters at 10:06 a.m.

With regard to the all-mail pilot program for Kauai County, Commissioner Bates suggested that Maui County should also be included. He added that he has an upcoming meeting with a legislator and plans to bring up the topic. CEO Nago commented that while OE's preference would be to implement all-mail statewide, the statute that the Legislature passed allows all-mail voting in 2020 for Kauai County only.

Commissioner Vierra asked CEO Nago if all-mail voting would mean zero open polling places. CEO Nago clarified that every registered voter will receive a ballot in the mail, though voters can continue to vote at an early walk-in site that will be open until the close of polls on election day.

Commissioner Curtis asked CEO Nago if OE has security measures in place between the absentee mail ballots and the early walk-in ballots. CEO Nago replied that if a voter requested an absentee mail ballot and showed up at their polling place on election day, the precinct workers would know if that voter had already cast their ballot or not. If a ballot had already been received for that

voter, they would not be allowed to vote at the polling place. If they had not yet voted, their mail ballot would be cancelled, and they would be allowed to vote at the polling place.

Commissioner Curtis asked CEO Nago if there were any attempts to hack the system. CEO Nago responded that there were none that they were aware of. He added that OE's voting system is not online, and that the Online Voter Registration System is the only thing that is.

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

Mr. Tommy Waters: Mr. Waters stated that he was a candidate for Honolulu City Council, District IV, which runs from Hawaii Kai to Waikiki. He explained that he knocked on 12,000 doors beginning in January, and missed his children's games in order to do the best that he possibly could with his campaign. Mr. Waters said that there are over 100,000 people in his district, and only 36,000 voted in the General Election. In talking to people, he discovered that many do not vote because they do not have confidence in politicians or in the system, and feel that their vote does not matter. Mr. Waters tried to convince these individuals that every vote counts by reminding them that he ran for office four years ago and lost by only 41 votes.

On General Election Day, Mr. Waters recalled that he was down by 64 votes in the first printout, up by 7 votes in the second printout, and up by 70 votes in the third and fourth printouts. The next morning, the fifth printout revealed that he ultimately lost by 22 votes, which is 0.06 of 1% of the total votes cast.

Mr. Waters said that according to Rich Geppart of Hart Intercivic, there are three types of machines: the eSlate, the eScan, and the Ballot Now. The eSlate is a type of computerized voting that prints out a verification of how votes were cast, and the eScan takes a digital picture of the ballot. Mr. Waters stated that he wanted to ask OE what the margin of error is on the machines. He explained that he is a criminal defense attorney, and the DUI machine has a margin of error of .05 that the courts recognize. Mr. Waters said that there must be a margin of error on the eScan machine. He stated that if he outside the margin of error, he will accept it; if he is within the margin of error, a recount should be done for the confidence in the system.

Regarding the Ballot Now machine used for absentee ballots, Mr. Waters stated that to his understanding, the signature on the envelope is verified against the signature on the voter registration form. If the signatures do not match and the machine rejects the ballot, a person physically compares the signatures.

Mr. Waters asked how accurate a machine can be at verifying signatures, and how accurate a person can be comparing signatures on absentee ballots received after midnight on election day. He explained that there were 620 absentee ballots that were invalidated, 91 of which were from City Council District IV, and 64 of those had mismatched signatures. Mr. Waters reiterated that he lost by only 22 votes, and that a recount should be done.

Chair Anderson told Mr. Waters that his questions are valid, and asked CEO Nago if he could provide any answers to them. Deputy AG Kunimoto pointed out that these issues are part of the litigation that is ongoing right now, and that they cannot be discussed publicly. She suggested that the EC continue the discussion in executive session.

Commissioner Curtis asked Deputy AG Kunimoto if there is some public record regarding the ballot counts that can be addressed during open session without jeopardizing the case. Deputy AG Kunimoto clarified that there are two lawsuits: one by Mr. Waters and one by 30 voters, and that the issues raised by Mr. Waters are currently before the Supreme Court.

