
**DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
ANNUAL REPORT ON GOALS, OBJECTIVES AND POLICIES**

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Program ID/Title: AGS 871/Campaign Spending Commission

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I. Goals

A. Goal #1 - To simplify and clarify campaign spending laws in order to improve implementation and compliance.

B. Goal #2 - To increase public education, awareness and access.

C. Goal #3 - Increase the technological capacity to improve access, reduce paperwork, and increase compliance.

D. Goal #4 - Upgrade the training for and ability of the committees to comply with campaign spending laws.

E. Goal #5 - Encourage compliance.

F. Goal #6 - Increase and stabilize CSC's institutional capacity to carry out its mission.

II. Objectives and Policies

A. Goal #1 - To simplify and clarify campaign spending laws in order to improve implementation and compliance.

1. Begin process in 2007, with the assistance of a blue-ribbon advisory committee.
2. Complete recodification draft in 2008, submit to the 2009, then 2010 legislature.
3. Use (recodification) process to stimulate the awareness of committees and the general public.

B. Goal #2 - To increase public education, awareness and access.

1. Hold periodic public seminars to highlight important issues.
2. Improve web-based information.

3. Develop capacity for regular public information releases during the electoral season on contributions and expenditures.
 4. Establish procedures between campaign spending, elections and ethics offices to formalize coordination efforts.
 5. Establish procedures between the campaign spending office and the procurement office to formalize coordination efforts.
- C. Goal #3 - Increase the technological capacity to improve access, reduce paperwork, and increase compliance.
1. Develop front-end system so all committees can file on-line, and access additional information and assistance on-line.
 2. Develop user diagnostics to serve as an early warning system for committees on potential violations.
 3. Increase the analyses capability for CSC.
 4. Keep the system updated, and current.
- D. Goal #4 - Upgrade the training for and ability of the committees to comply with campaign spending laws.
1. Develop a comprehensive curriculum, with training modules on most asked, most problematic, and new provisions.
 2. Establish a goal for minimum competency of each committee through testing and/or training.
 3. Create new methods for training and disseminating information, including virtual training (i.e. web-based, DVD).
 4. Hold periodic public discussions to highlight important issues.
- E. Goal #5 - Encourage compliance.
1. Develop system for automatic on-line, email, and postal notifications.
 2. Develop escalating penalties for repeat and gross violations.
 3. Simplify, expedite disposition of offenses.
 4. Automate tracking and follow up communications.

F. Goal #6 - Increase and stabilize CSC's institutional capacity to carry out its mission.

1. In anticipation of continued annual reductions in the annual tax check-off, develop proposals to stabilize funding, including a general appropriation to be made into the trust fund at 4 to 6 year intervals.
2. Articulate the philosophy of fines as fines, not as a dependable or primary funding source for CSC operations.
3. Plan for potential staff transitions (beyond 2012).
4. Continue Commissioner development through periodic discussions, and preparing a Commissioner handbook.
5. Document procedures.
6. Evaluate space needs for possible staff expansion due to potential for increased statutory responsibilities.
7. Develop contingency plans for public funding scenarios.

III. Action Plan with Timetable

(Completed objectives of the Strategic Plan from past years are not listed.)

A. Goal #1 - To simplify and clarify campaign spending laws in order to improve implementation and compliance.

- o **Past Year Accomplishments** – Objectives #1-#3 were completed last fiscal year.

Legislation. We drafted and sought introduction of House Bill 257 to make technical revisions to the campaign finance laws for purposes of clarity, consistency, and style as well as to seek substantive changes such as regulating automated phone calls, changing the report filing deadlines, requiring noncandidate committees to specify in disclosure reports the name of the candidate that is supported or opposed by an independent expenditure of the committee, reinstating partial public funding for prosecuting attorney candidates, providing monetary ceilings on the price of fundraiser tickets that may be purchased with campaign funds, and imposing fines for designated reports or notices untimely filed (or unfiled). This bill stalled in a joint conference committee with the Senate and House. When legislative session commences, we will seek to open conference on this bill again. The Commission's remaining two bills which proposed changes to the report filing deadlines and an additional report by committees as well as prohibiting a candidate from using contributions to pursue nomination and election to another state or county office without the contributor's written consent, did not pass this session.

