

HAWAI'I COUNTY BOARD OF ETHICS

MINUTES – REGULAR SESSION

Wednesday, August 12, 2009

10:00 a.m. to 10:58 a.m. and 11:24 a.m. to 11:26 a.m.

101 Aupuni Street, Suite 230

Hilo, Hawai'i 96720

Present: John E. K. Dill, Chair
Ann Lum, Vice Chair
Marilyn Nicholson, Member
Diane Gentry, Member (arrived 10:08 a.m.)
Rence N. C. Schoen, Deputy Corporation Counsel
Mary E. Crosson, Secretary for the Board

Also present: Kenneth Goodenow, Bradley Westervelt, Nancy Cook-Lauer

1. CALL TO ORDER

10:00 a.m. The Chair called the meeting to order.

2. STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS

The Chair stated that Joyce Folena had submitted public testimony via email, in which she urged the Board to adopt Ordinance 08-57 into its rules of practice and procedure so it could begin imposing administrative fines.

Motion and vote: Ms. Nicholson moved to accept and file the email testimony, and Ms. Lum seconded the motion. They and the Chair voted aye.

3. APPROVAL OF MINUTES

Minutes of the July 8, 2009, Regular Session.

Ms. Lum noted there was a typo on page 15 of the minutes, after Unfinished Business, where it said the "Boar" reconvened.

Motion and vote: Ms. Lum moved to accept and file the minutes with the typo corrected, and Ms. Nicholson seconded the motion. They and the Chair voted aye.

4. COMMUNICATIONS

- a. Communication No. 2009-041: Memo dated 7/2/09 to the Office of Information Practices and the Board of Ethics re "Violations of Hawai'i's Sunshine Laws, Filing of Civil Action against the Members of the Hawai'i County Board of Ethics, and the County of Hawai'i, et al., in the 9th U.S. Court of Appeals for violations of 42 U.S.C. §1986, 42 U.S.C. §1983, 42 U.S.C. §1985."

Motion and vote: Ms. Lum moved to accept and file the communication, and Ms. Nicholson seconded the motion. They and the Chair voted aye.

- b. Communication No. 2009-042: Memo dated 7/7/09 to the Board of Ethics and the FBI re "Violations by the Hawai'i County Board of Ethics, of Hawai'i County Board of Ethics RULE 4.13 Confidentiality, in violation of 18 U.S.C. §3 Accessory after the fact, to RICO Act violations of 18 U.S.C. §1512 Tampering with a witness, Victim, or an informant."

Motion and vote: Ms. Nicholson moved to accept and file the communication, and Ms. Lum seconded the motion. They and the Chair voted aye.

- c. Communication No. 2009-046: Letter from Charles Totto of the City and County of Honolulu Ethics Commission dated 7/10/09 to the Hawai'i County, Maui County, and Kauai County Board of Ethics, regarding "State Legislation to Clarify County Ethics Agencies' Power to Impose Civil Fines, S.B. No. 531 (and 128) and H.B. No. 626.

Ms. Schoen reported that she had spoken with Mr. Totto a few times and informed him that in the past the Board had agreed to support the legislation. He was aware that the Hawai'i County Council passed an ordinance to allow the Board to impose fines.

She said that the Board had adopted a rule but still needed to deal with the second issue, which involved creating a County agency to hear appeals, which is what Mr. Totto's bills dealt with. Ms. Schoen said the Board could support the legislation by writing letters to the House and Senate, as well as their representatives. The Board could also ask the Council to pass a resolution in support. It would be up to the Board on how they wanted to support the bills.

The Board members noted that the current County Council has several different members from when the fine ordinance was passed, and decided they would prefer to write letters in support of the legislation.

Motion and vote: Ms. Lum moved that the Board, in response to Mr. Totto's letter regarding the imposition of civil fines and the pending Senate Bills and House Bill, draft letters for both the House and Senate in support of the legislation. Ms. Nicholson seconded the motion, and all members present voted aye.

Motion and vote: Ms. Lum moved to accept and file Communication No. 2009-46. Ms. Nicholson seconded the motion, and all members present voted aye.

Ms. Schoen said she would draft letters for the Board's review at the next meeting.

