STATE OF HAWAII
ELECTIONS COMMISSION

MINUTES

WILLIAM B. MARSTON
ELECTION COMMISSION CHAIR

REGULAR MEETING OF THE
ELECTIONS COMMISSION

August 22, 2012 @ 10:00 AM
STATE CAPITOL
415 SO. BERETANIA STREET, ROOM 309
HONOLULU, HAWAII 96813

Commissioners in Attendance:

Mr. William Marston, Chair
Ms. Patricia Berg
Mr. Charles King
Ms. Carol Kitaoka
Ms. Terre Marshall
Ms. Margaret Masunaga
Mr. Warren Orikasa

Technical Support Staff in Attendance:

Ms. Robyn Chun, Department of the Attorney General
Mr. Scott Nago, Chief Election Officer
Ms. Judy Gold, Office of Elections
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. Derrick DePledge, Honolulu Star Advertiser
Mr. Jeffrey Kuwada, County of Maui
Ms. Nikki Love, Common Cause Hawaii
Ms. Shirley Magarifuji, County of Maui
Ms. Janet Mason, League of Women Voters
Ms. Bernice Mau, City and County of Honolulu
Councilman Dennis Onishi, County of Hawaii

Mr. Glenn Takahashi, City and County of Honolulu
Mr. Ricky Watanabe, County of Kauai
Mr. Lyndon Yoshioka, County of Kauai

PROCEEDINGS

I. Call to Order

Chair Marston called the meeting to order at 10:00 a.m. on August 22, 2012, at the State Capitol, Room 309.

II. Swearing in of New Commissioners Ms. Terre Marshall and Ms. Carol Kitaoka

Deputy Attorney General Robyn Chun conducted the swearing in of new Commissioners Terre Marshall and Carol Kitaoka.

III. Roll Call and Determination of a Quorum

Elections Commission Secretary conducted roll call. Commissioner Okazaki and Commissioner Young were not in attendance.

IV. Approval of Minutes of the May 30, 2012 Elections Commission Meeting

Chair Marston asked if there were any additions or corrections to the May 30, 2012 meeting minutes. Commissioner Masunaga noted that Councilman Dennis Onishi had corrections to the minutes. Chair Marston noted that he is allowing the Commission to make any additions or corrections to the minutes and Councilman Onishi's comments will be heard after the Commission is done. Commissioner Masunaga noted that she was aware of Commissioner Okazaki having some recommended changes. Since Commissioner Okazaki was not in attendance, Commissioner Masunaga recalled that the recommended change was in reference to a statement made by County Clerk Kuwada. Commissioner Orikasa noted that in his recollection, the minutes were accurate.

Commissioner King moved to approve the minutes and the motion was seconded by Commissioner Orikasa and carried by the Commissioners in attendance.

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

Ms. Janet Mason, Vice President from the League of Women Voters (LWV), submitted written testimony and also gave verbal testimony. She stated that the LWV did not observe any systemic problems with either voter registration or the Primary Election. However, the LWV does feel that there is a concentration of

issues on the Big Island and they're hoping that these problems will be addressed. They also feel that the voters have lost confidence in the Hawaii County Elections Office and they are also concerned about the contradicting information given by the State Elections Officer and the Hawaii County Clerk to the public.

They request that the Commission hire an independent investigator to compile all the facts and analyze what can be done to prevent these problems from occurring again. They also request that the findings be published before the General Election. They feel that this report will go a long way in restoring the public confidence in the election process. The LWV also feels that the press will continue to cover the mishaps with the County of Hawaii and the LWV is grateful.

Commissioner Orikasa asked Ms. Mason if the fact that the other counties did not have significant problems with the existing protocol during the election weigh into their decision to ask for the investigation. Ms. Mason responded that they did recognize that things went well in the three other counties but that there was a break down in operations and management on the Big Island. Commissioner Orikasa asked if rather than having an investigation, would it be reasonable to check into the implementation of existing protocol on the Big Island to prevent the reoccurrence of problems. Ms. Mason said that the reason for asking for an independent investigation was because of the contradicting information given by both the Hawaii County Clerk and the State Elections Office.

