

COMMITTEE C  
CHARTER COMMISSION  
MEETING MINUTES  
APRIL 2, 1992  
COUNCIL COMMITTEE ROOM

PRESENT

Dolores Fabrao  
Robert Nakasone (Commission Chair)  
Victor Reyes  
Allan Sparks  
Lloyd Yonenaka  
Susan Nakano-Ruidas (Staff)

EXCUSED

James Cockett  
Sherrilee Dodson (Commission Vice Chair)  
Annette Mondoy  
Anne Takabuki (Committee Chair)  
Deborah Wright  
Jamie Woodburn

GUESTS

Reverend Paul Kaneshiro  
Dave DeLeon

I. CALL TO ORDER

In the absence of Committee Chair Takabuki, Commission Chair Nakasone called the meeting to order at 3:17 p.m.

II. PUBLIC TESTIMONY

None.

III. APPROVAL OF MINUTES

As requested by Chair Takabuki, the minutes of the December 5, 1991 and February 27, 1992 meetings were approved as circulated. The minutes of the March 25, 1992 meeting were deferred to a later date.

IV. OVERVIEW/DISCUSSION OF ARTICLE 10 - CODE OF ETHICS

A. Reverend Paul Kaneshiro, Chairman of the Board of Ethics  
[Maile Luuwai was unable to attend due to illness]

Chair Nakasone: I understand that you were supposed to submit some amendments on the section of ethics.

Reverend Kaneshiro: There are actually four. The first one, and this is all in Section 10, Code of Ethics of the Charter. This one that we're most concerned about... The current reading under Section 10-4.1.d., is very restrictive. When we saw the state code of ethics articles it began to get us to think about...we wanted to add something to that. Under 1.d. it says "Represent private interests..." These are in the prohibitions section. "Represent private interests in any action or proceeding against the interest of the county or appear in behalf of private interests before any agency."

We wanted to continue the sentence to read: "of which the individual is an employee, or in a transaction in which the individual has participated or will participate."

The reason we brought this up is because people who serve, we're looking at not only from the employees viewpoint but also on behalf of those citizens who serve on boards or commissions. I'll just use myself as an example. I serve on the board of ethics, but according to the current wording, if my church, Pukalani Baptist Church, were to appear or to ask for a variance, or to have some...or was appearing before another entity, say the building or whatever, I would not be able to appear on behalf of my church; even though I have nothing to do with the planning commission or the building inspection. And so, what we wanted to do was very similar to what the state does, that you cannot appear in a private interest if you have something to do with that particular body that you are appearing before.

We have other situations where a member of one of the boards, say he's self-employed, he's a one man business, so he's serving in a capacity on one of

Reverend Kaneshiro: (Continued) the boards or commissions for the county. And, he has to appear, because of some business maybe, he has to go for a building permit, right? Right now, he can't; he'd have to hire somebody to represent him. And so, that's why we wanted to add in that...these words that would allow us, or any employee, or any person serving as an officer or employee of the county, to appear before an entity that he's not directly related to. Okay, so that's the first one.

Sparks: So that was 10-4.1.d. Okay.

Fabrao: Do you have copies of those? [Referring to the amendments Reverend Kaneshiro was reading from]

Reverend Kaneshiro: What I'm going to do is...Maile's not here, so I'm going to allow her to make sure about the wording and then she'll pass it on to you.

Chair Nakasone: Any questions on that, item one?

Reverend Kaneshiro: The second one is under the same area, prohibitions, 10-4.1.e. this time. And it says: "Use county property or personnel for other than public activity or purpose."

The board is recommending that you consider making that more specific in this way: "Use county's time, equipment, property, facilities or personnel for other than public activity or purpose."

And so what this is is a clarification in more detail. Do you have any questions about that amendment?

Chair Nakasone: Well, the question I have is, if you make it more specific, there's a chance you might leave something out...that still ties in with personnel or property.

Reverend Kaneshiro: What we have done...it's the same wording here which deals with property and personnel, we've just added three other things -- time, equipment and facilities. And the reason for that is time is not even mentioned in here, but yet, there has been sometimes where we have been asked to look into something that could be... You know, the employee should not be doing private business, outside business during public time, also. But, it just mentions personnel and property, and so we included time in that.

