

**MINUTES
OF THE
REGULAR MEETING OF THE
ELECTIONS COMMISSION**

**JANUARY 20, 2010
LEIOPAPA A KEMEHAMEHA BUILDING, ROOM 204
235 SOUTH BERETANIA STREET
HONOLULU, HAWAII 96813**

Commissioners in Attendance:

Mr. William Marston, Chair
Ms. Margaret Masunaga
Mr. Brian Nakashima
Mr. Harold Nelson
Ms. Zale Okazaki
Ms. Donna Soares
Mr. Daniel Young

Technical Support Staff in Attendance:

Ms. Robyn Chun, Department of the Attorney General
Ms. Ciress Cuevo, Office of Elections
Ms. Judy Gold, Office of Elections
Mr. Scott Nago, Interim Chief Election Officer
Mr. Rex Quidilla, Office of Elections
Mr. David Rosenbrock, Office of Elections
Mr. Rhowell Ruiz, Office of Elections
Mr. Aaron Schulaner, Office of Elections

Guests in Attendance:

Ms. Jean Aoki, League of Women Voters
Mr. Bart Dame
Mr. Kenneth Goodenow, Hawaii County Clerk
Mr. Jeffrey Kuwada, Maui County Clerk
Ms. Nikki Love, Common Cause Hawaii
Ms. Shirley Magarifuji, Maui County Clerk's Office
Ms. Bernice Mau, Honolulu City Clerk
Ms. Pat Nakamoto, Hawaii County Clerk's Office
Mr. Peter Nakamura, Kauai County Clerk
Mr. Andrew Pereira, KHON2 News
Ms. Cori Saiki, Hawaii County Clerk's Office

Mr. Lance Taguchi, Maui County Clerk's Office
Mr. Glen Takahashi, Honolulu City Clerk's Office
Mr. Lyndon Yoshioka, Kauai County Clerk's Office

PROCEEDINGS

I. Call to Order

The meeting was called to order by Chair William Marston at 10:00 a.m. on January 20, 2010 at the Leiopapa a Kamehameha Building in room 204.

II. Roll Call and Determination of a Quorum

Ms. Ciress Cuevo, Elections Commission Secretary conducted roll call. Ms. Yuki Lei Sugimura and Mr. Richard Swift were absent.

III. Approval of Minutes of Meeting of December 30, 2009

Ms. Donna Soares moved to approve the minutes of the meeting of December 30, 2009. Mr. Daniel Young seconded, and the motion carried unanimously.

IV. Public Testimony – Any interested person may submit data, views or arguments on any agenda item

Mr. Bart Dame provided oral testimony expressing his concerns regarding the bill that was submitted to the Legislature that would exempt the procurement of voting machines from the procurement code and noted that there is still no formal audit protocol for absentee mail voting in administrative rules or statutes.

V. Report from the Selection Committee and Agreement on Hiring Priorities for the Chief Election Officer Vacancy

Mr. Daniel Young, Selection Committee Chair reported that the committee met with Department of Accounting & General Services (DAGS) personnel last week and discussed the requirements for the Chief Election Officer (CEO) position. The committee will be seeking to fill the vacancy for the remainder of the term, which is two years. The position will be advertised nationally and locally on January 30, 2010. Applicants will be required to respond within 30 days. The recruitment is projected to be completed by July 1, 2010.

Mr. David Rosenbrock, Office of Elections inquired whether there was any consideration on what the impact of this recruitment would be on the Office of Elections' budget. Commissioners Young and Soares both expressed that considerations have been made. Ms. Soares explained that this recruitment will be less costly than the previous one conducted because most of the ground work

has already been done and the committee plans to reduce the distribution of advertisements.

Ms. Jean Aoki, League of Women Voters expressed concern that bringing in a new CEO in the middle of this upcoming election may be difficult because the Office of Elections is not as prepared as it was in 2008 as a result of the lack of funds and staff.

Mr. Bart Dame also expressed concerns about recruiting a CEO during this election.

VI. Special Election Planning to Include Methodology, Timing, and Funding

The Interim CEO informed the Commission that the Office of Elections submitted an emergency appropriation through DAGS to the Governor for \$1.2 million. The Office of Elections has not received any indication that it has been approved. The amount requested is to cover the cost of an all mail special election and to make up for this fiscal year's shortfall.

