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MINUTES FOR MAY 11, 2016 MEETING

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Campaign Spending Commission

Leiopapa A Kamehameha Building, Room 204

May 11, 2016

10:00 a.m.

Commissioners Present

Gregory Shoda, Adrienne Yoshihara, Eldon Ching, Bryan Luke, Kenneth Goodenow

Staff Present

Kristin Izumi-Nitao, Tony Baldomero, Gary Kam, Sandrina Lee, Jessica Richey

Deputy Attorneys General Valri Kunimoto and Deirdre Marie-Iha

Call to Order

Chair Shoda called the meeting to order at 10:05 a.m.

Old Business

Commissioners' Vote to Approve Chair and Vice Chair of the Commission

Chair Shoda asked if there was any further comment or discussion from the last meeting concerning this matter. There was none.

Commissioner Goodenow moved to appoint Bryan Luke to be Chair of the Commission and Adrienne Yoshihara as Vice Chair of the Commission. Motion seconded by Commissioner Ching. Motion carried (5-0).

Consideration and Approval of Minutes on 4/20/16

Chair Luke asked for comments or changes. Vice Chair Yoshihara commented that Jessica Richey should be added under "Staff Present" and sought to clarify the second to the last paragraph on page 4 concerning the motion to go into Executive Session. Chair Luke then called for a vote to approve the amended minutes.

Commissioner Shoda moved to approve the amended minutes of 4/20/16. Motion seconded by Commissioner Goodenow. Motion carried (5-0).

New Business

*Docket No. 16-30 – In Re the Matter of Dr. Leonard Horowitz v. Roz Baker, Capitol Consultants, Radcliffe and Assoc., & G.A. Morris

General Counsel Kam reported that a complaint was filed by Dr. Leonard Horowitz against Respondents Senator Rosalyn Baker, Capitol Consultants of Hawaii, Radcliffe and Assoc., & G.A. Morris on March 14, 2016. John Radcliffe is the owner of Radcliffe and Assoc. George (“Red”) Morris is the owner of G.A. Morris. Radcliffe and Morris are lobbyists. Both are equal partners in Capitol Consultants Hawaii.

In his complaint, Dr. Horowitz alleges that: (1) During the 2012-2014 election period, Respondents gave Senator Baker an aggregate contribution over \$6,000 which exceeded the \$4,000 contribution limit applicable to her office under HRS §11-357(a)(2); and (2) Senator Baker filed a false Hawaii State Ethics Commission Disclosure of Financial Interest Form.

In addition to the complaint, staff provided to the Commissioners copies of Respondents’ responses to the complaint and Complainant’s response to Respondents. Further, Complainant submitted a supplemental packet of information for consideration at the meeting.

With respect to the first claim, for the 2014 election period, the Commission’s electronic records show that:

- Capitol Consultants made a contribution of \$250 to Senator Baker;
- Morris made three contributions to Senator Baker aggregating \$2,000; and
- Radcliffe made three contributions to Senator Baker aggregating \$2,000.

Under the Commission’s general rule of aggregation, a person whose contributions are “financed, maintained, or controlled” by another person shall be considered to have been made by a single person. HRS § 11-361(a). There is no evidence that Radcliffe financed, maintained, or controlled Morris’ contributions or vice versa. Respondents Radcliffe and Morris provided to the Commission canceled checks of their contributions to Senator Baker. All were drawn upon their individual personal accounts. Radcliffe and Morris stated that they “made separate decisions to contribute from their respective personal funds on separate checks.” Radcliffe’s personal contributions should not be attributed to Morris and Morris’ personal contributions should not be attributed to Radcliffe.

Under the Commission’s aggregation provision for partnerships, a partnership’s contribution “shall be attributed to the partnership and to each partner in direct proportion to the partner’s share of the partnership’s profits.” HRS § 11-361(b). Applying this aggregation rule to this case,

\$125 of Capitol's \$250 contribution is attributed to both Radcliffe and Morris since they are equal partners in Capitol. Thus, during the 2014 election period, Radcliffe and Morris each gave Baker \$2,125 in contributions which is well below the \$4,000 contribution for her Senate office.

With respect to the second claim, the Commission does not have jurisdiction. Commission staff has informed Horowitz of this fact and suggested to him that he file this claim with the State Ethics Commission. Horowitz informed Commission staff in his May 5, 2016 e-mail transmittal of his reply that he has done so.

General Counsel Kam recommended that the Commission summarily dismiss Horowitz' complaint.