Ms. Mason also noted that the LWV appreciates the role of the Elections Commission and feels that the Commission can turn this situation around. Chair Marston noted that the Commission is empowered by law to conduct investigations, however, it has no oversight of the Counties or the County Clerks. Chair Marston noted that the Commission will discuss this with General Counsel.

Councilman Dennis Onishi testified that he was representing himself and was not present to testify on behalf of the County of Hawaii. Councilman Onishi stated that he felt there were items discussed at the last meeting that were not written in the minutes. He noted that he had written to Mr. Nago asking how the minutes were taken. He wanted to know if notes were taken or if the meeting was recorded since some items discussed at the last meeting were left out of the minutes.

He was in disagreement with the documentation of County Clerk Kawauchi's response to the question of whether or not she has ever run an election. He also noted that a statement made by County Clerk Jeffrey Kuwada and a request from the Commission Chair to place an update of elections on the County Council meeting agenda was also not included in the minutes. Commissioner Orikasa noted that the documentation of County Clerk Kawauchi's response was documented on page 5 paragraph 4. He also noted that his concerns regarding the Chairs agenda request was documented on page 7 paragraph 2.

Councilman Onishi stated that since the request was not documented in the minutes and a written request from the Commission Chair was not sent to him, elections was not placed on the council meeting agenda.

Commissioner Masunaga noted that on page 8 paragraph 5 states "Councilman Onishi suggested that if available, the Commissioners could attend the next Council meeting. Commissioners Okazaki and Masunaga said that they would be willing to attend the meeting if elections were placed on the agenda. Councilman Onishi also expressed that he is appreciative that this issue was placed on this Commission meeting agenda for discussion." She noted that travel arrangements were made for Commissioner Okazaki to attend the Council meeting but later had to be canceled since elections was not placed on the agenda.

Councilman Onishi also noted that the County Clerk stated at the Commission meeting that the County Council meeting agenda could be waived to include the elections update, however, he was later told that waiving the agenda would be in violation of the Sunshine Law.

Councilman Onishi asked County Clerk Jeffrey Kuwada if he wanted to comment on the minutes and if he agreed with what he had said. County Clerk Kuwada stated that he did not feel it was proper to comment on testimony given by the Councilman.

Councilman Onishi went on to state that for current agenda item VII, the LWV asks for an investigation on what happened on the Big Island and he agrees. He feels that instead of an independent individual doing the investigation, it is the job of the Elections Commission to do the investigation. Since the County Clerk and the Chief Election Officer are making conflicting statements, the Commission should be conducting the investigation to present the facts. He also noted that he had asked the Office of Elections and the person that was sent to Hawaii County during the primary election, attend Mondays Council meeting to discuss what happened during the election. He stated that his request was denied and felt the Monday Council meeting was held for nothing.

Councilman Onishi asked if there was a log for complaints on election day. CEO Nago responded that there are record books. Councilman Onishi stated that there were complaints about the Control Center on the election day because the phones were not being answered and when they were answered, the Control Center worker would ask to call them back and the calls were not being returned to the poll workers and voters were waiting for long periods of time and sometimes left before they were able to vote. Councilman Onishi told the Commissioners to review the logs to see the various complaints that happened on election day.

Commissioner Orikasa asked CEO Nago if there was a log book for the Precinct Chairs to log incidents that occur on election day. CEO Nago responded that there are record books at each polling place and complaints are logged in the record books. Commissioner Orikasa explained to Councilman Onishi that in order to validate the complaints he is disclosing, it would help if the polling places of the incidents could be given to the Commission. Councilman Onishi told the Commission that they should look at the log books. He also stated that if they do the investigation, they would need to review the log books and see what kinds of problems there were.

Councilman Onishi also commented on the report submitted by County Clerk Kawauchi in which he heard that she mentioned some of the problems were due to inexperienced staff and not enough training. He stated that the inexperienced staff were not only the volunteers but her permanent staff as well. He went on to mentioned that there was a voter whose children did not get their absentee ballots. He reiterated that these problems were due to inexperienced staff. Commissioner Berg asked Councilman Onishi if he knew how many experienced staff was left in the County Clerks office. He responded that there was one left out of 7 staff. Chair Marston asked if these issues were discussed at the Council meeting and Councilman Onishi said that County Clerk Kawauchi would not discuss personnel issues at the council meeting.