Ms. Soares' asked what the ruling is about holding a special election. Ms. Robyn Chun, Deputy Attorney General said that the Attorney General addressed the question at a Senate Ways and Means Informational Briefing by opining that the special election should be held sooner rather than later to avoid a long term vacancy.

Ms. Soares expressed concerns about the timing and cost of holding a special election. Ms. Soares questioned whether the state would be in compliance with Federal law if the State were to hold the special election in conjunction with the Primary Election.

Ms. Margaret Masunaga expressed the same concerns as Ms. Soares and requested that Attorney General Mark Bennett provide a written opinion on this matter. Ms. Chun opined that a written request for an opinion must be submitted to the Attorney General.

Ms. Margaret Masunaga moved for the Commission to ask for an opinion by the Attorney General about whether the State would be in compliance with the Federal law for an election to replace the congressman, who we understand will be resigning next month and if the State would be in compliance with the Federal law if we were to have the election in September in conjunction with the Primary Election. Ms. Soares seconded, and the motion carried unanimously.

The Interim CEO explained the purpose and mechanics of holding an all mail special election, as well stated the need to have a contract for a voting system for the special election.

In response to Mr. Harold Nelson's questions regarding the \$1.3 million that was found due to an accounting error, the Interim CEO explained that the \$1.3 million was a reimbursement from the Federal government for the State migrating from the punch card voting system. Due to the recent Federal audit, it was found that the reimbursement should have been deposited in to general funds, instead of the Help America Voter Act (HAVA) account. The Interim CEO provided the status of the State's HAVA funds and explained that the funds will be used according to the State plan. There are stipulations as to how the funds can be used and the Interim CEO clarified that Federal funds cannot be used to supplant State funds.

VII. Primary and General Election Planning to Include Funding, Precinct Locations, and Voting Machines

The Interim CEO reported that a portion of the amount submitted in the emergency appropriation is to cover this fiscal year's shortfall. Also, a Request for Proposal (RFP) was issued for personal services contracts to hire seasonal staff and other vacant positions in the Office of Elections.

Chair Marston stated that he contacted Ms. Linda Smith, Senior Policy Advisor of the Governor to inform her of the funds needed to conduct a special election. Chair Marston expressed his frustration with the Legislature for its lack of assistance in this matter.

In response to Chair Marston's inquiry regarding the election plan presented by Mr. Kevin Cronin, the Interim CEO said that the office will be implementing the plan proposed by Mr. Cronin and will be reducing the number of polling places to 243 because it will allow the Office of Elections to better utilize staff and funds. In addition, The Office of Elections recently implemented furloughs, so staff has less days to recruit poll workers.

Ms. Margaret Masunaga asked if any changes to the plans were made as a result of her recommendation to keep Honaunau Elementary School open and consolidate Konawaena Elementary School and Konawaena High School. Ms. Judy Gold, Office of Elections said that she was not aware of Ms. Masunaga's concern and explained that consolidations were based on ballot type. The Interim CEO added that consolidations cannot be made because of proximity since polling places may have different ballot types. Ms. Pat Nakamoto, Office of the County Clerk of Hawaii noted that the problem with consolidating Konawaena Elementary School and Konawaena High School is that the unit size would increase significantly and would be unmanageable for poll workers. Mr. Kenneth Goodenow, Hawaii County Clerk explained that standardized criteria was used to formulate the closure of polling places, but County of Hawaii will review the polling places that were recommended for consolidation and will get back to Ms. Masunaga.

In response to Chair Marston's question whether all the County Clerks are in agreement with the election plan, all the County Clerks said yes.

VIII. Executive Session: Pursuant to Haw. Rev. Stat. §92-5(4), consult with counsel regarding the commission's powers, duties, privileges, immunities and liabilities re:

1. Babson v. Cronin, Civil No. 08-10-378(3)
2. Procurement appeals (ES&S v. Cronin, Civil No. 08-101657-08, Hart InterCivic v. ES&S, Civil No. 08-1-1665-08, Cronin v. ES&S, Civil No 08-1-1680-08)

Ms. Zale Okazaki moved for the Commission to go into executive session. Ms. Margaret Masunaga seconded, and the motion carried unanimously.

The Commission resolved to executive session at 11:00 a.m. and reconvened in open meeting at 12:22 p.m.

IX. Adjournment

Chair Marston adjourned the meeting at 12:23 p.m. The next meeting date of the Elections Commission is to be determined.

Respectfully submitted,
Ciress Cuevo
Elections Commission Secretary