



MICHAEL CURTIS
ELECTIONS COMMISSION CHAIR

**STATE OF HAWAII
ELECTIONS COMMISSION**

April 17, 2024

State of Hawaii
Office of Information Practices
Attn: Staff Attorney Lori Kato
250 South Hotel Street, Suite 107
Honolulu, Hawaii 96813

Dear Ms. Kato:

This is in response to the Notice of Appeal of Sunshine Law complaint from Mr. Ralph Cushnie concerning actions taken by the Elections Commission at its February 20, 2024 meeting.

Mr. Cushnie cites the following Sunshine Law violations in regard to the conduct of the February 20, 2024 meeting.

- EC failed to provide the public with proper notice of an executive session as required by section 92-7, HRS;
- EC did not complete a 2/3 vote to go into executive session, in violation of section 92-4(a) HRS;
- EC did not do a roll call vote going into executive session, in violation of section 92-3.7(b)(5);
- EC evaluated the performance of the Chief Election Officer in executive session in violation of section 92-5(a)(2), HRS.

This letter serves as the Elections Commission's response to the appeal made by Mr. Cushnie.

Mr. Cushnie alleges that the Commission failed to provide the public with proper notice of an executive session as required by section 92-7, HRS.

The Elections Commission electronically filed its notice of meeting on

February 14, 2024, on the State and County Calendar website. Additionally, a copy of the notice was faxed to the Lt. Governor's office. The agenda includes notice that the Commission anticipates going into executive session as listed under agenda item IX and noting the topics in which the Commission had intended to discuss - specifically the approval of the minutes of the executive session meeting of January 16, 2024, and the discussion and evaluation of the performance of and the reappointment of the chief election officer.

Mr. Cushnie alleges that the Commission did not complete a 2/3 vote to go into executive session, in violation of section 92-4(a) HRS.

A motion was made by Commissioner Takenaka to enter into executive session, however, the videorecording does not capture on video who seconded the motion. The recording captured several voices stating "second". Chair Curtis called for a vote asking for those in favor of going into executive session in which you hear and see some commissioners voting "aye" and when asked if any commissioner votes against the motion, the videorecording captures Commissioner Cushnie raising his hand saying "aye". Chair Curtis requested those Commissioners who voted no to raise their hand, Commissioner Cushnie was the only commissioner to raise his hand, however, the videorecording does not capture this. With no other Commissioners verbally voting against the motion, the Commission entered into executive session.

Mr. Cushnie alleges that the Commission did not do a roll call vote going into executive session, in violation of section 92-3.7(b)(5).

As noted in the above response, the Chair called for a vote in which all commissioners appeared to have voted in favor of entering executive session.

Mr. Cushnie alleges that the Commission evaluated the performance of the Chief Election Officer in executive session in violation of section 92-5(a)(2), HRS.

The Chair explained to the Commission that the evaluation of Scott Nago will be conducted in executive session as Mr. Nago asked to be reappointed but did not opt to have his evaluation done in an open meeting. It was explained to the Commission by Deputy AG Stella Kam that the law provides that the public officer who is being evaluated may choose to have their evaluation conducted in public. If they choose not to have it in public, then the discussion will be held in executive session.

Lori Kato, Esq.
April 17, 2024
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Enclosed, please find the following links to supporting materials, as requested. Links are also posted on the Elections Commission website at <https://elections.hawaii.gov/about-us/boards-and-commissions/elections-commission/>

- Link to the Agenda of the February 20, 2024 meeting;
<https://elections.hawaii.gov/wp-content/uploads/2024-02-20-EC-Agenda-FINAL.pdf>
- Link to the videorecording of the February 20, 2024 meeting; and
Part 1: <https://www.youtube.com/watch?v=9FoEmHLLYS4>
Part 2: <https://www.youtube.com/watch?v=2xTyYuMK0SY>
- Link to the Written Minutes of the February 20, 2024 meeting
<https://elections.hawaii.gov/wp-content/uploads/2024-02-20-EC-Regular-Mtg-Minutes-FINAL.pdf>
- Hard copy (enclosed) of the Minutes of the Executive Session meeting of February 20, 2024

If you have any questions or need additional information, please contact Nedielyn Bueno, Elections Commission Secretary at (808) 453-VOTE (8683) or send an email to elections@hawaii.gov.

Sincerely,

Michael Curtis

Michael Curtis
Elections Commission Chair

NB:rd
EC-24-002

Enclosure

c: Elections Commission
Scott Nago, Chief Election Officer, Office of Elections



**STATE OF HAWAII
ELECTIONS COMMISSION**

MINUTES – DRAFT
EXECUTIVE SESSION
ELECTIONS COMMISSION
FEBRUARY 20, 2024 @ 1:30 p.m.

Pursuant to Section 92-3.7, Hawaii Revised Statutes, the Elections Commission (EC) will be meeting remotely using interactive conference technology.

Commission in Attendance:

Michael Curtis, Chair
Dylan Andrion
Anita Aquino
Ralph Cushnie
Stafford Kiguchi
Clare McAdam
Kahiolani Papalimu
Cynthia Takenaka

Support Staff in Attendance:

Stella Kam, Department of Attorney General (AG)
Nedielyn Bueno, Office of Elections (OE)

IX. Executive Session

- A. Pursuant to section 92-5(a)(8), Hawaii Revised Statutes (HRS), the Commission anticipates going into executive session to discuss the approval of the executive session minutes from January 16, 2024
- B. Pursuant to section 92F-5(a)(2), HRS, the Commission anticipates going into executive session to discuss and evaluate the performance of and the reappointment of the Chief Election Officer.

