



**STATE OF HAWAII
ELECTIONS COMMISSION**

F.M. SCOTTY ANDERSON
ELECTIONS COMMISSION CHAIR

MINUTES- DRAFT

REGULAR MEETING OF THE
ELECTIONS COMMISSION

JULY 23, 2020 @ 10:00 AM

Pursuant to the Governor's Ninth Supplementary Proclamation Related to the COVID-19 Emergency dated June 10, 2020, the Elections Commission held this meeting using remote videoconferencing technology. Members of the public could participate in the meeting via Microsoft Teams by either using the website address provided below or calling in to the phone number provided below:

Video: https://teams.microsoft.com/l/meetup-join/19%3ameeting_Njg3YTJlYjEtNmNiMS00MGZiLWJiYzEtOTg1ZjU5OTMwODly%40thead.v2/0?context=%7b%22Tid%22%3a%223847dec6-63b2-43f9-a6d0-58a40aaa1a10%22%2c%22Oid%22%3a%22497cba00-30a2-44fd-ac5d-727c4c09e4bd%22%7d

Telephone: +1 808-829-4853, Conference ID: 995 048 196#

Commissioners in Attendance:

Mr. F.M. Scotty Anderson, Chair
Mr. Michael Curtis
Mr. William Dean
Mr. Stafford Kiguchi
Ms. Lillian Koller
Mr. Jeffrey Kuwada
Ms. Carol Seielstad
Ms. Cynthia Takenaka
Mr. Victor Vierra

Technical Support Staff in Attendance:

Ms. Lori Tanigawa, Department of the Attorney General (AG)
Mr. Scott Nago, Chief Election Officer (CEO)

Ms. Nedielyn Bueno, Office of Elections
Ms. Jaime Kataoka, Office of Elections
Ms. Jasmine Ko, Office of Elections
Mr. Aaron Schulaner, Office of Elections
Ms. 'Auli'i Tenn, Office of Elections
Ms. Kristen Uyeda, Office of Elections
Ms. Kimberly Yamada, Office of Elections

PROCEEDINGS

I. Call to Order

Chair Anderson called the meeting to order at 10:00 a.m. on July 23, 2020.

II. Swearing In of New Elections Commission Members

- a. Mr. William Dean, County of Hawaii
Appointed by House Minority Leader Gene Ward
- b. Mr. Stafford Kiguchi, City and County of Honolulu
Appointed by House Speaker Scott Saiki
- c. Ms. Lillian Koller, County of Maui
Appointed by Senate Minority Leader Kurt Fevella

III. Roll Call and Determination of a Quorum

Elections Commission (EC) Secretary conducted roll call. Commissioner Koller was not in attendance. All other Commissioners were in attendance and the Commission had a quorum.

IV. Approval of Minutes for the Meeting of February 21, 2020

Commissioner Curtis moved that the minutes be approved; the motion was seconded by Commissioner Takenaka, and approved unanimously by the Commissioners. The newly appointed Commissioners Dean and Kiguchi abstained.

V. Status of Operations Report from the Chief Election Officer

CEO Nago reported that OE would normally be attending community events at this time to engage with voters, but due to the impacts of COVID-19, those events were cancelled. He stated that it was a challenge having to find other ways to reach and educate voters about voting by mail. CEO Nago said that OE is working with an advertising agency, and efforts include a flysheet in the Star Advertiser, television commercials, and partnering with Star Advertiser's "Spotlight Hawaii" and local television show, "It's a Hawaii Thing" on Kupuna Power. He instructed that if a voter did not receive their ballot last week, they should contact their County Elections Division.

CEO Nago reported that OE will be conducting the logic and accuracy test of the vote counting system this Saturday in the presence of Official Observers. He explained that Official Observers are representatives of the political parties who serve as the "eyes and ears" of the general public, mark test ballots, and ensure that the logic and accuracy of the machines are working properly. CEO Nago stated that the County Elections Divisions will be opening the voter service centers next Monday, where voters can register and vote in person. He said that over 7,000 ballots have been received so far, and that ballot processing will begin on Wednesday of next week. CEO Nago added that the law allows for processing to begin 10 days prior to Election Day, and that the first result report will be released after 7:00 p.m. on August 8.

Commissioner Kuwada asked CEO Nago if there is any projection as to what percentage of the vote will be in the first results report. CEO Nago replied that he is only projecting as this is the first statewide elections by mail. He stated that they hope to have all ballots that they receive up until Election Day in the first report, and ballots from the voter service centers and places of deposit in the next report issued around 10:00 p.m. CEO Nago added that their goal is to keep up with processing all ballots that were received the previous day.

