

HAWAI'I COUNTY BOARD OF ETHICS

MINUTES – REGULAR SESSION¹

Wednesday, February 11, 2009 - 10:02 a.m.

101 Aupuni Street, Suite 230

Hilo, Hawai'i 96720

Present: John E. K. Dill, Chair
Marilyn Nicholson, Member
Diane Gentry, Member
Arthur Martin, Member
Renee N. C. Schoen, Deputy Corporation Counsel
Mary E. Crosson, Secretary for the Board

Also present: Roy Takemoto, Petitioner

1. CALL TO ORDER

The Chair called the meeting to order at 10:02 a.m.

2. STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS

No one from the public was present.

3. APPROVAL OF MINUTES

Minutes of the January 14, 2009, Regular Session.

Motion and vote: Mr. Martin moved to accept and file the Regular Session minutes, Ms. Gentry seconded the motion, and all members present voted aye.

Minutes of the January 14, 2009, Executive Session.

Motion and vote: Ms. Gentry moved to accept and file the Executive Session minutes, Mr. Martin seconded the motion, and all members present voted aye.

4. COMMUNICATIONS

There were no communications.

¹ Minutes in italics are verbatim.

5. NEW BUSINESS

- a. **Petition No. 2009-1: from Roy Takemoto, requesting an informal advisory opinion relating to post-employment as authorized under Hawai'i County Code Section 2-91.2(f)(1).**

CHAIR: Like I mentioned, if I could get a motion from one of the Board members to enter into Executive Session for the purpose of consulting with the Board attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities.

GENTRY: Motion to go into Executive Session.

MARTIN: Second.

CHAIR: All in favor?

GENTRY, MARTIN, and NICHOLSON (simultaneously): Aye.

CHAIR: It'll just be a couple minutes. Thank you.

(Mr. Takemoto left the room and the door was closed for Executive Session at 10:04 a.m. Minutes for Executive Session are separate and closed.)

Regular Session was reentered at 10:15 a.m. and Mr. Takemoto came back into the room.

CHAIR: Mr. Takemoto, if you could come up. Thanks. Okay, we're back in Regular Session, and Mr. Takemoto, we've been discussing your case and we want to make sure that we give you the best advice and advisory opinion that we can. First of all, we don't have our vice chairwoman here. We feel that there might be a potential for a conflict of interest for me, myself, that will be discussed later once we have a full Board. We came in with not enough information. We had a couple cases pertaining to post-employment, and then also the State Ethics Commission had a case, and then the supplemental provision—correct?—kind of details it a little bit more. What I'd like to do is get the Board all of that information before we reconvene and decide on what to do. And first of all, I really want to thank you for coming to us, because I know you just want to do the right thing, too, and we don't want to keep you back in what you're trying to do after your eight years with the County. So what we decided to do is file a motion to postpone this decision to the March 11th meeting, when we have a full Board and we can get more information and discuss any potential issues. So I hope that's not going to be too bad for you. We discussed getting all the stuff we need to before then, so I don't see anything holding us up from deciding on March 11th.

TAKEMOTO: Okay.

CHAIR: And the March 11th meeting will be here, so if you could come back, I'd really appreciate it. I'm sorry to inconvenience you with this.

TAKEMOTO: No, that's all right.

CHAIR: If we could get a motion to—

MARTIN: I so move.

CHAIR: Okay.

GENTRY: Move to defer again--second.

CHAIR: All in favor?

MARTIN, GENTRY, and NICHOLSON (simultaneously): Aye.

CHAIR: Thank you, Mr. Takemoto, I appreciate it.

GENTRY: Thank you so much.

Mr. Takemoto left the meeting at 10:18 a.m.