Councilman Onishi wanted to put it on record that he began his effort to make the Commission and Elections Office aware of the existing problems from April. He is also asking that the Elections Office and the Attorney General send someone to the Big Island to assist with the preparation for the General Election.

VI. Status Report from the Chief Election Officer

As outlined in the Status Report to the Commission dated August 15th, CEO Nago reported that after the Primary Election, the Office of Elections conducted its own investigation into the late opening of polls on the Big Island. What they found were three polling places that were opened significantly late, one as late as an hour and a half. This information was gathered from reviewing the record books and interviewing the Precinct Chairs.

CEO Nago explained that the separation of State and County election functions is also outlined in the report. At the Commissions request, a timeline of communication with the Big Island, which included copies of letters and emails, is also provided.

In the interest of providing clarification for the public, it was suggested that CEO Nago proceed with explaining the separation of State and County election

responsibilities. He explained that State law outlines the responsibilities for the State and Counties. The four Counties are responsible for absentee walk, absentee mail, voter registration and storage of polling equipment. The state is responsible for election day officials and counting of ballots. The Office of Elections does not register voters or send out absentee mail and ballots. The Office of Elections takes care of election day polling place functions and counting of ballots. Issues of ballots not being received or voter assignments are under the purview of the County Clerks. For the neighbor islands, the Office of Elections delegates the polling place responsibilities to the County Clerk and does cost sharing with them. The Office of Elections also funds a portion of the positions used for election purposes. This arrangement has worked in the prior elections.

Commissioner Masunaga referred to the Status Report and questioned if the audit conducted by the County Clerk on the Big Island was standard procedure. CEO Nago responded that he was not aware of audits of this type taking place in previous elections. He suggested that this question be posed to the County Clerks in attendance. Commissioner Masunaga asked Maui County Clerk Jeffrey Kuwada if the audit conducted on the Big Island is something that Maui County does. He responded that as referenced in the Status Report on page 5, Maui County does not conduct audits of its voter registration roll, however, they do continuous updating of the voter registration roll and if they find a questionable voter registration record, they will contact the individual for clarification and will update it as necessary. He also noted that this is a continuous process in Maui County and they do not conduct a backwards audit. Commissioner Masunaga also asked Maui County Clerk Kuwada if they have ever closed their office and he responded that they have not.

Commissioner Masunaga also referred to a memo and Primary Election day report written to Council Chair Yagong and members of the Hawaii County Council by County Clerk Kawauchi. Commissioner Masunaga quotes page 2 paragraph 2 of County Clerk Kawauchi's report as saying, "My concerns regarding the State Office of elections and election day activities date back to September 2011 when I expressed by strong concerns to the State of Hawai'i Elections Commission about the performance of the State of Hawai'i Office of Elections in the following categories" with the categories listed after the quote. Commissioner Masunaga said that she discussed this with CEO Nago because she was not aware of this. CEO Nago indicated that it wasn't a communication that was sent to the Commission but it was a performance survey that every County Clerk was to complete in the CEO appointment process and the document is marked "CONFIDENTIAL". Commissioner Masunaga asked CEO Nago if he is willing to waive the confidentiality of the performance survey and he responded yes. Commissioner Orikasa questioned what the purpose of this was and Commissioner Masunaga responded that in order to clarify what happened, she would need to make a motion to release this document for review and

discussion. Chair Marston also noted that this document was one of four performance surveys which were done during the appointment process for the Chief Election Officer and all the documents were classified as CONFIDENTIAL.

CEO Nago gave his approval so Commissioner Masunaga made a motion to release the document which is entitled, *Performance Survey by the County Clerks for the Chief Elections Officer,* which Ms. Kawauchi made reference to on Page 2 for review. CEO Nago asked if this was for all the surveys or only the Big Island County Clerks survey. Commissioner Masunaga clarified that it would only be for the survey completed by Ms. Kawauchi. CEO Nago stated that he would waive all the documents for review. Knowing this, Commissioner Masunaga wanted to amend her motion to state the release of all documents relating to the *Performance Survey by the County Clerk for the Chief Election Officer* for review.