Other legislation of significance that we provided written and oral testimony and/or tracked included House Bill 443 which prohibited subcontractors and contract bidders submitting an offer for a government contract solicitation from making campaign contributions, House Bill 872 which added new requirements for noncandidate committee registration including additional disclosures as well as repealing reporting for corporations, and House Bill 1572 which amended the Hilo County Council Comprehensive Public Funding Pilot Program (HCCCPF) to add an alternative funding mechanism, raise the program cap, repeal the requirement of a minimum fund amount, extend the period for signature collection, and repeal equalizing funds. We expressed concerns in each of these bills mainly for purposes of implementation, resources, and inconsistencies. None of these bills passed. Further, we provided oral and written testimony at the Senate Ways and Means Committee and the House Finance Committee regarding the budget bill and tracked its progress.

Advisory Opinions. Under HRS §11-315, the Commission may render written advisory opinions upon the request of any candidate, candidate committee, noncandidate committee, or other person or entity subject to campaign finance laws, as to whether the facts and circumstances of a particular case constitutes or will constitute a violation of the laws. If no advisory opinion is rendered within ninety (90) days after all information necessary to issue an opinion has been obtained, it shall be deemed that an advisory opinion was rendered and that the facts and circumstances of that particular case do not constitute a violation of the campaign finance laws. During this period, we issued four (4) Advisory Opinions which are all posted on our website once approved by the Commissioners in a publicly noticed meeting.

Advisory Opinion 10-01 held that the campaign finance laws permit an elected official to use campaign funds for “ordinary and necessary expenses” of the office which include travel expenses to conduct State or county business; bonafide registration and travel expenses for conferences and workshops directly related to the official’s duties and responsibilities; expenses to organize and host community meetings to disseminate information and gather public comment regarding issues relevant to the elected official; expenses for leis for official events or office events, but not leis for legislators; and legislative opening day expenses and inaugural expenses for food and beverages to host constituents.

Advisory Opinion 10-02 held that no contribution is received by a candidate who speaks at a professional association’s meeting. Reasonable overhead meeting expenses of a regularly scheduled association meeting paid by the association or its members are not a contribution if there are no additional costs in connection with the candidate’s attendance.

Advisory Opinion 10-03 held that a candidate is prohibited from contributing campaign funds to another candidate or committee, but may purchase with

campaign funds “not more than two tickets for each event held by another candidate or committee.”

Advisory Opinion 11-01 held that ActBlue, a political committee registered with the FEC, may accept and disburse earmarked contributions subject to the \$1,000 per person election limit as a noncandidate committee; that the earmarked contributions would count toward the individual contributors’ contribution limits; and that it must report the earmarked contributions on Schedule A and the disbursement to candidates on Schedule B1.

- **One Year** – Continue to draft legislation seeking further technical revisions to the campaign finance laws for purposes of clarity, consistency, and style as well as to seek substantive changes such as regulating and reporting independent expenditures, filing deadlines, and electioneering communications. Continue to render advisory opinions as required.
- **Two Year/Five Year** - Continue to update the law and administrative rules as well as issue advisory opinions as needed.

B. Goal #2 - To increase public education, awareness and access.

- **Past Year Accomplishments** – Objectives #1-#5.

Hold Public Seminars. Community presentations to noncandidate committees, corporations, community groups, contractors, certified public accountants, political parties, etc., on various areas of campaign finance laws are regularly delivered when requested. An invitation to facilitate and present a table topic for general counsels at the Council on Governmental Ethics Laws’ (COGEL) Annual Conference in December 2010 was met. Additionally, requests to respond to media inquiries are accepted where practicable.