- b. Discussion on Section 2-91.1 of the Hawai'i County Code (financial disclosures and disclosures of interest): Proposal to (1) amend the current instruction sheet that accompanies the Confidential Financial Disclosure Form; (2) clarify the information that must be disclosed; and (3) recommend that the County have a uniform instruction sheet for both public and confidential disclosures.**

Ms. Schoen said that the change in administration precipitated many questions regarding financial disclosures. One issue that came up is that, under the current requirements, a disclosure is to be filed upon leaving the County, upon being appointed, and also in January each year. This resulted in some employees having to file three disclosures.

Another issue that came up was whether assets of a spouse or dependent children and 401K mutual funds need to be included on the disclosure. In addition, there were questions about which disclosure form to use and the due dates.

Regarding mutual funds, Ms. Schoen said she advised people that they should be disclosed if the value is more than \$5,000. However, people would not necessarily know what investments are made with the mutual funds.

There are two disclosure forms in use, and they are slightly different from each other. One form gets filed with the County Clerk and is open to the public. The other form gets filed with the Board of Ethics and is confidential. The Board's form has an accompanying instruction sheet. Although the two forms are different, the information they require is identical.

Ms. Schoen reported that she spoke to the County Clerk, Ken Goodenow, and he supported having a uniform instruction sheet for both public and confidential disclosures. She

noted that the State Ethics Commission has a good instruction sheet which could be used as a sample.

Ms. Schoen proposed that the Board amend its instruction sheet or disclosure form to make the process more understandable for everyone. She could then check with the County Clerk to get his input and approval.

Ms. Nicholson suggested combining the instructions and the disclosure form into one document, even though it might mean more paper. It would be good if the instruction for each item was incorporated next to that item on the form. Ms. Schoen said that was a good suggestion.

The Board agreed to wait for Ms. Schoen's drafts.

6. UNFINISHED BUSINESS

- a. **Update on the status of amending the Board's Rules of Practice and Procedure regarding the imposition of administrative fines pursuant to Ordinance 08-57.**
- b. **Discussion on Board's position, if any, on Senate Bills 1128 and 531, and House Bill 626, pending before the legislature regarding administrative fines.**

Ms. Schoen reported that there are two senate bills and one house bill that are alive on the issue of administrative fines. She had recently contacted their Chair to suggest postponing the public notice and hearing on the Board's rule changes until the legislature rules on these bills, since they may affect their rules.

The Chair stated that he would like the Board to submit testimony in support of the two senate bills, and Ms. Schoen said that the bills were at the committee level and were not yet set for hearing. However, she would prepare testimony for the Chair to sign. She noted that Kauai and Maui counties were also in support but had not yet submitted testimony.

Ms. Nicholson asked whether either of the bills relate to the appeals process, and Ms. Schoen said yes, and that she was changing her "no" answer from the previous meeting regarding whether an appeals entity would be needed. Based on how the law is written now, her answer is yes, a County agency or department would need to be created or designated to review BOE decisions. If the bills do not pass on that provision, this will remain the case, because it is existing law.

The Chair said since he is following other bills, he will try and track these as well and that if it was okay with everyone, he would sign off on the testimony on BOE letterhead.

Ms. Schoen said that she discussed the administrative fines issue and the pending bills with several attorneys in her office, and some felt an appeal process was not necessary because people could appeal to the Circuit Court. Other attorneys believed a separate appeal agency was needed, and the more she studies the issue, the more she believes that is the case. There are three

counties supporting the bills, so it is hopeful they will be passed. The same bills were presented last year, but there was no testimony in favor of them. The intent of the proposed bills is to have the appeal process, which can be lengthy, not apply to ethics situations, because ethical violations need to be dealt with immediately.

Ms. Gentry asked whether the Board could just decide not to issue fines, so that an appeals agency would not need to be established. Ms. Schoen explained that the Council wanted to give the fining authority to the Board, which is why there is now such a Code provision. Ms. Nicholson pointed out that the Board had gone through a couple of years of effort to get the authority to issue fines and that even though they might not ever issue one, it would keep the door open to have a process in place.