And then, property depends on how you interpret the word property. So, we added in facilities and equipment, also.

Sparks: Does that include pens and pencils?

Reverend Kaneshiro: That would be subject to interpretation.

Chair Nakasone: That's county property.

Reverend Kaneshiro: We dealt more with such things as how... Well, the questions that have come to us have been more of the nature of how to use the county vehicles, to and from, with those people who are able to take them home because of their job descriptions. So, it's been more of those larger items rather than the small items, but it depends on how those interpretations within that topic. So, the only reason we added in these three items is time was not mentioned at all, and that has come up several times, and just because the definition of property -- so equipment and facilities was added in.

Okay, there's another one I think Maile brought up last time, as far as... We're required to receive and file lobbyist forms elsewhere in the Charter,

Reverend Kaneshiro: (Continued) but it doesn't appear specifically in this section. And so, we were not aware of that until somebody actually filed a lobbying form with us, and we said why is that coming to us, because when we looked in Article 10 there was no mention of that. So, it was our recommendation is to go ahead and put it in Article 10, Section 10-2.2.g. So, it's adding the wording under g. "Receive and file lobbyist registration forms."

And, the last recommendation is a recommendation that we on the board are not in complete agreement about. Some felt strongly enough about it, that we felt we ought to bring the issue to you along with both sides of the arguments, and of course, to allow you to make the final decision.

It's a new subsection to Section 10-4.1. And we added that would require an official or employee to disclose that individual's county position, if the official or employee is involved in a public activity in which he or she may take an official action. What we are relating to here is we've received several situations that are not a direct violation of the code of ethics, but it seemed to be a problem. And, what it is is in some situations there will be a community, what do you call those, councils like, a person spoke who was serving on a board or commission. Would that person carry undue influence because they were on a certain board, especially if that board or commission would be dealing directly with that issue. For instance, if they sat on some commission and it was before a community association, and that person spoke, it might be interpreted as an official opinion from the group that would be ruling on it in the future. So what the recommendation was was that person, that official or employee, ought to declare themselves publicly to what that person's position was within the county. And then leave it up to the community organization or that public entity to decide whether or not they wanted to hear from him. But at least there was a declaration, which meant there was possibly a potential conflict of interest that everybody would recognize and that the body could rule whether or not to hear from that person.

The reservations regarding this recommendation are for several reasons. Our counsel has listed these first in Section 10-4.1.c. She feels that this would address that area of concern. Secondly, the disclosure requirement seems to be unduly restrictive and may inhibit county employees from participating in public/community activities. Third, if a county employee fails to disclose his or her county position, a violation of the code of ethics will occur. As a result, that employee will be subject to disciplinary action, which appears to be harsh.

And so, there were some on our committee that felt very strongly about that, that when you are in the public arena, outside of county business, the people that you are speaking to ought to know where you are coming from, and so you have some kind of declaration or disclosure. And then the group would decide what weight they want to put on that person's testimony or argument.

Others on the board felt that that was something outside of our bounds in terms of the code primarily deals with activities within the county operations, you know, county time, that kind of thing. And, this may be an area that falls under their private life.

So, we wrestled with that back and forth; so we're just passing it on to you.

Chair Nakasone: Any questions?

Fabrao: I wanted to address the sentiment Mr. Smith had regarding the ethics value of when a person goes for a variance... You heard about that?

Reverend Kaneshiro: I was here with you the first time he brought that up. Yeah, I expressed real concern about that, and the reason for that is because that would make

Reverend Kaneshiro: (Continued) the board of ethics our super board of ethics, and it would have to be manned by paid full time professionals because we do not know... I mean, we don't know about...we don't know the variance codes and how would we make that determination that they were out of line. Or, any other boards or agencies, so I just don't see that as being possible.

Yonenaka: I was just going to...a little off the subject maybe... I guess it was today's paper had something about some golf tournaments and I think some public officials attended free as gifts. And, apparently these public officials were determining...that the people who put on the golf tournament were going to these public officials to get rate adjustments and what not. But, would that be something that you would look at offhand and say they have a problem, that may be unethical?

Reverend Kaneshiro: Let me just say that I would not venture to speak for the board.