Dr. Horowitz introduced himself to the Commission and commented that Senator Baker is at the forefront of advancing mandatory vaccinations that are being manufactured and distributed by Monsanto and Pfizer which has caused brain damage and autism to over one million children. He stated that an aggregate of \$7,650 in contributions went to Senator Baker by these companies. He showed the Commissioners a record which lists the \$7,650 coming from Monsanto, Syngenta, Pfizer, and PhRMA and further commented that these records are confusing statements and difficult to see. Dr. Horowitz talked about monopolization statutes and that he would go to the Attorney General's Office to inform that office about the iShare and BlackRock stock that Senator Baker owns.

Commissioner Shoda asked General Counsel Kam about the \$7,650 contributions to which it was confirmed that Dr. Horowitz was relying upon State Ethics Financial Disclosure forms and not campaign contribution data.

Commissioner Shoda stated that the Commission's website is clear that there are tools to see where campaign funds are coming from.

Sherrri Kane commented that if Senator Baker passes mandatory vaccination bills, there should be a choice. She questioned where Senator Baker's money was coming from and that it was hearsay that the money was not coming from other companies totaling \$7,650. She further asked why Senator Baker was not at the meeting to defend herself.

General Counsel Kam stated that Senator Baker was not present because she will be traveling out of state later in the afternoon and that he told her that her presence was not required by law.

Chair Luke asked the parties to confine their presentation to Commission business and asked Associate Director Baldomero to explain the Commission's database.

Associate Director Baldomero said that the State Ethics Commission is a different office and that if you were to look at campaign finance reports, you could zoom in/out with your browser. He

further stated that the report Dr. Horowitz is referencing regarding the \$7,650 in contributions is from the Commission's office but that it was in an altered graphic format that was difficult to read. He suggested that they print reports directly from the Commission's website or use the data from the datasets that can be downloaded into an Excel file and then manipulated from there.

Chair Luke offered that Complainants should call the Commission office if they would like assistance in using the searchable database.

Commissioner Goodenow moved to dismiss the complaint. Motion seconded by Vice Chair Yoshihara. Motion carried (5-0).

*Docket No. 16-34 – In Re the Matter of Raymond Banda and Friends of Raymond Banda

Executive Director Izumi-Nitao reported that a complaint had been filed against Raymond Banda and Friends of Raymond Banda for the failure to file an amended Organizational Report.

On 3/28/16, treasurer Tracy Ryan of the Friends of Raymond Banda informed Commission staff that she resigned as treasurer. On 3/30/16, Commission staff sent Respondents a "Notice to Submit Candidate Committee Electronic Filing Form and Notice to Amend Organizational Report" via first class mail informing them that they must amend their Organizational Report to appoint a new treasurer and that a fine would be imposed. Respondents did not file an amended Organizational Report.

On 4/21/16, Commission staff sent Respondents a "Notice of Fine for Failure to Amend Organizational Report" via first class mail informing them that a fine of \$50 had been assessed. Respondents have not paid the fine nor have they filed an amended Organizational Report.

On 5/5/16, Commission staff sent Respondents a copy of the complaint and informed them that the matter would be set on the 5/11/16 Commission Agenda.

Executive Director Izumi-Nitao recommended that the Commission make a preliminary determination, pursuant to HRS §11-405(a), that probable cause exists to believe that a violation of the campaign spending law has been committed, assess an administrative fine of \$50, and order that the Respondents file an amended Organizational Report within two weeks of receipt of the order.

Commissioner Shoda moved to make a preliminary determination that probable cause exists that a violation has been committed and to accept the fine and terms as stated in the complaint (i.e., assess a fine of \$50 and order that an amended Organizational Report be filed within two weeks of receipt of the order). Motion seconded by Commissioner Ching. Motion carried (5-0).

*Draft Advisory Opinion No. 16-02 – Perkins Coie

General Counsel Kam reported that Perkins Coie, a law firm in Washington, D.C., requested an advisory opinion concerning the formation of a hybrid-PAC, the republication of campaign material, and the application of Docket No. 10-06 – In Re Sierra Club of Hawaii PAC to future activities. Pursuant to HRS §11-315, the Commission’s written advisory opinion is due in 90 days.

General Counsel Kam reported that Perkins Coie has requested a continuance to permit them the opportunity to respond to the draft Advisory Opinion which was submitted to them earlier this week. Further, he said that Perkins Coie is willing to waive the 90 day requirement.

William McCorrison, Esq., local representative for Perkins Coie, asked for a continuance to the July or August meeting. The Commissioners agreed to continue the matter until the August 10, 2016 Commission meeting.

General Counsel Kam recommended that the Commission go into Executive Session pursuant to HRS §92-5(a)(4) to consult with the Commission’s attorney on questions and issues pertaining to the Commission’s powers, duties, privileges, immunities, and liabilities related to its consideration of Advisory Opinion No. 16-02.