Ms. Gentry asked whether a BOE appeal would follow a contested case hearing scenario, which requires a hearings officer, and Ms. Schoen said yes. Ms. Gentry noted it could get expensive for the County if someone should appeal a fine. Ms. Schoen said it would need to be figured out what agency would handle the appeals and whether there were existing rules that could apply to BOE appeals.

Ms. Gentry asked whether they could pass something directing a person to appeal directly to the Circuit Court if he/she disagreed with the Board's decision. Ms. Schoen said that is what she originally thought the process would be and that the issue resulted in a lot of emails back and forth between the Honolulu Ethics Committee attorney and her, as well as a few other parties.

Ms. Gentry said she did not understand why an appeals board was needed. She could understand someone appealing an original decision, but not appealing a fine. Ms. Nicholson agreed that it seemed the Board's original decision was what the subject of an appeal should be. Ms. Schoen cited a couple of examples, saying that for zoning violations, a case has to go through a hearing process before a fine can be imposed. In addition, people can appeal fines and property tax valuations to the Tax Board of Review.

Ms. Gentry said that in her experience with the County, people appeal the decision but not the fine. Ms. Schoen agreed it was confusing and pointed out that a person aggrieved by a finding of ethical violation could appeal directly to the Circuit Court, whereas a person aggrieved by a fine would have to appeal to the appropriate County agency.

Ms. Nicholson suggested the Board be preemptive and find out what agency would handle the appeals so that part at least would be determined, and they could move faster from there. Ms. Schoen said she could start researching that.

The Chair asked that the Board's testimony be worked on in the meantime, and that their unanswered questions should be included.

c. Ongoing discussion on the Sunshine Law.

There was nothing new on the Sunshine Law.

Motion and vote: Ms. Gentry moved to enter Executive Session for review of confidential financial disclosures. Ms. Nicholson seconded the motion, and all members present voted aye.

Executive Session was reentered at 10:44 a.m. (Minutes for Executive Session are separate and closed.)

The Board returned to Regular Session at 11:27 a.m. for voting on the confidential financial disclosures.

7. RETURN TO REGULAR SESSION FOR VOTING ON EXECUTIVE SESSION MATTERS

- a. Review of *Confidential Financial Disclosure Forms* filed pursuant to Section 2-91.1(d), Hawai'i County Code, by County board and commission members and designated County employees, where personal matters will be reviewed.**

Motion: The Chair asked for a motion to accept financial disclosures 1 through 38 and to exclude 9, 19, and 31 for insufficient information. Ms. Gentry so moved, and Mr. Martin seconded the motion.

Ms. Nicholson pointed out that since one disclosure was hers and one was the Chair's, they would need to be voted upon separately while she and the Chair abstained.

The Chair struck the motion.

Motion and vote: The Chair asked for a motion to accept financial disclosures 1 through 38, excluding 9, 19, 31, and 5 and 29. Ms. Gentry so moved, and Mr. Martin seconded the motion. All members voted aye.

Motion and vote: The Chair asked for a motion to accept financial disclosure 5. Mr. Martin so moved, Ms. Nicholson seconded the motion, and Mr. Martin, Ms. Nicholson, and Ms. Gentry voted aye. The Chair abstained.

Motion and vote: Mr. Martin moved to accept financial disclosure 29, Ms. Gentry seconded the motion, and Mr. Martin, Ms. Gentry, and the Chair voted aye. Ms. Nicholson abstained.

8. ANNOUNCEMENTS

The Chair read the announcement of the next meeting of the Board of Ethics, scheduled for March 11, 2009, at 10:00 a.m. at the same place.

9. **ADJOURNMENT**

Motion and vote: Ms. Gentry moved to adjourn, Mr. Martin seconded the motion, and all members present voted aye.

The meeting adjourned at 11:29 a.m.

Respectfully submitted:

Mary E. Crosson

Mary E. Crosson, Secretary