Sparks: I understand that practice -- it's disclosure, right?

Reverend Kaneshiro: I'm not familiar with the situation because I haven't read the paper today but, generally the prohibition there is one of receiving any type of gift directly or indirectly in the form of money, service, loan, travel, entertainment, hospitality, etc. that can be reasonably inferred that that gift was given either to influence that person in the performance of his official duties, or intended as a reward for something that they did on their behalf. So, each of those situations we'd have to look at as to what happened actually. We've had a number of situations where a complaint was issued, or a complaint was given to us from some individual who was concerned about that, and they made different allegations. Then in investigating those allegations, there was no substantiation about that. So, that's why I'm saying it just depends on what our investigations shows -- if there was substantiation to that, what the gifts were, what was the connection between the individuals and the organization, etc. So, I wouldn't want to venture...

Yonenaka: And, I just think the board of ethics is a real difficult thing because a lot of times it is a judgment call, and it's almost to the point -- you can actually take it to an extreme -- it's good but at the same time you can prohibit an official from actually even talking to somebody, in the wrong place at the wrong time. And you know, it's a problem. And, there are times a lot of problems are solved just sitting down and talking to the person and saying okay, we've got to work something out, let's do it. And, if you end up buying my lunch we have a problem, or if I end up buying your lunch we have a problem. It's a...

Reverend Kaneshiro: The other thing too, and this was not a part of the discussion on the board, it's just my personal... The only thing that we're charged to do is to find whether there's been a violation or not. Period. And then it's sent on to the administration or to the prosecuting attorney's office and then it's out of our hands. Which, we're more comfortable with, but sometimes, you know that's the concern, is that you can see violations that may be minor and where other violations that may be major. So, all we're doing though is having to go by the code and ruling upon that, and then sending it on. And so, you brought up pencils and pens and that type of thing, we could be very tied up and not do much work if there were a lot of people who just wanted to complain about little things rather than substantial things. And, we have to make the determination which ones we're investigate and we try to do it with each of them, and fortunately it's not at the point where there's a lot of frivolous things, so we take each one seriously and go ahead and go in and investigate. But we do have

Reverend Kaneshiro: (Continued) look at... You know, we're limited and we keep emphasizing that to people who write to us and complain; we're limited by the code of ethics. And, they want us to do all kinds of other things. They may have a leg to stand on, they may have something there, but it's beyond our purview. And, I know that's part of the frustration of some people in the public who feel like we should do something, but it's really not in... All these situations which seem to be real big, we need to get in and see what really happened, if that can be determined.

Fabrao: It's not really that important but, I was with the senior citizens one day, they invited me to functions because they come to the hospital and do things for the patients, so this one time I won a complimentary dinner at Manele Bay Hotel. Did you know I didn't use it because I was afraid of this kind of thing. A little thing like that...

Reverend Kaneshiro: In those kinds of situations you can come to the board and ask for an advisory opinion. An advisory opinion is that aspect where you give us the situation and we'll call you in and let you talk to us and we'll call in whoever else might have a bearing on that, and then we would give you an advisory opinion. And, it may be perfectly okay for you to go ahead and do that, and we want you to be able to do that we'd rule it that way. Or we'd say, probably that might end up as a violation so it's best not to. But that's what it is, an advisory opinion. We love to see those because then it's up front before the event, 'cause after the event happens then it becomes a complaint.

Sparks: I noticed that you said all you can do is respond to complaints but in so doing, you can also initiate impeachment proceedings, if your findings are serious enough. And you mentioned earlier that financial disclosure statements may be too rigorous. Was that one of your recommendations, or what was...

Reverend Kaneshiro: It's not the financial disclosure statements, it's the section on appearing before...it's 10-4.1.d. the prohibitions.

Sparks: Yeah, okay, I followed that. But you have no recommendations on financial disclosures?

Reverend Kaneshiro: Nothing on financial disclosures.

Chair Nakasone: What's bringing that question up is from the Chamber's meeting.

Sparks: Yeah, well that resonates in my memory a little bit. There were some people, one or two people expressed the notion that financial disclosure statements as it's constructed, as it's obligated now might be too much for some people. People won't serve on boards and commissions because of that. Have you had much of that kind of flack?