Commissioner Orikasa asked Commissioner Masunaga if it was necessary to release this document. Commissioner Masunaga stated that County Clerk Kawauchi's report is stating that she expressed strong concerns of the performance of the State of Hawaii Office of Elections when in fact the document she is referencing is a performance survey of the Chief Election Officer for the purpose of his appointment. Deputy AG Robyn Chun asked if it would be sufficient to note this discrepancy in this meeting. Commissioner Masunaga withdrew her motion on the advice of the Deputy AG Robyn Chun.

VII. Discussion of Commissioners' Observations of the 2012 Primary Elections

Commissioner Berg noted that the Kauai County elections went smoothly. She did make note of a few things that she noticed when she visited the poll. Her list included: 1) the demonstration ballot shown at the polling place was not the same as the ballots given to voters and this caused some confusion among the voters; 2) she noticed that the Chair and Voter Assistant manuals were not user friendly and they should have an index and be tabbed for quick and easy access; and 3) when the ballot is spoiled and the voter needs to sign for a new one, there is no space available on the new format of the poll books. She also noted that there was a big increase in voters using the voting machines and she noticed that it went smoothly. She also wanted to know if there was a way to know how many absentee spoiled ballots there were because if there was a large number not being counted, perhaps the ballot is confusing and we should not encourage absentee voting for the primary election. She also suggested that the polling place be set up differently where there is a table placed between the check in desk and the voting booth. This would allow the voter to sit and review the ballot before they enter the booth to vote. Commissioner Berg also suggested that the poll books be reconciled by the poll workers during down time. She noted that there was a general feeling that there was not enough voter information printed in

the newspapers, and she was told that some of the streets with Hawaiian names were misspelled in the poll books.

Commissioner King noted that Kauai County was uneventful but that there was a need for additional voting machines.

Commissioner Marshall commented that the polling place appeared to run very smoothly and was very well organized and the workers were very well informed. She also noted that in her conversations with other Maui residents, she received the same feedback.

Commissioner Masunaga noted that she received information that the cell phones were giving them problems on the Big Island. In reading the report submitted by Maui County, she noticed that their phones were pre-programmed with the control center phone number. County Clerk Kuwada noted that they had someone from Verizon come in to program all the telephones and he believes that this service is offered to all of the counties. He suggested that Hawaii County may want to use this service but this would be a decision of the Hawaii County Clerk.

Commissioner Masunaga also commented that based on information that she received, the polling place cans were not properly filled with supplies, required documentation and poll books that are needed on election day. She hopes that Hawaii County will be able to work with the other County Clerks and the Attorney General's Office to be properly prepared for the General Election and that all of their polling places will open on time. She is also willing to work on election day.

Commissioner Kitaoka commented that she voted absentee and did not make any observations.

VIII. Request reports regarding the 2012 Primary Elections from County Clerks – discussion and decision making if appropriate

Election Administrator Glenn Takahashi reported for the City and County of Honolulu. He explained that the City and County Elections Division basically handles early voting, absentee voting and voter registration. He also noted that the precinct functions and election day vote counting is the responsibility of the Office of Elections. The County Elections Office has 6 full time election staffers and 50 seasonal staffers. There are approximately 461,000 registered voters out of approximately 953,000 residents as reported during the recent census in the City and County of Honolulu. The three early voting sites located at Kapolei Hale, Honolulu Hale and the Pali Golf Course, serviced a total of 12,941 voters.

The Elections Division sent out 102,653 absentee ballots of which 86,054 were returned. The Elections Division also supports the Office of Elections on election day by providing general support with regards to voter registration and absentee voter matters that effect the operation of the precincts. This assistance amounts to 48% of all votes cast in the Primary Election. He also commented that the Oahu elections went smoothly. Commissioner Masunaga asked him how many pocket precincts there were on Oahu and he responded that there were 14 on Oahu and approximately 2000 voters were serviced in those pocket precincts. He also noted that the return rate for these pocket precincts was higher than the county wide turnout.