Improve Web-Based Information. We have an ongoing partnership with the State of Hawaii’s Information & Communication Services Division (ICSD) to improve our website which contains three (3) statutorily required electronic filing systems for candidate committees, noncandidate committees, and corporations. For purposes of transparency, much of the Commission’s operations, business, and finances are posted online including but not limited to Commissioners’ biographies, meeting agendas, meeting minutes, newsletters, conciliation agreements, advisory opinions, Hawaii Election Campaign Fund (HECF) information, annual reports, campaign finance statistics, and the Strategic Plan. Information of current interest is constantly identified and posted on the Commission’s website including laws and rules changes, reporting deadlines, enforcement issues, new case law, and contribution limits. There are also links to viewing reports, filing reports, seeking guidance including e-learning presentations, forms, and qualifying for public funding. In 2010, three (3) presentations concerning candidates and candidate

committees, partial public financing, and noncandidate committees were updated and taped as e-learning videos which were then posted online to be available 24/7.

In May 2011, we began a discussion and researched **social media tools** such as Facebook and Twitter to leverage our capabilities to increase, enhance, and supplement our communication efforts to inform the public of important and time sensitive campaign finance information. In June 2011, DAGS approved our request to employ these applications.

Develop Capacity for Regular Public Information Releases During the Electoral Season on Contributions and Expenditures. When training classes are scheduled, announcements are placed in appropriate mediums to inform the public. Regular requests are made to the Comptroller to approve paystub messages to government employees to remind them of the \$3 check-off to the HECF on their state tax returns. Articles are written and submitted to the Hawaii Society of Certified Public Accountants for publication concerning campaign finance. Staff compose and mail biannual newsletters which capture important information to share with interested parties including candidates, candidate committees, chairpersons, treasurers, noncandidate committees, and others. In preparation for 2012 elections, forms, presentations, and guidebooks for candidate and noncandidate committees have been reviewed, updated, and posted on our website. The Commission's Annual Report for FY 2011 was approved at a publicly noticed meeting on August 10, 2011 and posted on our website. Pursuant to Act 244, in September 2011, we issued newspaper ads stating that there was \$3.5 million in the HECF to run the HCCCPF project absent the equalizing funds program as a result of recent federal case law.

Establish Procedures Between Campaign Spending, Elections and Ethics Offices to Formalize Coordination Efforts. We continue to work with the Office of Elections in arranging joint training presentations concerning the campaign process for candidates. We also provide informational packets to the Office of Elections for them to give to candidates who file their nomination papers. Further discussion with the Office of Elections is expected to continue to identify collaboration on shared issues to include legislation. Monthly meetings with State Ethics Commission, Honolulu Ethics Commission, and Office of Information Practices (OIP) started in 2011 to identify areas in which we may be able to partner and coordinate efforts including legislation and public seminars/training efforts.

Establish Procedures Between the Campaign Spending Office and the Procurement Office to Formalize Coordination Efforts. Since 2009, we have been working with the State Procurement Office (SPO) to notify them monthly of fines and penalties imposed by the Commission for purposes of compliance with HAR §3-126-11.01.

- One Year - Continue to drive the public to our website and utilize social media applications to inform and educate. Complete the subscribe-unsubscribe e-mail system to connect with candidates, committees, and the public. Plan, organize, and

host trainings for 2012 elections. We will be looking at bringing back random audits of candidates and committees filing disclosure reports as a mechanism to not only increase compliance but as an educational tool to improve a better understanding of campaign finance laws. Continue to collaborate with Office of Elections, State Ethics Commission, Honolulu Ethics Commission, and OIP.

- **Two Year/Five Year** - In an economic upswing, hold the National Campaign Finance Law Forum in Hawaii. Update guidebooks, manuals, and e-learning videos as needed.

C. Goal #3 - Increase the technological capacity to improve access, reduce paperwork, and increase compliance.

- **Past Year Accomplishments** – Objective #4.

Keep the System Updated and Current. Appropriate work orders are constantly submitted to ICSD to tweak the system including modification to accommodate new reporting periods, adding new late contribution reports for special elections, building a subscribe-unsubscribe program, and developing any new systems. As a result of an unfunded legislative mandate, the Commission was required to build and launch a **corporate electronic filing system**. Effective January 1, 2011, corporations are required to file a report with the Commission for contributions from its own treasury that aggregate more than \$1,000 per two year election period made directly to a candidate or candidate committee. See, HRS §11-332(a). In partnership with ICSD, this system was launched on March 31, 2011. A “Corporate Administrator-User Guide” was created and made available on our website. Additionally, there have been a number of modifications (business requirements) to the candidate committee, noncandidate committee, and corporate filing systems. Periodic meetings with ICSD are held to check the status of our work orders as well as discuss whether training and/or upgrades are needed to maintain our systems.