Reverend Kaneshiro: We...since I've been on the board, I'm not aware of any, so this is news to me. There's two types of financial disclosures; one's public disclosures and the other one is private disclosures. So the public disclosures are for elected officials and department heads, and their assistants. And most of the other commissions and boards fall under the private, so those are all confidential.

Sparks: Just while we're on that topic, is that a chore for you folks?

Reverend Kaneshiro: It depends on the time of the year. Right now there's a lot of paperwork and we're expecting a flood of them coming in. In fact, I just signed a number of letters going out to different individuals who filed with us questioning them on certain items that we're not sure about, so we're just awaiting their reply. But, in my experience, that has been one of the easier parts of our boards work because most of that is pretty clear cut.

Sparks: Apparently every year you send out a reminder -- has anything major changed -- and you revise it or amend it.

Chair Nakasone: I think the concern that was expressed at the start of the meeting was the extent of the commissions authority. So my other question is why is it necessary to submit these disclosure forms. I could see like your planning commission, police, liquor that has administrative authority I can see that board requiring but where the board is advisory, they don't make final decisions or have decisions which have the force of law...that's the concern here. And one person actually stated that that's the reason why a lot of people don't anymore sit on boards and commissions.

Sparks: That person's idea was that it should be that maybe a disclosure makes sense at the time something comes up, rather than just before presuming that there might be a problem. That doesn't make sense to me...who's going to bring it up?

Chair Nakasone: I had a question a long time ago with the board of ethics. For example, council deals with the question of property tax, the tax rate. And yet, they're voting on something which they are homeowners, too. And they say it's not a conflict. How do you figure that out?

Dave DeLeon: Exempt themselves from the property tax.

Chair Nakasone: The decision was when everybody is in conflict, there's no conflict.

Yonenaka: So if you do it as a group, it's okay.

Sparks: Bob, but what if there's one of those councilmen who doesn't have any property, and so they're not in conflict, so not everybody is in conflict.

Chair Nakasone: Well, the majority's in conflict.

Sparks: Okay, the majority.

Fabrao: This is not important, but this one person told me that one case that went to court, something about that there's no law that says that you have to pay taxes. And so it's a choice you make when everybody pays taxes. So this one guy questioned it and he told the judge to show him where on the books it says we have to pay taxes, and there really is no law that covers that, but we assume that there is.

Yonenaka: There was a guy on Kauai that beat them. Yeah, but you've got to understand he owed \$20,000 in taxes and it cost him over \$20,000 to fight the case.

Sparks: Last time Maile was here she had some written suggestions from you folks and we started looking at it and asking questions, she couldn't

Sparks: (Continued) answer all questions, so she was going to go back and get things sorted out. Is that...are we...have we done that? Are we going to get that?

Reverend Kaneshiro: Primarily what we looked at was... What the board came up with last time, that Maile brought back, was the aspect of... Primarily we were taking a look at the state's code in comparison. So when we did that this last meeting, we felt it was impossible for us to propose to you all twenty or thirty different changes, so let's boil it down to the ones we felt were most important. And so these four were the ones most important, that we felt were of substance.

Sparks: I don't remember what it was, but as we got into the details of what she had and started asking questions, things didn't make sense, she didn't know the answers and so at that point she said we'll regroup and come back. So, you're coming back with about four specific...

Reverend Kaneshiro: Four specific; so it was a boiling down of that. Because we didn't want to rewrite the whole section, and primarily what it was was we liked a lot of the things that we saw in the state code, and it made a lot of sense to us to make it uniform all the way on through, and so we were highlighting just the places where we saw differences and there are a lot of those. So, we just boiled it down to these four. There are other areas, but we felt these were the... Well, two of them are key and one we brought up that was just among ourselves that...that aspect of when a person speaks out in public. And then the fourth one in terms of just adding in a lobbying requirement here just to make it uniform with the other part of the Charter.

Sparks: Where's the other request?

Reverend Kaneshiro: It's somewhere else.

Yonenaka: Don't worry about it, Al.

Sparks: Are you recommending anything in here that gives the board some authority over lobbyists, or you just receive their statements or forms?