The Commission went into executive session at 4:20 p.m.

Commissioner Takenaka sought clarification if the Commission would be voting on the reappointment of Scott Nago in which Chair Curtis responded yes.

Commissioner Takenaka expressed that she is not ready to vote on the reappointment at today's meeting.

Chair Curtis invited CEO Nago into executive session to speak on his reappointment.

Chair Curtis asked CEO Nago if he would like to be considered for reappointment and to explain to the Commission why he feels he should be reappointed. CEO Nago expressed that he would like to be reappointed as Chief Election Officer sharing that he brings years of experience to the job. Prior to becoming CEO, Nago shared that he worked in various positions within the Office of Elections which has helped in managing and conducting the complexities involved in running elections.

Commissioner Takenaka made a motion to defer the vote of CEO Nago's reappointment to next month's meeting which was seconded by Commissioner McAdam. The motion failed.

AYES: Curtis, Kiguchi, McAdam, Takenaka

NOES: Andrion, Aquino, Cushnie, Papalimu

Additional discussion occurred amongst the Commissioners regarding CEO Nago's performance. Chair Curtis expressed that CEO Nago has the experience and that Scott believes in the integrity of the elections. Commissioner McAdam commented that the testimonies received in opposition to Scott's reappointment is a small population and that she has not seen a mass opposition to eliminate Scott. Commissioner Kiguchi agreed with Commissioner McAdam's comment adding that there are various reasons for low voter turnout. He believes that the office has gone through difficult elections and that Scott has performed well in managing those difficult conditions and should be reappointed. Commissioner Papalimu shared that in her years as a volunteer she has seen a steady decline of voters and that reflects on Scott's performance and shared that she would be voting no to his reappointment.

The Commission sought clarification from Deputy AG Kam whether Scott's appointment would be terminated immediately if he is not reappointed or if he can stay in the position as a holdover. Deputy AG Kam responded that the statute relating to the CEO reappointment does not have specific language about holdover.

With no further discussion about CEO Nago's reappointment, Chair Curtis asked if there were any comments on the minutes of the executive session meeting on January 16. With no further discussion Commissioner Andrion made a motion to approve the executive session meeting minutes which was seconded by Commissioner Cushnie and approved unanimously by the Commission.

With no further business, Chair Curtis made a motion to end executive session and was approved unanimously by the Commissioners.

The Commission reconvened into open meeting at 5:14 p.m.



MICHAEL CURTIS
ELECTIONS COMMISSION CHAIR

**STATE OF HAWAII
ELECTIONS COMMISSION**

May 16, 2024

State of Hawaii
Office of Information Practices
Attn: Staff Attorney Lori Kato
250 South Hotel Street, Suite 107
Honolulu, Hawaii 96813

Dear Ms. Kato:

This is in response to the Notice of Appeal of Sunshine Law complaint from Mr. Ralph Cushnie concerning actions taken by the Elections Commission at its March 19, 2024 meeting.

Mr. Cushnie cites the following Sunshine Law violations in regard to the conduct of the March 19, 2024 meeting.

- EC failed to provide the public with proper notice of a public hearing on the performance of the Chief Election Officer, as required by section 92-7, HRS;
- EC failed to hold a public hearing on the performance of the Chief Election Officer in violation of section 92-7, HRS;
- EC failed to allow public testimony on the performance of the Chief Election Officer on an agenda item that was subsequently bypassed and restricted public testimony to the beginning of the meeting in violation of section 92-3, HRS

This letter serves as the Elections Commission's response to the appeal made by Mr. Cushnie. As a preliminary matter, we note that under the Elections Commission's administrative rules, the definition of "meeting" in section 3-170-2, Hawaii Administrative Rules, includes "public hearings."

Mr. Cushnie alleges that the Commission failed to provide the public with proper notice of a public hearing on the performance of the Chief Election Officer, as required by section 92-7, HRS;

The Elections Commission electronically filed its notice of meeting on March 13, 2024, on the State and County Calendar website. Additionally, a copy of the notice was faxed to the Lt. Governor's office. The agenda includes the topic of evaluation and reappointment of the Chief Election

Officer under agenda item VI to be considered at the March 19, 2024 meeting which also included the meeting date, time and place of meeting.

Mr. Cushnie alleges that the Commission did not hold a public hearing on the performance of the Chief Election Officer in violation of section 92-7, HRS;

The Elections Commission held a meeting on March 19, 2024 to discuss the evaluation and performance of the Chief Election Officer as listed on its agenda.

Mr. Cushnie alleges that the Commission did not allow public testimony on the performance of the Chief Election Officer and that the agenda item was bypassed and restricted public testimony to the beginning of the meeting violated section 92-3, HRS:

The Elections Commission's March 19, 2024 agenda was properly filed in accordance to section 92-7, HRS, which included Public Testimony under agenda item IV. Upon filing of the agenda on March 13, 2024, the Commission began receiving written testimony from the public which was compiled in the meeting board packet. Additionally, the Commission accepted oral testimony from the public which is reflected in the written minutes.

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May 16, 2024
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Sincerely,

Michael Curtis

Michael Curtis
Elections Commission Chair

NB-nb
EC-24-008

c: Elections Commission
Scott Nago, Chief Election Officer, Office of Elections