Kauai County Clerk Ricky Watanabe and Elections Administrator Lyndon Yoshioka from the County of Kauai reported that there were no major events in Kauai County. They reported that they mailed out a record amount of absentee ballots but did not get the return that they expected. There were a larger number of voters that chose to vote electronically and there was a minor incident involving an accident that created a power outage at the Kapa'a Middle School Cafeteria. The power was restored rather quickly. County Clerk Watanabe stated that Commissioner Berg raised some good points during her observation report and he wanted to clarify that the demonstration ballot used is only a sample ballot and not the actual ballot used for voting. There are no candidate names listed on the sample ballot. He also commented that there is an extra table available at the early walk in voting location and he will try to see if extra tables are available for use at the polling sites. Election Administrator Yoshioka also commented that they encourage voters to do their "homework" before coming to the polling place to make things go smoother at the polls.

Maui County Clerk Jeffrey Kuwada reported that due to the low voter turnout for the Primary Elections, the incidents at the polls were reduced. They do however, expect to have a larger turnout for the General Election and are prepared to deal with whatever problems occur that day. He also noted that this Primary Election has been no different than any previous elections in terms of the working relationship with the Office of Elections. The Office of Elections has been outstanding in providing whatever assistance needed to conduct the elections on election day and they are looking forward to working with the Office of Elections for the General Elections. He also introduced his Election Administrator Shirley Magarifuji and Deputy Clerk Lance Toguchi. He noted that Ms. Magarifuji has 20 years or more of election experience and knowledge and she is a key factor in the smooth operations of their Elections Division.

There were no representatives from the County of Hawaii in attendance at this meeting. The written *Primary Election Day Report* dated August 20, 2012 that was submitted to the Hawaii County Council was available for the Elections Commissioners review.

IX. Recommend that the Office of Elections publicly clarify the election related responsibilities of the County Clerks and the Office of Elections

Clarification of this agenda item has done during the Chief Election Officers Status Report.

X. Possible interviews of Big Island precinct officials to determine the identify problems with the 2012 Primary Elections – discussion and decision making, if appropriate

Chair Marston noted that these interviews have already been completed by the Office of Elections and asked the Commission if they had any comments or questions. Commissioner Orikasa commented that he is concerned because the County that experienced the most problems is not represented at the Commission meeting. He also feels that because of the adversity, one of the first steps to remedy the situation would be to participate with their peers, the Commission and the Office of Elections and their absence speaks volumes in terms of how messages can be conveyed and how the relationship can be improved or restored.

Chair Marston asked CEO Nago if the interviews with the Precinct Chairs were documented and if it was available for public review. CEO Nago responded that there is a matrix and further comments from Deputy AG Chun indicated that details of whether or not there will be charges for copying the document when requested have not been determined.

Commissioner Masunaga said that in her discussion with a precinct worker at Konawaena High School, the worker expressed concerns with setting up the polling place since all of the poll workers were female. She wondered if there were similar concerns mentioned in the interviews with the Precinct Chairs.

Commissioner Marshall stated that she also shared the same concerns as Commissioner Orikasa regarding the County of Hawaii. She stated that in the report submitted by County Clerk Kawauchi, it mentioned that since the Office of Elections now has control of the record books, she does not have the ability to review it and correct things for the General Election. Commissioner Marshall asked CEO Nago what is being done to address this issue. CEO Nago explained that the Office of Elections would never take the records books without the County Clerks knowledge. County Clerk Kawauchi indicated on that Tuesday that she had reviewed all of her paper records and she was going to begin her interviews. The Office of Elections then took the record books to begin looking into the opening times of the polling places. CEO Nago stated that if she wants the records books back they can be given back to her and to date she has not asked for them. He also noted that the Record Books are state logs.

Commissioner King asked if we had the information for the Counties of Kauai and Maui. CEO Nago stated that the easiest way to get the opening times for polling places are to check the record books but the opening times for theses counties were not an issue.

XI. Discussion on status of preparations for the 2012 General Election

CEO Nago reported that the Office of Elections will begin meeting with the Counties to review the procedures so there is no breakdown in communications. Each County does things slightly different due to geography. The Office of Elections is currently conducting debriefings with precinct officials and various election day officials. The office will also begin preparations, testing, and trainings for the General Elections. CEO Nago also wanted to thank and express his deepest appreciation to the election day workers who make sacrifices to volunteer and work long hours on election day. Without them, election day activities would not be possible.