5. UNFINISHED BUSINESS

- a. *Further discussion on clarifying lobbyist registration requirements, including Communication No. 2009-045 (memo to Renee Schoen from Kenneth Goodenow dated 7/9/09, regarding clarification of the County's lobbyist registration requirements and enclosing recommended changes to the Lobbyist Registration Form by the Office of the County Clerk).*

Mr. Goodenow explained that his office receives inquiries from people who are uncertain as to whether they need to register as lobbyists, or who feel the definition is not clear. As a result, he is seeking guidance from the Board on how to make the process more user-friendly.

His office's legal specialist, Levi Hookano, has recommended changes to the registration form, but they have not yet been implemented. The current form being used is from October 2005.

Ms. Nicholson asked whether the definition of lobbyist had been changed, and Mr. Goodenow said that since the Board of Ethics is the primary interpreter of that definition, he would defer to the Board on the definition.

Ms. Nicholson said it would be helpful to have specific examples of the problem areas if the Board was to craft language to address them.

Mr. Goodenow said an example would be if the head of the bar association lobbied on an issue. Though he was not paid for doing so, it could be argued that he received consideration in terms of getting his name out there. A true situation they had dealt with a realtor who was involved with the 2% land fund issue. The realtor was subsequently also a candidate. It was not clear whether she should register as a lobbyist, but there were concerns that she was spending a lot of time and money on the land issue and using it as a platform.

Mr. Westervelt explained that he is the legislative assistant to Councilman Enriquez and that in his position, he has dealt many times with people who come forward and express that they represent groups. He receives numerous calls and emails from them, and many provide public testimony at Council meetings, and some take out newspaper ads for their causes. Many of them are recurring names and are not registered as lobbyists. He feels they are ducking the responsibility of coming forward and stepping up to a cause and is concerned that at some point they should be instructed to fill out a lobbyist registration form.

Ms. Lum asked whether people do not register because they reason they are not being paid. Mr. Westervelt said he never asked why they were not registered, but that they might excuse themselves in that manner. How to enforce the rule is not known. In many cases, it would be justifiable not to register. He questioned at what point a hobby becomes a professional cause.

Ms. Nicholson said that if ads are bought, someone is paying for them. However, the way the lobbyist definition reads, it could be an organization and not an individual paying for the ad. Mr. Westervelt said the spirit of why people should be registering is so they can be connected to the stream of money that is supporting their activity. He said there are very few people who register as lobbyists compared to the number who come forward stating that they represent a group or organization.

Ms. Gentry asked Mr. Goodenow whether his concern was enforcement of the lobbyist requirements. He said that his office has not gotten involved in enforcement at all, and that if they received a complaint that someone should be registered, it would get referred to the Corporation Counsel. All his office does with the forms is collect and file them. He would like guidance from the Board on what they should be doing.

Ms Gentry asked whether the County Clerk's Office or County Council ever sponsored any workshop on lobbying, and Mr. Goodenow said not to his knowledge, but that it would be a good idea.

Ms. Gentry asked whether there is a method of disclosure for people who testify, and Mr. Goodenow said there is a registration form provided but that under the Sunshine Law, they also have to accept anonymous testimony. Most people do provide their name on the form, but it is not required.

Ms. Nicholson said it seems that a lot of paper is generated for naught. Ms. Schoen said the purpose of filing the forms with the Clerk's Office is because they are public documents that become readily available for the public to scrutinize. Ms. Nicholson said the whole process seems a little too complex and questioned whether it could be made simpler for the public. The current form is a lot of work to fill out, and requires expenditure reports, etc.

Mr. Goodenow said there are professionals that are registered as lobbyists, but the total number of filers is very few.

Ms. Gentry asked if there was a high frequency of supposedly paid lobbyists who come forward, and Mr. Goodenow said no. She said in that case it did not seem to be a big issue, except for those who are paid and prominent, and asked whether they come in very often. Mr. Goodenow said no.

Ms. Gentry asked how serious the problem was, and Mr. Goodenow said he would defer to the Board on that. He said he does not know if Mr. Westervelt's concerns could be addressed on the forms. Ms. Nicholson noted that an organization may be spending a fair amount of money, but not the person who is representing it. Ms. Gentry asked how often that happens, and Mr. Goodenow said it happens on hot-button issues, such as the 2% land fund issue. He said that on that issue there was a front person, identified as the spokesperson for the group, who did not complete the lobbyist forms. Unless he was directed by the Board to do so, Mr. Goodenow did not feel it was his place to investigate.