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

EC Secretary explained that she will go down the list of those logged into the meeting, and call out the name or the last four digits of the phone number identifier. She called Janet Mason, to which there was no response.

EC Secretary called Karl Dicks, who identified himself as a candidate for mayor, and stated that a lot of people had reached out to him claiming to have issues with their ballots. He said that many individuals did not receive a signature card, and that it is his understanding that a person who does not receive a signature

card is not registered, and will also not receive a ballot. Mr. Dicks stated that this is a problem because when he filed his nomination papers, he had collected 50 signatures, but only 15 were valid, and he was still short by four signatures. He said he believes that there are many people who think they are registered when they are not.

Chair Anderson told Mr. Dicks that his issue is on the agenda, but he does want to address one statement he made. He explained that if a voter did not return the signature verification card, they would still get a ballot. Chair Anderson clarified that all registered voters will receive a ballot in the mail.

EC Secretary called Nathan Okubo, to which there was no response. She called "Unknown User," to which there was no response. She called out the last four digits of a telephone number, to which there was no response. She called out the last four digits of another telephone number, to which there was no response. She called out the last four digits of another telephone number, to which the individual stated that they are waiting for the open forum period and wanted to confirm that they are not able to ask questions at this time. Chair Anderson replied that open forum is the next item on the agenda.

EC Secretary called out the last four digits of a telephone number, to which there was no response. She called Jay Balisican, to which there was no response. She called Charlotte, to which there was no response. She called David Cho, to which there was no response.

EC Secretary called Sandy Ma, who stated that she had a couple of comments to share on behalf of Common Cause Hawaii. She reported that Common Cause Hawaii supports voting by mail, especially during the pandemic, and that they hope the remainder of the CARES Act funding will be used to help the County Elections Divisions to establish additional voter service centers. Ms. Ma said that there are voters who have traditionally voted at polling places who may not be used to voting by mail, and that there may be disabled voters who need additional important services. Furthermore, she said they are learning of homeless/houseless/unsheltered voters who may have difficulty receiving their ballots given that they do not have a mailbox. Ms. Ma stated that Common Cause Hawaii hopes that the neighbor island county election officials will consider adding language assistance services for Ilocano and Chinese on the mail ballot. Ms. Ma added that an issue that was brought to their attention this morning related to a voter on Hawaii Island whose ballot was mailed back to them due to an error by the postal service. She explained that the address of the voter is also printed on the return ballot envelope, which is causing confusion for the postal service. Ms. Ma asked if someone could check to ensure that the

voted ballots are being received by the County Elections Divisions, and not returned to the voters.

Chair Anderson asked CEO Nago if he would like to respond. CEO Nago stated that they were made aware of the voters who had their ballots mailed back to them, and that OE is contacting USPS to ensure that this does not continue. He clarified that the envelope is printed with both the address of the voter and the address of the County Elections Division, however the side with the voter's address is also printed with, "Do not deliver to this address, deliver to the address on the other side." CEO Nago explained that this is the same practice that they have been using since absentee mail began, and reiterated that they are working with USPS to correct the issue.

Ms. Ma asked CEO Nago what he suggests the voter should do if their ballot is mailed back to them. CEO Nago responded that the voter should contact their County Elections Division so that a follow-up with the post office can be done. He added that there are other options the voter can utilize to deliver their ballot: places of deposit open five days prior to Election Day, and voter service centers open beginning Monday. Ms. Ma said the County Elections Division advised the voters to put their returned ballot into another envelope, and that the voters did not know how much postage to use or if the ballot would be delivered on time.

Chair Anderson called Charlotte, who expressed concern with mail-in voting, stating that she is very opposed to it and does not think it is valid. She said that she is trying to educate her 17-year-old son on how to get involved and register to vote, but he did not receive a signature card.

Chair Anderson asked CEO Nago if he would like to respond. CEO Nago explained that voting by mail was passed by the Legislature in 2019 through a statutory law change, primarily because an increasing amount of people have been choosing to vote absentee since 2014. He stated that all registered voters will now receive a ballot in the mail without having to put in a request. Voters just need to sign the return envelope, which is compared against the signature on file to verify the voter's identity, and ensure that their ballot is received by 7:00 p.m. on August 8. Regarding registering at age 17, CEO Nago clarified that the law allows 16-year-olds to pre-register and be automatically eligible to vote at age 18. CEO Nago stated that the purpose of the card is to confirm a person's registration, and if they did not receive one, it should trigger an action for the voter to follow up and ensure their registration is up to date. He explained that according to federal law, the only way a voter can be removed from the voter registration rolls is due to a returned mailing, not for failing to vote. For example, if a voter moved, the unforwardable card is bounced back to election officials, and the voter would be flagged as "inactive," which begins the removal process.