Reverend Kaneshiro: You know we were not really sure what to do there. Our understanding was that the aspect of the reason why lobbyists register, because we had never dealt with it before the last few months, because we didn't see it as such in Article 10. So our understanding was that it was for the purpose of disclosure, so that people would know that this person was a lobbyist.

Sparks: So it's public -- the forms that the lobbyists file.

Reverend Kaneshiro: I've forgotten where that section is, but there was somewhere else that says they ought to register with us.

Dave DeLeon: There's a state law to that effect.

Chair Nakasone: Is that part of the Charter or was it an ordinance?

Reverend Kaneshiro: I'll bring that back to Maile. I thought it was in the Charter.

Dave DeLeon: The problem with that is a good definition of what is a lobbyist.

Reverend Kaneshiro: That's right, that's why the state code was much more detailed

Reverend Kaneshiro: (Continued) about that.

Dave DeLeon: You know who could tell us right away would be the Clerk.

Chair Nakasone: I'm just wondering if it was an ordinance or a Charter provision. I don't see it in the Charter.

Fabrao: I think that was one of the things that Maile said she was going to check out for us, that lobbyist issue.

Reverend Kaneshiro: She showed it to us...

Chair Nakasone: In the Charter?

Reverend Kaneshiro: I'm not real certain but I thought it was. I'll give that request to her and have her include it on the memo to you all with the actual wording.

Chair Nakasone: Any other questions? It doesn't look like there's anything in here about lobbyists.

Sparks: If you put something in you almost have to identify what you mean by lobbyist.

Chair Nakasone: Okay, any other questions? That's what we're waiting for, Maile's response to those questions.

Reverend Kaneshiro: I'll have her respond to that one question about where the lobbyist is found, plus the exact wording of those...

Chair Nakasone: Those four points.

Fabrao: One more question before you go, Reverend. You don't feel that anything else needs to be changed in the chapter? It's going to be another ten years before commission comes along.

Reverend Kaneshiro: We understand that. We have not been able to identify anything of substance as far as the Charter is concerned. We have to work on some of our internal documents, you know, rules and regs, but it doesn't fall within the Charter aspect.

Sparks: There's no problems or frustrations perhaps with lack of authority or teeth in your decisions that might be fixed by something in the Charter?

Reverend Kaneshiro: That's something we haven't discussed as a board. My personal opinion is I'm very comfortable in terms of dealing with looking to see if there's been violations, and then leaving it up to the department head to make corrections under his department. Also the aspect of it if there are criminal proceedings out of our findings, something that may be criminal, then a copy of our findings go to the prosecuting attorney. We would be very uncomfortable with trying to do some kind of prosecution because that's not our expertise. And, there is the aspect of impeachment, you know, so those recourses I feel very comfortable with.

Sparks: Educate me a little bit. If somebody has clearly done one of the no noes, the prohibitions, legally is that a crime? Or, what is it?

Reverend Kaneshiro: It's really left up...there is a procedure with a complaint. When the complaint is issued there's a preliminary investigation, an informal hearing is what it is called. Now if there is a finding that there may be a probable violation, then we go into a formal hearing, and in the formal hearing they are able to be represented by legal counsel. And then, at the end of that formal hearing, there is then a decision made, a finding of fact, which is then transmitted to the administration and to the prosecuting attorney, and they make the decisions of what needs to happen.

Sparks: According to this there's an ordinance, huh, that sets penalties.

Chair Nakasone: That's because it's required in the Charter.

Sparks: The Charter requires an ordinance to set penalties for these violations, so it'd either go that way, or if it was serious enough I suppose it'd go for criminal prosecution.

Chair Nakasone: Right.

V. OVERVIEW/DISCUSSION OF ARTICLE 12 - RECALL

Chair Nakasone: You folks have a copy of Daryl Yamamoto's recommendations. Look at his proposal; the things that are in brackets he wants deleted and underlined he wants in. So, you folks just got this, so why don't we defer since the chair is not here also. [Reference - Communication 92-22]

[Item VI. on the agenda was deferred to the next committee meeting - date to be determined]

VI. ADJOURNMENT

There being no further business, Commission Chair Nakasone adjourned the meeting at 3:56 p.m.

ACCEPTED:

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Robert Nakasone, Commission Chair Date

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Anne Takabuki, Committee Chair Date