Ms. Nicholson asked Mr. Westervelt if the issue was a real concern, or whether it was a matter of having the forms updated. She asked if the issue could be addressed by better defining what a lobbyist is or by giving examples of what would qualify as lobbying. Mr. Westervelt said

a better definition would be helpful. It is a problem in that it is a great burden on the staff to go through all the public commentary and review all the action, and for the Council to hear public testimony when there is a call put out on an issue. He said there should not be a restriction on public commentary, but when he looked at the definition of lobbyist, he realized that records are supposed to be kept on who they are. He said he could make a list of a dozen people who fall squarely under the rules but are not registered, which is why he brought the matter to Mr. Goodenow's attention. People need to be aware that they are expected to participate by registering.

Ms. Nicholson said it would be hard for the Board to craft a definition of lobbyist and that it might be easier for the County Clerk's Office to do so, since they deal with this matter. It may also be helpful to provide several examples of lobbyists on the instruction form so that people could recognize whether they fall into that category.

The Board agreed that the threshold question is whether a person is paid to lobby. Most people do not get paid, regardless of what their organization may spend on an issue.

Ms. Gentry asked Mr. Goodenow if he recommended that organizations register, and he said the County Clerk's Office does not advocate for one thing or the other, but he would like the Board's help in making things clearer for the public.

Ms. Nicholson said that rather than change the Code's definition of lobbyist, it would be helpful to provide examples of lobbyists. If, however, an unpaid spokesperson who lobbies for an organization were to be considered a lobbyist, then the definition would need to be worked on.

Ms. Gentry pointed out that when lobbying is on a matter pending before the Council, the issue would often be completed within a few months. Although the lobbying may be intense, it would not meet the registration criteria if there is no compensation. She suggested the County Clerk explore doing workshops and provide the Board with feedback on the public's response. If it appeared that clarification was needed, the Board could move in that direction.

Mr. Goodenow said his office would work on the lobbyist instruction sheet to include examples and get back to the Board.

Motion and vote: Ms. Lum moved to approve the recommended changes to the lobbyist registration form and instructions prepared by Levi Hookano. Ms. Nicholson seconded the motion, and all members present voted aye.

Ms. Lum told Mr. Goodenow that the Board would like to see the updated form when it comes out, and Mr. Goodenow said he would send it to the Board for final approval.

- b. *Further discussion on the requirements and purpose of gift disclosure statements, and further review of the Gift Disclosure Statements received from Councilmembers Brenda Ford, Peter Hoffmann, Donald Ikeda, Emily Naeole, and Dennis Onishi.*

The Chair reminded the Board that at the previous meeting, they were concerned about the relationship of the giver.

The Board discussed whether the disclosure statement needed an instruction sheet, because Brenda Ford had listed gifts that did not need to be disclosed.

Ms. Gentry felt that the statement just needed a one-liner from Sections 2-91.4 and 2-91.5 of the Code. She said every legislative assistant has the information readily available and should know the procedure.

Ms. Nicholson asked whether the disclosure form should be amended to include information on the relationship of the giver. Ms. Gentry felt the form was sufficient without that, because if the Board had questions about a relationship, they could look into it.

Motion and vote: Ms. Lum moved to accept Ms. Gentry's suggestion to add references to Code Sections 2-91.4 and 2-91.5 to the form. Ms. Nicholson seconded the motion, and all members present voted aye.

Motion and vote: Ms. Gentry moved to accept the gift disclosures of Ms. Ford, Mr. Hoffmann, Mr. Ikeda, Ms. Naeole, and Mr. Onishi. Ms. Lum seconded the motion, and all members present voted aye.

Motion and vote: Ms. Gentry moved to enter into Executive Session for agenda item 6. Ms. Nicholson seconded the motion, and all members present voted aye.

10:58 a.m.: The Board left Regular Session and entered Executive Session.

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11:24 a.m.: The Board reentered Regular Session.

6. EXECUTIVE SESSION (voting)

- b. *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 and vote: Ms. Nicholson moved to accept and file financial disclosures 1 and 2 as listed on the agenda. Ms. Gentry seconded the motion, and all members present voted aye.

7. ANNOUNCEMENTS

The Chair announced the Board's next meeting as being scheduled for September 9, 2009, at 10:00 a.m. at the Department of Liquor Control's conference room at 101 Aupuni Street, Suite 230, Hilo.

8. **ADJOURNMENT**

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

11:26 a.m.: The meeting adjourned.

Respectfully submitted:

Mary E Crosson

Mary E. Crosson, Secretary