

**Report of the
Permitted Interaction Group
on Proposals Relating to
Ethics and the
Ethics Commission
March 23, 2016**

Members:

**Kevin D. Mulligan, Chair
Judge Michael F. Broderick (Ret.)
Paul T. Oshiro**

PERMITTED INTERACTION GROUP REPORT – ETHICS

Proposal #15 – This proposal attempts to address the conflict of interest issue by focusing on a matter not within the Commission’s jurisdiction and should not be considered.

Proposal #39 – Authorize the Salary Commission to set salary ranges for attorneys who work for the Ethics Commission, who would set their actual salaries.

Comment/Analysis: *We recommend modifying Proposal #39 by allowing the Ethics Commission to set the salary of the Executive Director and the salaries of the staff attorneys assigned to the Ethics Commission. Section 11-107 would be amended to read as follows:*

Section 11-107. Ethics Commission --

There shall be within the department of the corporation counsel for administrative purposes only an ethics commission which shall consist of seven members. The commission shall be governed by the provisions of Section 13-103 of this charter. In accordance with the prohibition in Article XIV of the Constitution of the State of Hawaii, the members of the ethics commission shall be prohibited from taking an active part in political management or in political campaigns.

The commission may appoint such staff and engage consultants as is necessary to assist it in the performance of its duties. Such staff and consultants may include attorneys who may advise the commission independently of the department of the corporation counsel. All staff positions shall be exempt from the provisions of Chapter 11 of Article VI of this charter, but such staff positions, except the position of executive director **and staff attorneys**, shall be included in the position classification plan. The executive director shall be an attorney qualified to practice law in the State of Hawaii. The salary of the executive director shall be ~~[fixed by ordinance]~~ **set by the ethics commission within the EM-7 range applicable to city and county civil service employees; provided that the salary may fall below the EM-7 range if the position of executive director is less than a full time position. The salary of staff attorneys shall be set by the ethics commission; provided that salaries of staff attorneys shall not be more than comparable salaries of attorneys in the department of corporation counsel.**

Proposal #107 – Create an Office of the Inspector General to replace the Ethics Commission. The Inspector General would not be under the control or administrative authority of the Corporation Counsel to provide a more independent watchdog agency for residents and taxpayers. The person who submitted this proposal pointed to several other jurisdictions with this type of structure, including Broward County, Florida, Cuyahoga County, Ohio and Montgomery County, Maryland.

In *Broward County*, the OIG investigations program is responsible for the investigation of allegations of misconduct and gross mismanagement by Broward and municipal elected officials, employees and providers. Misconduct is defined as “any violation of the state or federal constitution, any state or federal statute or code, any county or municipal ordinance or

code; or conduct involving fraud, corruption, or abuse.” Gross mismanagement is defined as “the material waste or significant mismanagement of public resources.”

The *Cuyahoga County Agency of Inspector General* was established by the County Executive and County Council to protect taxpayers’ interests by promoting honesty and accountability in County government. To further this objective,, the Agency of Inspector General is granted broad authority to conduct investigations, inspections and audits relating to fraud, corruption, waste, abuse, misfeasance, malfeasance and nonfeasance in the operations of County government. In addition, the Agency of Inspector General is the investigative officer for all issues arising under the County’s Ethics Ordinance. The Agency of Inspector General is responsible to ensure that County employees and contractors/vendors who do business with the County meet the highest ethical standards.

The *Montgomery County Office of the Inspector General* prevents and detects fraud, waste, and abuse in government activities and proposes ways to increase the legal, fiscal, and ethical accountability of County government departments and County-funded agencies by reviewing the efficiency and effectiveness of programs and operation of County government and independent County-funded agencies.

Comment/Analysis: *We do not believe we need this type of structure in the City and County of Honolulu. This constitutes a major policy change and would involve considerable expense. We already have the Ethics Commission and the City Auditor that perform similar functions.*

The City Auditor has the authority to conduct performance and financial audits of funds, programs, and operations of any agency of the city, as determined by the auditor.

An alternative would be to make strengthen the Ethics Commission through the qualifications necessary to be appointed as a member and allowing the Ethics Commission to set the salary of its staff attorneys.

For example, in the City of Oakland, California, there are specific qualifications in the appointments made by the Mayor, City Attorney and City Auditor. The mayor must appoint one member who has represented a local civic organization with a demonstrated history of involvement in local governance issues.

The City Attorney must appoint one member who has a background in public policy or public law, preferably with experience in governmental ethics or open government matters. The City Auditor must appoint one member with a background in campaign finance, auditing of compliance with ethics laws, protection of whistleblowers, or technology as it relates to open government.

We provided this information to the Executive Director of the Honolulu Ethics Commission and he spoke with the Executive Director of the Oakland Public Ethics Commission. He is supportive of this type of change to the Honolulu City Charter.

Therefore, we recommend leaving the current appointment process in place, but adding the qualifications used by the City of Oakland.

Proposal #114 – This proposal submitted by the League of Women Voters supports the increased independence of the Ethics Commission by: 1) changing the appointment process to one adopted by Atlanta, Georgia and 2) locating the Ethics Commission in the Office of the Auditor.

Under the Atlanta model, the selection of ethics commissioners is made by the following organizations:

- The Atlanta Bar Association selects one member
- Another Bar Association selects one member
- The Atlanta Business League selects one member
- The Atlanta Chamber of Commerce selects one member
- The Atlanta-Fulton County League of Women Voters selects one member
- The Atlanta Planning Advisory Board selects one member
- The six major colleges and universities within Atlanta region select one member

Comment/Analysis: *This particular method of selecting members of the Ethics Commission is questionable. Commissioner Waihee raised a very legitimate issue by questioning what gives these organizations preference over others. Would their selections be more representative of the community or have any expertise with ethics matters? The selection criteria used by Oakland, California is a more effective way of addressing this issue. Therefore, we recommend not adopting this proposal.*

Proposal #147 – This is not a proposal but several editorial statements about different issues, including ethics. Therefore, it should not be considered.

Proposal #153 – This proposal would amend Section 11-102 (a) of the Charter by inserting the following language:

“No elected or appointed officer shall:

Solicit or accept any gift, directly or indirectly, whether in the form of money, loan, gratuity, favor, service, thing or promise, or in any other form, under circumstances [~~in which it can reasonably be inferred that the gift is]~~ which are intended to influence the officer or employee in the performance of such person’s official duties and which benefit the elected or appointed officer or employee personally affect the financial interests of their family or involve individuals or organizations with which the elected or appointed officer or employee has some past, present or future connection away from their official duties.”

The rationale is that the current language is overly broad and warrants change so that there is a clear standard of conduct.

Comment/Analysis: *Based upon an analysis from the Honolulu Ethics Commission, the language in Proposal #153 is overly broad. It would require the Ethics Commission to prove that whoever gave a gift had the intention to influence a city official in carrying out their duties. This is the standard of proof required in a criminal bribery conviction.*

However, we also recognize that the term “can reasonably be inferred” in Section 11-102 (a) of the Charter is open to interpretation and application. We are currently seeking guidance in how other municipalities deal with the issue of gift to city officials.

Therefore, we make no recommendation with respect to Proposal #153.