- **One Year** - Continue to work and meet with ICSD to identify areas and ways to further this goal. Consideration of other areas such as cloud computing, Google +, and Quick Response (QR) codes are being researched for application to increase, supplement, and enhance communication with candidates, committees, corporations, and the public.
- **Two Year/Five Year** - As ICSD is able to complete our work orders with respect to our electronic filing systems, we will continue to collaboratively identify analyses capability of contributions and expenditures data. In recognition that technology plays a critical role in communicating, it is important to remain abreast of newer applications and social media which will enable us to more effectively improve access, increase compliance, and meaningfully engage stakeholders and interested parties. Evaluate current systems, hardware, and software to determine whether upgrades are needed. Maintain dialogue with

ICSD to ensure Memorandum of Agreement (MOA) with the Public Utilities Commission (PUC) which permits the Commission to house its two (2) blade servers in PUC's blade center and use of PUC's disk storage until March 2013 is continued or other arrangements are made.

D. Goal #4 - Upgrade the training for and ability of the committees to comply with campaign spending laws.

- **Past Year Accomplishments** – Objective #1.

Develop a Comprehensive Curriculum, with Training Modules on Most Asked, Most Problematic, and New Provisions. In an effort to prepare candidates of the numerous reporting requirements and laws regarding campaign finance, training classes were offered in pre-election years across the State. There were five (5) classes offered in 2010 with 104 attendees who attended presentations on candidate committees, noncandidate committees, and public financing. In preparation for 2012 elections and in consideration of new case law, we have revised our powerpoint training presentations, guidebooks, and forms which are all available on our website.

As early as 2007, certified public accountants were attending these trainings because they were often employed or asked to assist with treasurer duties of candidate and noncandidate committees. Accordingly, with the assistance of Commissioner Chair Paul Kuramoto, we were approved to provide Continuing Professional Education credits by the Board of Accountancy to certified public accountants. Our instructor certification must be annually renewed and our current certification will expire in December 2011.

- **One Year** - Update e-learning videos on our website if any new legislation is enacted. Work with ICSD to determine the magnitude of a project to test online all candidates filing nomination papers for knowledge of campaign finance laws and rules. Renew our instructor certification with Board of Accountancy.
- **Two Year/Five Year** – Explore other avenues for training and disseminating information including digital publications.

E. Goal #5 - Encourage compliance.

- **Past Year Accomplishments** – Objectives #1-#4.

Develop System for Automatic Online, Email, and Postal Notifications. ICSD began work on the subscribe-unsubscribe system in 2011 which we anticipate will be functional and operational by fall 2011. Continued collaboration with ICSD is anticipated to identify newer technologies and mobile applications to increase communication and engagement with stakeholders. Our decision to employ social media tools was meant to enhance and increase our communication efforts to

inform committees of important and time-sensitive information to obtain better compliance.

Develop Escalating Penalties for Repeat and Gross Violations. We continue to find that candidates and committees are not filing their reports timely or not at all. In consideration of staff resources in getting these parties to file their reports, the Commission decided to consider other remedies including filing complaints against violators. This resulted in thirteen (13) complaints totaling \$8,395.29 being considered at three Commission meetings in March, April, and June 2011. Of these thirteen (13) complaints, two (2) applications in First Circuit Court were filed in June 2011 to seek judicial enforcement of Commission orders pursuant to HRS §11-410(d) as a result of noncompliance. We intend to file more applications if violators fail to comply with Commission orders. Although this process has been time consuming and requires process servers to be retained for purposes of serving filed court documents, it is our hope that a contempt of court for failure to comply with a Commission order will be an effective deterrent for late reporters and non-reporters.

As for other fines imposed, a total of \$30,242.31 was assessed in FY 2011 for various campaign finance violations.