Chair Luke moved to convene Executive Session pursuant to HRS §92-5(a)(4) to consult with the Commission’s attorney on questions and issues pertaining to the Commission’s powers, duties, privileges, immunities, and liabilities related to its consideration of Advisory Opinion No. 16-02. Commissioner Shoda seconded the motion. Motion carried (5-0).

Public session reconvened at 10:55 a.m.

Old Business

Consideration, Discussion, and Update of Commission Legislation and/or Other Campaign Finance Related Bills/Resolutions for the 2016 Legislative Session

General Counsel Kam presented Commissioners an updated spreadsheet of the House and Senate bills. The only bill discussed was HB 2156, HD 2, SD 2, CD 1 which was originally a funding bill that became a modified version of HB 2066. Essentially, CD 1 took out everything except the amendment to HRS §11-381(a)(8) which permits candidate committees to use campaign funds for ordinary and necessary expenses “including expenses incurred for memberships in civic or community groups.” CD 1 passed final reading in the House and Senate on 5/3/16 and is now before the Governor for approval.

Discussion ensued on the position to be taken before the Governor. General Counsel Kam stated that staff does not believe that this amendment is necessary and would recommend veto because the law already permits this expenditure. HRS §11-381 is modeled after federal law and it would be detrimental to modify our law – especially, if it adds no value – because the

Commission relies on federal case law for guidance and interpretation of similar or identical federal campaign finance law.

Executive Director Izumi-Nitao reported that the Commission received no general funding. Efforts to address this situation will be taken at the next legislative session.

Commissioner Goodenow questioned whether the Commission should recommend veto over this bill, but after a general discussion with the Commission, it was decided that they would defer to staff.

Report from Executive Director

Report on Compliance of Filing Timely Disclosure Reports

Executive Director Izumi-Nitao reported that the Attorney General's Office – Civil Recoveries Division (“AG-CRD”) provided the following update:

- Hanalei Aipolani – a demand letter was sent on 3/21/16. A petition for 1st Circuit Court relief will be filed.
- Faye Hanohano – a demand letter was sent on 4/25/16.
- Learning Matters – a petition for 1st Circuit Court relief will be filed.
- Curtis Lake – a demand letter was sent on 3/21/16 and a tax intercept was placed on him.
- Noralyn Pajimola – a payment plan will be arranged.
- Henry Kahula – a demand letter was sent on 5/6/16.
- Creighton Higa – a demand letter needs to go out.
- Richard Fale – Commission staff sent out demand letters last week to perfect the claim for AG-CRD.

These matters are being handled by three AG-CRD attorneys. Chair Luke asked that Deputy Attorney General Kunimoto report on the progress at the next meeting.

Deputy Attorney General Kunimoto reported that one matter was resolved (Christy Gusman).

Report on Training Committees for the 2016 Election

Executive Director Izumi-Nitao updated the Commission on the following schedule of classes:

- HILO – 5/17/16 Tuesday @ 9:30 – 11:30 a.m. (Candidate Committee training) → 30 registrants so training has been confirmed. Associate Director Baldomero to present and Elections Assistant Lee to assist.
- MAUI – 5/24/16 Tuesday @ 9:30 – 11:30 a.m. (Candidate Committee training) → 5 registrants so training has NOT been confirmed. Associate Director Baldomero to present and Administrative Assistant Richey to assist.
- KAUAI – 5/27/16 Friday @ 9:30 – 11:30 a.m. (Candidate Committee training) → 10 registrants so

training has NOT been confirmed. Executive Director Izumi-Nitao to present and Elections Assistant Lee to assist.

-HONOLULU – 6/1/16 Wednesday @ 9:30 – 11:30 a.m. (Candidate Committee training) and 1 – 2:30 p.m. (Noncandidate Committee training) → 14 registrants for candidate committee training and 17 registrants for noncandidate committee training so both trainings have been confirmed. Associate Director Baldomero to present the candidate committee training and General Counsel Kam to present the noncandidate committee training.

Chair Luke asked for a motion to convene Executive Session to consider and approve Executive Session minutes from the Commission meeting on 4/20/16. Vice Chair Yoshihara moved to convene Executive Session for the aforementioned reason. Motion seconded by Commissioner Goodenow. Motion carried (5-0).

Public session reconvened at 11:06 a.m.

Next Meeting:

Scheduled for Wednesday, June 29, 2016.

Chair Luke asked for a motion to adjourn the meeting. Commissioner Goodenow moved to adjourn the meeting. Motion seconded by Vice Chair Yoshihara. Motion carried (5-0). Meeting adjourned at 11:13 a.m.