Commissioner Takenaka asked if the EC is able to authorize a recount. Deputy AG Kunimoto replied that the contests have been filed with the Supreme Court at this point. Commissioner Takenaka asked if the procedures for validating signatures on absentee ballots is within the purview of the litigation. Deputy AG Kunimoto answered that she is unsure if CEO Nago is able to address that since absentee ballots are the responsibility of the City Clerk's Office. Mr. Aaron Schulaner (OE) introduced himself as the General Counsel for CEO Nago, and said that he wanted to go on record that Article 2, Section 10 states that any contested election is within the jurisdiction of the court. He added that the Supreme Court has sole jurisdiction over this contested election, and discussing it any further may risk getting into their jurisdiction. Mr. Schulaner reiterated Deputy AG Kunimoto's suggestion that CEO Nago can speak to the EC in executive session so as not to violate the Supreme Court's jurisdiction.

Commissioner Vierra asked Mr. Schulaner how a tied election would be addressed. Mr. Schulaner responded that there is a statute that addresses a calculation that would determine who would win a tied election. Commissioner Vierra asked Mr. Schulaner if there is anything in statute that addresses the issue of a 22-vote difference. Mr. Schulaner repeated that the Supreme Court has jurisdiction over contested elections.

Chair Anderson told Mr. Waters that his concerns are legitimate, and that the EC is aware of them. He suggested that if anyone is serious about wanting

automatic recount procedures, they could talk to their legislators about making a change to the election laws.

Commissioner Bill Bates: Commissioner Bates shared that he visited five polling places in Maui County on General Election Day: two in Kahului, one in Paia, one in Haiku, and one in Spreckelsville. He reported that four out of the five precincts were experiencing difficulties. Polling place staff had trouble getting their calls answered by the Control Center in Wailuku, which was the same issue that occurred in 2016. Commissioner Bates said that after speaking with CEO Nago this morning, he learned that this is a County staffing issue. In Haiku, Commissioner Bates stated that the line of voters extended to the parking lot, due to the polling place being understaffed. One polling place worker expressed to Commissioner Bates that he will not be returning to work future elections. Chairpersons also complained about workers attending the training, but failing to show up to work on election day.

VI. Biennial Evaluation of the Office of Elections to Report to the Legislature

Chair Anderson stated that the EC is required to submit a report of OE to the Legislature 20 days before the start of the next legislative session. He told the Commissioners that their meeting packet contains a copy of the report that was submitted in 2016, and that they are welcome to provide any input. Chair Anderson asked when opening day of the legislative session is, to which EC Secretary replied January 16th.

VII. 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.

No public comments were made.

With no further comments, Chair Anderson asked for a motion to go into executive session as stated in the agenda, i.e., pursuant to Sections 92-5(a)(2) and 11-7.5(5), HRS, to conduct a performance evaluation of the chief election officer within two months after the date a general election is certified; pursuant to Section 92-5(a)(2), HRS, to discuss the salary adjustment of the chief election officer, if any, pursuant to Section 11-1.6(e), HRS, and action, if appropriate; and 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 regarding legal issues arising from the 2018 Elections, and action, if appropriate. The motion was made by Commissioner Curtis, seconded by Commissioner Vierra, and approved unanimously by the Commissioners.

The Commission went into executive session at 10:28 a.m.

VIII. Executive Session

Pursuant to Sections 92-5(a)(2) and 11-7.5(5), HRS, conduct a performance evaluation of the chief election officer within two months after the date a general election is certified.

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.

Pursuant to Section 92-5(a)(4), HRS, consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities regarding legal issues arising from the 2018 Elections, and action, if appropriate.

The Commission reconvened into open meeting at 11:08 a.m.

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

Chair Anderson announced that the EC arrived at a unanimous decision to increase the salary of CEO Nago to \$119,664, which is equivalent to the salaries of other executives in the same category. He added that it will be applied retroactively, and that the EC thinks it is well deserved.

X. Adjournment

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

Elections Commission meeting was adjourned at 11:10 a.m.

Respectfully submitted,

Jaime Kataoka
Elections Commission Secretary