CEO Nago reiterated that if a voter believes they are registered and did not receive that card, they should contact their County Elections Division to ensure they are properly registered.

Commissioner Koller entered the meeting at 10:35 a.m.

- VII. Open Forum: Any interested person may conduct a 3-minute presentation of a matter(s) for the Commission's potential consideration at a future meeting.

EC Secretary called out the last four digits of a telephone number, to which PM Azinga identified herself as a candidate for district 30, and said she has comments regarding the preservation of free and open elections. She stated that on Thursday, July 9, she was required to submit preliminary filing reports as late as 11:59 p.m., and attempted to do so beginning at 7:30 p.m. Ms. Azinga reported difficulty in logging in and submitting the reports, so she attempted to contact the office and left messages at 7:15, 8:00, 8:30, 9:00, 9:30, 10:00, 10:30, 11:00, 11:30, and 11:45, but did not receive a response. She stated that if reports were to be submitted at a certain time, there should be staff available to assist. Ms. Azinga said that when the office opened on Friday morning, she had her concerns resolved in five minutes, but was assessed a penalty fee, which she did not think should have been issued. She stated that she knows that voting by mail is a new process, but suggested that each voter should be able to track their ballot through the postal stream and know when their ballot was received by the elections office. Ms. Azinga said that if early voting begins ten days prior to Election Day, we should be able to know prior to Election Day the number of votes that have been submitted. She stated that to her, withholding the number indicates a favoritism for the incumbent, and that voters have a right to that information if we are trying to promote free and open elections.

Chair Anderson asked CEO Nago if he would like to respond. CEO Nago stated that he believes Ms. Azinga was speaking about a Campaign Spending form, as OE does not assess penalties. Regarding her barcode concern, CEO Nago explained that voters are able to log in to OE's website to view the status of their ballot, including whether their ballot was received, validated, and accepted for counting.

Ms. Azinga stated that it is her understanding that the ballots are only validated upon receipt by election officials, which could occur before or after Election Day. She reiterated that voters should be able to track their ballots and know when it is in the custody of USPS.

CEO Nago said that they currently do not have the ability to track ballots within the postal system, but that is something they are looking into for the next election, which would require the cooperation of USPS.

Chair Anderson explained that your ballot cannot be tracked in the postal stream, but you can currently track whether your ballot has been received and validated by the County Elections Division.

Ms. Azinga said she is suggesting that voters should be able to track their ballots through the postal system. She added that other states already do so, and that it is up to the elections director to make the request. CEO Nago reiterated that they are looking into working with USPS to be able to track ballots within the postal stream for future elections.

Chair Anderson asked CEO Nago how many days he thinks it would take for a ballot to be dropped into the mail and received by the County Elections Division. CEO Nago replied that the length of time it takes for delivery depends on a voter's location. He explained that USPS recommends five days for rural areas, or a 967 zip code, and two days for urban areas, or a 968 zip code, though they have seen returns as quick as one day. Regarding results being reported prior to Election Day, CEO Nago stated that the law prohibits them from doing so, and that he does not believe that occurs anywhere in the US.

EC Secretary called Janet Mason, who identified with the League of Women Voters (LWV), and stated that LWV is very excited about the first statewide elections by mail. She said that LWV thinks it is going to be a tremendous success in terms of improved voter turnout, and thinks that the results will be available promptly. Ms. Mason stated that LWV does recognize that as with any new process, there will be a chance to improve things between the primary and the general elections. She said she hopes there will be a clear message to the public that ballot drop boxes should be utilized five days prior to Election Day as a precaution, because they are hearing many concerns from the public about the reliability of the post office delivering their ballots on time. Ms. Mason stated that LWV is aware that ballot drop boxes are very popular in other localities that conduct elections by mail, and that they know the ballots will be collected daily including Election Day. Ms. Mason shared that she had a chance to see the setup at the counting center on Tuesday and thought they did an excellent job with the COVID-19 safety precautions. She said that they did not see the final setup with the different stations for processing, but hopes that these stations will be set up with the same safety precautions. Ms. Mason added that she hopes there will be an analysis of whether more drop boxes and voter service centers are needed when the evaluation of the election is done.

New Commissioner Lillian Koller introduced herself and said that she needs to be sworn in. She explained that there were some difficulties with logging into the meeting. Chair Anderson conducted the swearing in of Commissioner Koller.