Commissioner Kitaoka asked CEO Nago what his plan was if things will not run well again. CEO Nago responded that the Office of Elections will try to provide as much support as County Clerk Kawauchi asks for and the Office of Elections will be sending over a staff member again for the General Election. CEO Nago also explained that sending over a staff member from the Office of Elections to the County of Hawaii on Primary Election day did hurt the election day operations here on Oahu. Fortunately the voter turnout for the Primary Election was not large but we do not know what the turnout will be like for the General Election.

Commissioner King asked CEO Nago if the staff member sent over was over and above the normal staff provided for the Counting Center and the response was that the staff member sent over was a section head that had vital election day responsibilities. Fortunately, other staff members were able to pick up the slack and made sure that the job was completed.

Councilman Onishi asked if it was possible for the County of Hawaii to hire someone with election experience from here for a week or so to assist them with the elections. CEO Nago explained that the election is not a simple process. It is complex with many moving parts so to send an experienced veteran staff member from the Office of Elections to assist the County is difficult. CEO Nago stated that the Office of Elections will provide as much assistance as it can without compromising the elections operations for the State.

Commissioner Orikasa noted that any requests for assistance should be coming from the Big Island and not this office. Councilman Onishi commented that the absence of the County Clerk at this meeting shows she doesn't believe in what the system is. Commissioner Orikasa again noted that any requests for support should come out of the County Clerks Office. He also noted that the Office of

Elections provides basic support to all Counties and any other support over and above this needs to be requested and it is not the responsibility of this Office to administer the County. Councilman Onishi asked if there was a request to send someone over on Primary Election day. CEO Nago responded that the staff member was sent over to assist the new Counting Center Manager for which the State is responsible for. Councilman Onishi asked if we sent the staff member over to assist someone the County Clerk hired and CEO Nago responded that the Office of Elections hired the new manager. He went on to explain that the State hires a Counting Center Manager for each county.

Councilman Onishi went on to state that for the record, he brought these issues to our attention. Commissioner Orikasa noted that although there were issues during the Primary Election, he feels that everyone has a learning curve and the errors should not be replicated. These errors should be remedied since the County Clerk is aware of them. In addition to this, support is available should they not be able to remedy these errors but the request will need to be initiated at the county level.

Commissioner Berg noted that at the last Commission meeting, it was strongly recommended to County Clerk Kawauchi that she find someone with elections experience to assist her and wondered if she was able to find someone. Secondly, it was suggested that she try to set benchmarks. Commissioner Berg asked CEO Nago if any of these things were done because she is very concerned with the General Elections. He responded that he was not able to answer for the County Clerk and he has not seen any benchmarks from her.

Commissioner King noted that he understands when communication breaks down it can be tough. He wanted to know if there was any way to reach out and re-establish communications with the County Clerks office. CEO Nago stated that the Office of Elections has been sending the County Clerk correspondence offering assistance.

Commissioner Masunaga stated that she believes face to face communication is effective and she is willing to, along with Commissioner Kitaoka and the Attorney General's Office if they are willing, meet with Jamae Kawauchi, Steve Lopez and their Administrator. CEO Nago explained that they have had face to face meetings but keep in mind that when some of these meetings were taking place, AB walk was in operation and some individuals were not always able to be away from their offices and attend these meetings. He reiterated once again that he will provide assistance for her without compromising the elections operations for the State.

XII. Executive Session

Pursuant to Haw. Rev. Stat. 92-5, consult with counsel regarding the Commission's powers, duties, privileges, immunities and liabilities related to the 2012 Elections

Chair Marston moved for the Commission to go into executive session. Motion was seconded by Commissioner Berg and carried unanimously.

The Commission resolved into executive session at 12:05 pm and reconvened in open session at 12:44 pm.

XIII. Adjournment

Commissioner King moved that the meeting be adjourned. Motion was seconded by Commissioner Marshall and approved unanimously by the remaining Commissioners.

Elections Commission meeting was adjourned at 12:45 a.m.

Next commission meeting has been scheduled for September 18, 2012.

Respectfully submitted,

Carolyn L. Roldan
Elections Commission Secretary