Simplify, Expedite Disposition of Offenses. Representative of this objective are conciliation agreements which are essentially settlement agreements negotiated by the staff and approved by the Commissioners in a publicly noticed meeting, and complaints filed either by the staff or an outside party. In FY 2011, there were twenty-three (23) conciliation agreements which were approved resulting in a total of \$6,295 in administrative fines and fifteen (15) complaints decided. Of the fifteen (15) complaints, thirteen (13) were due to late reports or non-reporting (see above), one (1) was an alleged false contribution, and one (1) was an alleged excess contributions, non-resident contributions, failure to report, and improper registration. The last two complaints and two of the late reports complaints were dismissed. Only one complaint concerning late reports was withdrawn. Total fines imposed in FY 2011 was \$38,637.60.

We still remain involved in litigation in Yamada v. Kuramoto, et. al., Civil No. CV10-0497. On October 13, 2010, the federal district court enjoined the Commission from enforcing any contribution limits to a noncandidate committee making solely independent expenditures. An appeal to the 9th Circuit Court by the attorney general was withdrawn on June 9, 2011 as a result of a 9th Circuit Court decision in Thalheimer v. City of San Diego issued that same day. Essentially, Thalheimer held that restricting independent expenditures on political speech has a chilling effect extending well beyond the government's interest in preventing quid pro quo corruption. It therefore foreclosed the argument that the State has a justifiable interest in preventing corruption or the appearance of corruption in regulating independent expenditures. Notwithstanding the dismissal of this issue, there will be further litigation to resolve remaining matters in this lawsuit

including another order issued by Judge Seabright denying plaintiffs' request for a preliminary injunction concerning disclosure requirements applicable to noncandidate committees and a challenge to the state contractor provision.

Automate Tracking and Follow Up Communications. As ICSD is able to complete our current requests for modifications to the candidate committee filing system and noncandidate committee filing system, a request to automate the identification of late report filers and the automatic generation of late report letters will be submitted. Other measures to automate our system will be identified and continued work with ICSD is expected.

In addition, to encourage compliance, we encourage people to call us and go to our website. The staff handles numerous phone calls, walk-ins, and inquiries daily. There are computers located in our office for parties to file their reports and to seek our assistance.

- **One Year** – As mentioned earlier under Goal #2, we will be looking at bringing back random audits of candidates and committees filing disclosure reports as a mechanism to not only increase compliance but as an educational tool to improve a better understanding of campaign finance laws. We will also be working with Office of Elections concerning certification of elected officials if they have been delinquent with their reports.
- **Two Year/Five Year** – Identifying other strategies to increase and encourage compliance.

F. Goal #6 - Increase and stabilize CSC's institutional capacity to carry out its mission.

- **Past Year Accomplishments** – Objectives #1, #3-#5, and #7.

Proposals to Stabilize Funding. The Commission's operating expenses and public financing programs are funded by the HECF which is a trust fund within the state treasury. See, HRS §11-421. Revenue sources for the HECF are generated from the \$3 state income tax check-off, the interest generated from the principal, and any funds that escheat to the HECF pursuant to campaign finance laws. Prior to the 2008 Legislature, another revenue stream was administrative fines imposed by the Commission. The 2008 Legislature amended the law so that these fines are now deposited into the general fund rather than the HECF. While the legislature increased the state tax check-off for the HECF from \$2 to \$3, the number of check-offs continue to decline. In FY 2011, a total of \$374,051.45 in revenue was generated and a total of \$881,957.12 in expenditures was incurred, thereby closing FY 2011 with a balance of \$4,141,216.20.

As for public funding, the Commission funds and services two (2) public financing programs – partial public financing and comprehensive or full public

financing which is the HCCCPF program. By law, the HCCCPF program provides for a statutory ceiling of \$300,000 for all qualifying candidates during election years 2010, 2012, and 2014. See, Act 244, SLH 2008, Section 12. As such, the HCCCPF program may deplete as much as \$1 million from the HECF for the 2010, 2012, and 2014 elections. As the balance of the fund declines, the interest on the fund is also rapidly declining. The situation is amplified to the extent that our state's economic situation is in crisis. A proposed bill to request a general appropriation to the HECF was withdrawn when the state's fiscal situation worsened in January 2009. It is projected that an appropriation will be needed by at least 2014, if not sooner, and thus, strategies must be developed to anticipate this need.