IX. Consideration of Correspondence from Karl Dicks, Dated June 18, 2020, Pursuant to HAR §§ 3-170-6 through -9

Pursuant to HRS § 92-5(a)(4), the Commission anticipates going into an executive session to consult with its attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities.

Chair Anderson told the rest of the EC that they have a considerable amount of correspondence from Mr. Karl Dicks in their possession, and that they are going to first allow him to speak, then have a discussion.

Mr. Dicks stated that this is his first time running for office in Hawaii, and that he is running for mayor. He said that when he filed his nomination papers in February, he noticed that there were many other candidates who were not yet "registered" who were accepting donations and campaigning actively. For the protection of the public, Mr. Dicks reported that he and others filed several objections regarding ethics and law violations. He stated that it is clear in federal law that fraudulent misrepresentation is portraying that you are someone you are not, and that he understands that Campaign Spending requires candidates to file reports once they collect \$100 because some were otherwise not doing so. Mr. Dicks suggested that there needs to be additional clarification that simply accepting \$100 in donations does not automatically make someone a candidate, but they must also file all necessary reports so it is all on record. He suggested that the rule should require that if you accept \$100 in donations, you must register within 15 days, because it is his belief that individuals are not registering so they can accept larger donations and engage in campaign activity that is not authorized once you are registered. Mr. Dicks stated that it is fraudulent misrepresentation, and that the general public already has a distrust in the election process and thinks their votes are not counted. He said that the process to become a candidate is not difficult; you obtain the signatures on the nomination paper, have them verified, pay the fee, and take the oath. Mr. Dicks explained that there is one candidate who has been in the media for 40 years and is well aware of the forms required to run political advertisements. He said he inquired in late February or early March whether that individual had registered, and his response was that the process was more complicated than he thought and that he would register that day. In late May, Mr. Dicks stated that the individual was on the radio again, and was asked by a caller if he had registered yet. His response was that he had not registered, but was planning to do so on June 1. Mr. Dicks asked why these individuals are waiting and what the benefit is to not registering. He added that it is unethical and not the kind of behavior of someone we want to hold elective office. Mr. Dicks said that this was the foundation of all of the objections he filed. He explained that there were no procedures in place, so he developed a form and a process through which the form is timestamped and the objector is given a copy.

Chair Anderson asked Mr. Dicks if he could tell the EC what specific law he believes has been broken. Mr. Dicks stated that in order to be considered a “candidate” according to Hawaii Revised Statutes in OE procedures is that one must collect signatures, file the nomination papers, take the oath, and pay the fees. In contrast, Mr. Dicks said that Campaign Spending considers an individual a “candidate” once they have reached the \$100 threshold. Mr. Dicks disclosed that he had a conversation with the Campaign Spending Commission, and that if the rules for Campaign Spending, OE, and the FCC are reviewed together, it is very clear that candidates must register. In his research, Mr. Dicks stated that according to the FCC, one must be registered by paying the necessary fees in order to advertise as a legal candidate for office. Chair Anderson told Mr. Dicks that the EC will be going into executive session to discuss the matter.

Ms. Azinga asked why there was not better coordination between OE and Campaign Spending, since both are state government offices and under the leadership of the Governor. She stated that one office was available to accept walk-ins and the other was not, which impacted her filing process. Ms. Azinga suggested that the offices should maintain the same hours to help facilitate the entire process. She explained that during her filing process, she was detained for over a month and a half because she was told by the Mayor’s office that she would be subject to arrest if she went through the process of collecting signatures. On the other hand, Ms. Azinga said that the Governor’s office did not send the same message. She suggested that there should have been one message to the public and to the candidates, and that there be better coordination between the Mayor’s office, the Governor’s office, OE, and Campaign Spending.

Chair Anderson asked CEO Nago if he would like to respond. CEO Nago said that he does not know how to address Ms. Azinga’s concerns because OE was open throughout the entire timeframe to accept candidates for filing. Ms. Azinga stated that the Mayor’s office told her she was to delay her signature collection process for over a month and a half, and that it was not until she asked two or three times that the Mayor’s office called OE to authorize the collection of signatures. She said that it is imperative that we preserve free and open elections, that we are negligent, and hopes that we do as much as we can to improve that.

Chair Anderson thanked Ms. Azinga for her comments and stated that the EC has no jurisdiction over the Mayor’s office. He asked CEO Nago if he could provide a response to the comments made by Mr. Dicks.

