



**STATE OF HAWAII
ELECTIONS COMMISSION**

WILLIAM B. MARSTON
ELECTION COMMISSION CHAIR

MINUTES

**REGULAR MEETING OF THE
ELECTIONS COMMISSION**

September 28, 2010 @ 10:00 AM
STATE CAPITOL
415 SOUTH BERETANIA STREET, ROOM 309
HONOLULU, HAWAII 96813

Commissioners in Attendance:

Mr. William Marston, Chair
Ms. Patricia Berg
Ms. Margaret Masunaga
Mr. Brian Nakashima
Ms. Zale Okazaki
Mr. Warren Orikasa
Ms. Donna Soares
Mr. Daniel Young

Technical Support Staff in Attendance:

Ms. Robyn Chun, Department of the Attorney General
Ms. Judy Gold, Office of Elections
Ms. Chelsia Lau, Office of Elections
Mr. Scott Nago, Chief Election Officer
Mr. Rex Quidilla, Office of Elections
Ms. Carolyn Roldan, Office of Elections
Mr. David Rosenbrock, Office of Elections
Mr. Rhowell Ruiz, Office of Elections
Mr. Aaron Schulaner, Office of Elections
Ms. Lori Tomczyk Office of Elections

Guests in Attendance:

Mr. Jeff Kuwada, Maui County Clerk
Ms. Jean Aoki, League of Women Voters
Ms. Jo Ann Maruoka, League of Women Voters
Ms. Nikki Love, Common Cause
Mr. Bart Dame
Mr. Larry Gellar

PROCEEDINGS

I. Call to Order

Chair William Marston called the meeting to order at 10:00 a.m. on September 28, 2010, at the State Capitol, Room 309.

II. AG Robyn Chun conducted the swearing in of new Commissioner Patricia Berg.

III. Roll Call and Determination of a Quorum

Elections Commission Secretary conducted roll call. Mr. Charles King was absent.

IV. Approval of Minutes for the June 23, 2010 Elections Commission Meeting

Ms. Zale Okazaki moved to approve the minutes of the June 23, 2010 meeting. Ms. Donna Soares seconded, and the motion carried unanimously.

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

Mr. Larry Gellar asked and was allowed to provide public testimony for agenda item VI. Mr. Gellar testified that his intent was to bring this issue before the commission for investigation to bring some clarity for the public. It was not intended to be an investigation of wrong doing but to find out if there was any wrong doing on the part of the Chief Election Officer as stated in a complaint from Maui resident Mr. Michael Howden regarding the resignation of Senator Robert Bunda from his Senate seat prior to filing nomination papers to run for Lt. Governor.

It is the belief of Mr. Howden that the Chief Election Officer should have filed a complaint with the Circuit Court to determine if the nomination papers of Sen. Bunda were valid because he had not resigned from his Senate seat. Mr. Gellar noted that Senator Bunda did file a letter of intent to resign but there was no proof that a letter of resignation was received before he filed his nomination papers for Lt. Governor. It should be determined if the Chief Election Officers action or inaction supported the candidacy of Senator Bunda.

VI. Discussion – Mr. Larry Gellar's request for investigation dated September 13, 2010

Chief Election Officer Scott Nago reported to the commission that the Office of Elections did receive Mr. Howden's complaint. Upon receiving the complaint, the office checked with the Senate Clerks Office and confirmed that Senator Bunda did resign to run. The Senate Clerks Office also had the same letter of intent and letter of resignation that the Office of Elections received from Senator Bunda.

Mr. Nago also stated that Senator Bunda signed the resigned to run portion of his nomination papers. This section certifies under self-subscribing oath that he was qualified under the law to be a candidate for another state office.

A motion was made by Commissioner Warren Orikasa to recommend that the Commission proceed with an inquiry to determine if an investigation to address Mr. Gellar's complaint should take place. The motion was seconded by Commissioner Donna Soares. The Commission voted four (4) yes and four (4) no. The motion did not carry.

Another motion was made by Commissioner Patricia Berg to move this subject discussion to the next meeting's agenda and discuss it in executive session if permitted. The motion was seconded by Commissioner Young. The Commission voted yes with no objections and the motion was carried.

VII. Review of and recommendations for Primary Election

Chief Election Officer Scott Nago began by thanking all staff from the counties and the Office of Elections for their hard work which minimized some of the concerns the public voiced prior to the elections. The elections did go smoothly however, there were some start up issues such as a voting machine not working at the polling place for about two hours and some poll worker no shows at the polling place. These issues were addressed.

Voter turnout was at 43% in comparison to 39% during the last election. There was a large turnout for absentee voters. Approximately 90% of the Absentee Ballots requested were returned.

Commissioner Margaret Masunaga inquired about the incident involving Sen. Mercado-Kim. It was explained that there was a clerical error made when counting the amount of valid signatures that her opponent had when filing his nomination papers. He had a total of 14 valid signatures and he needed 15 in order to qualify. If the error was caught earlier, he could have signed his own nomination papers or he could have gone back into the community to get the one more signature needed. It was determined by the court that the Office of Elections accepted his nomination papers and so he is considered a candidate.

Another incident questioned by Commissioner Masunaga involved the absentee ballots which were sent out and missing the Senate District 25 race. Corrected ballots were sent out to the voters along with voting instructions. All but 130 corrected ballots were received back. Costs for printing the corrected ballots were paid for by the vendor.

It was commented that some voters had a difficult time finding out where their polling place was located. Mr. Nago explained that there were several ways to find out the location of your polling place. The voter could contact 211, the Office of Elections, or use our webpage to get this information.

Nikki Love from Common Cause of Hawaii submitted written testimony on ballot design. Testimony stated that there was some confusion with the ballot design. An official observer from the League of Women Voters also supported the testimony. She observed quite a few spoiled ballots at the poll.

Other concerns mentioned by Bart Dame included the late mailing of absentee ballots, drop in the number of overseas votes, and if there was a possibility of the software reading the party selection on the ballot rather than having the ballot kicked back and processed by election staff. Mr. Nago responded that the mail out of the absentee ballots is the responsibility of the County. Voters are also allowed to request absentee ballots up to the week of the elections. There was an amendment to UOCAVA procedures which may have caused the drop in overseas voters. The election software currently used is not able to read the ballots that are not marked correctly so the ballots need to be processed by election workers.

Jean Aoki from the League of Women Voters commented that since elections is a must for the citizens, she would like to see the Legislature set aside monies so that the elections process can be protected and take place without problems such as those experienced in the year leading up to this election.

VIII. Review of General Election preparation to include Funding, Precinct Locations

Mr. Nago reported that since the general election falls on a Tuesday and is not a holiday for many workers, polling place worker recruitment may be an issue. He also reported that the Office of Elections has been fully funded and there is enough money to run this election.

IX. 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. 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)
2. Chen, et al. v. State of Hawaii, et al., Civil No. 10-00245 BMK (USDC Hawaii)

3. Nishimura v. Williams, Civ. No. 10-1-0186

4. Uniformed and Overseas Citizens Absentee Voting Act

Ms. Zale Okazaki moved for the Commission to go into executive session. Mr. Danny Young seconded and the motion carried unanimously.

The Commission resolved to executive session at 11:20 am and reconvened in open meeting at 11:32 am.

X. Adjournment

Chair Marston adjourned the meeting at 11:33 a.m. The next meeting date of the Elections Commission is to be determined.

Respectfully submitted,



Carolyn L. Roldan
Elections Commission Secretary