Plan for Potential Staff Transitions (beyond 2012). Before staff members are able to carry out specified transactions, DAGS requires multiple training classes for procurement, etc. By increasing the number of staff members attending classes, more are qualified to carry on the various types of administrative work necessary to complete the Commission's work. Furthermore, each staff member drafts and maintains procedures documenting their position and respective duties which are reviewed and shared. Notably, in FY 2011, the Commission experienced significant staff transitions as a result of retirements – i.e., a new Executive Director, General Counsel, and Elections Assistant.

Continued Commissioner Development. A Commissioner's handbook was developed in FY 2008 which was updated in FY 2011. Commissioners are also regularly updated on any new or developing issues (e.g., court cases, public financing concerns, tax laws, etc.) and provided information from annual COGEL conferences. At the end of FY 2011, a request was made to fund Commissioners to attend the 2011 COGEL Conference in Nashville, TN.

Document Procedures. Commission staff continue to build binders to document their duties and responsibilities as well as the steps necessary to carry out their duties and responsibilities. It is expected that as processes and procedures are added, revised, or eliminated, that the binders will be amended accordingly.

Develop Contingency Plans for Public Funding Scenarios. With respect to the HCCCPF program, we continue to emphasize in our legislative oral testimony and in meetings with legislators that the Arizona, Maine and Connecticut clean election programs all have substantial revenue for their programs coming primarily from sources other than the state tax check-off. Hawaii does not.

Notably, on June 27, 2011, in a 5-4 vote, the U.S. Supreme Court struck down the matching funds provision in the Arizona public campaign financing law in Arizona Free Enterprise Club's Freedom Club PAC v. Bennett, 564 U.S. ___ (2011). The Court held that Arizona's matching fund program violated the First Amendment because it substantially burdened protected political speech of privately financed candidates and independent spending groups without serving a

compelling state interest. In effect, this case strikes down the equalizing funds provision in the HCCCPF program (i.e., Act 244, SLH 2008, Section 3).

- **One Year** – Examine other campaign finance systems to identify revenue streams to sustain our operations and programs. We anticipate an appropriation will be needed by at least 2014, if not sooner, to fund Commission duties and responsibilities. This will be a difficult challenge in consideration of our state’s economic situation, and therefore, strategies should be evaluated. Furthermore, we anticipate that the HECF will not have the minimum \$3.5 million in its funds to permit the Commission from administering the HCCCPF program in the 2014 election. Continue to add processes and procedures to each position binder to provide smoother transitions in the future.
- **Two Year/Five Year** - Look for additional sources of funding. Consider strategic planning as the present 5-year plan approaches an end in 2012.

IV. Performance Measures

- A. Customer Satisfaction measure - Evaluate website use by the general public and interest in campaign spending information by analyzing statistical data on the number of visits to our website and determination of what pages have the most viewer interest. Utilize the statistical analysis to improve the contents and user-friendliness of the Commission’s website. Also evaluate training session attendance and hits on website e-training. Gather input from customers seeking phone assistance and attending classes.
- B. Program Standard measure - Number of serious campaign spending law violations should decline as compliance increases as a result of the Commission’s widely-publicized investigations, as candidate training sessions increase, as public use of the Commission’s website increases, as random audits of disclosure reports are reinstated, and as enforcement remains proactive and stable. Consideration and evaluation of Commission operations and programs including identification of core business should be considered as well as continued strategic planning as the 5-year plan approaches an end in 2012. Both discussions are vital to help guide and aid the Commission in prioritizing issues which will be critical in recognition that 3 of the 5 Commissioners have terms which end in 2011.
- C. Cost Effectiveness measure – We believe we can be cost effective if we can continue to carry out our duties and responsibilities without increasing costs significantly. We continually look for new ways to work more efficiently and implement changes accordingly.