CEO Nago stated that he is unsure what Mr. Dicks means by “registering,” whether he is referring to registering to vote or filing a nomination paper. He

explained that OE's definition of a "candidate" is one who files nomination papers with the office. CEO Nago said that he is aware of Campaign Spending's law that an individual who raises \$100 is deemed a candidate, however OE does not have jurisdiction over the Campaign Spending laws.

Mr. Dicks stated that CEO Nago made his point. Candidates who raise \$100 are self-declaring as candidates, despite the fact that they are not registered as required by OE.

Chair Anderson asked Mr. Dicks what state law was broken. Mr. Dicks answered that he quotes the laws that were violated in his objections. He clarified that there is a federal law against fraudulent misrepresentation that is a Class C felony, punishable by up to \$10,000 penalty and up to five years in prison.

Commissioner Koller told Mr. Dicks that his concern seems to belong in a different venue. She asked Mr. Dicks what he imagines to be an appropriate remedy that the EC can render for him. Mr. Dicks replied that this issue falls directly under the jurisdiction of OE because OE is where one takes the oath and pays the fees to officially be placed on the ballot. Commissioner Koller agreed that is where to find the rules for becoming an official candidate, but her question asked whether Mr. Dicks thinks the EC has some enforcement power or ability to issue a penalty, conduct an investigation, or bring a lawsuit, for example. Mr. Dicks responded that the EC appoints CEO Nago, so presenting his issue to the EC was the next logical step to appeal CEO Nago's decision. He added that the remedy he sought was to disqualify the nomination papers of those candidates due to unethical behavior. Commissioner Koller told Mr. Dicks that she believes that the EC will be going into executive session to discuss his appeal.

Ms. Mason stated that she believes Mr. Dicks raised a legitimate concern, and that it is probably not adequately addressed in the rules for either OE or Campaign Spending. She said she thinks it merits some consideration in the next legislative session because it should not be possible for someone who is not an official candidate to collect funds. Ms. Mason added that Mr. Dicks' ethical concern is valid, but she does not think OE or the EC has regulations that address his concern.

Ms. Azinga said that there are some candidates who say she has not formally filed, but she has an investigative committee that is considering her filing. She asked if they are able to receive funding and if we have laws related to that issue. Chair Anderson asked CEO Nago if he would like to answer that question. CEO Nago responded that he thinks she is referring to Campaign Spending laws which OE does not have jurisdiction over. Ms. Azinga asked if the investigation

committee is classified as “informal candidates seeking” and if there are laws regarding this so that one is not in violation when they are in the investigation portion as opposed to a formal registering. Mr. Dicks replied that he is able to answer the question. He explained that they are referred to as non-candidate committees and that they do not have to register as a candidate because their names will not appear on the ballot. Mr. Dicks added that that is a separate issue regarding Campaign Spending.

With no further comments, Chair Anderson stated that the EC will go into executive session as stated in the agenda, i.e., to approve the minutes for the executive session for the meeting of February 21, 2020, pursuant to HRS § 92-5(a)(8); and to consult with its attorney on questions and issues pertaining to the Commission’s powers, duties, privileges, immunities and liabilities, pursuant to HRS § 92-5(a)(4).

Chair Anderson asked for a motion to go into executive session. The motion was made by Commissioner Koller, seconded by Commissioner Seielstad, and approved unanimously by the Commissioners.

The Commission went into executive session at 11:18 a.m.

VIII. Approval of Minutes for the Executive Session for the Meeting of February 21, 2020

Pursuant to HRS § 92-5(a)(8), the Commission anticipates going into an executive session to consider the approval of executive session minutes.

IX. Consideration of Correspondence from Karl Dicks, Dated June 18, 2020, Pursuant to HAR §§ 3-170-6 through -9

Pursuant to HRS § 92-5(a)(4), the Commission anticipates going into an executive session to consult with its attorney on questions and issues pertaining to the Commission’s powers, duties, privileges, immunities and liabilities.

The Commission reconvened into open meeting at 11:49 a.m.

X. Adjournment

Chair Anderson stated that the EC moves to take no further action on Mr. and Mrs. Dicks’ complaint because the law or rule which they believe has been violated is not a law or rule that OE or the EC is statutorily authorized to administer or enforce. Commissioner Seielstad made the motion, which was

seconded by Commissioner Vierra, and approved unanimously by the Commissioners.

With no further business before the Commission, Commissioner Kuwada made a motion to adjourn the meeting, which was seconded by Commissioner Seielstad, and approved unanimously by the Commissioners.

Elections Commission meeting was adjourned at 11:57 a.m.

Respectfully submitted,

Jaime Kataoka
Elections Commission Secretary