HAWAII
STATE
ETHICS
COMMISSION
State of Hawaii • Bishop Square, 1001 Bishop Street, ASB Tower 970 • Honolulu, Hawaii 96813

ADVISORY OPINION NO. 2006-1

CONFIDENTIAL*

The Honorable Beverly Harbin
Representative, District 28
House of Representatives
State Capitol, Room 320
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Representative Harbin:

By letter dated May 20, 2006, you requested an advisory opinion regarding the use of "interns" at the Legislature. Since the Legislature allows interns to work at the Legislature, and since you are a legislator, we believe your request for advice is appropriate. Further, the Commission has not addressed the issue of legislative interns in any prior advisory opinion.

Currently, we are aware that the Legislature allows students to serve as interns at the Legislature. We are also aware that individuals with considerable work experience at companies or at other organizations have also served as interns. Since interns are approved or allowed by the Legislature or individual legislators, the Commission believes that it is necessary to discuss the application of the State Ethics Code, set forth in chapter 84 of the Hawaii Revised Statutes ("HRS"), to legislative interns.

The Commission first notes that there is general agreement regarding the definition of an "intern." The American Heritage Dictionary of the English Language, 4th Edition, defines an "intern" as follows:

> A student or recent graduate undergoing supervised practical training.

Similarly, Webster's Third New International Dictionary defines an intern as:

> An advanced student or recent graduate in a professional field (as teaching) who is getting practical experience under the supervision of an experienced worker.

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* Note: Since the requestor of this opinion released this opinion publically, the Hawaii State Ethics Commission is not redacting this opinion, which is normally required by the State Ethics Code in order to protect the identity of the requestor of the opinion.

Lastly, Black's Law Dictionary, 8th Edition, defines an intern as:

> An advanced student or recent graduate who is apprenticing to gain practical experience before entering into a specific profession.

From these definitions, it is clear that an intern is generally a novice who serves as an intern to gain practical experience in some field of endeavor, under the supervision of a more experienced person.

Since interns perform state duties and must be appointed by a legislator or the Legislature, the Commission believes that interns are subject to the provisions of the State Ethics Code. The Commission believes that this is so because the definition of a state employee, as set forth in the State Ethics Code, is intentionally broad. HRS section 84-3 defines an "employee" subject to the State Ethics Code as follows:

> "Employee" means any nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices and judges.

The Commission believes that this definition includes interns as "employees" because they are appointed to perform state duties. Though interns may not be compensated by the State, the Commission notes that the definition of "employee" includes state board and commission members, who generally serve without compensation. Further, HRS section 84-1, entitled "Construction," mandates that the State Ethics Code be "liberally construed." Liberal construction means that a statute is given as broad a reading as possible to effectuate the intent of the statute. Clearly, it would make little sense for an intern to be allowed to perform state duties, but not be subject to the State Ethics Code. Such an interpretation of the law would allow an intern to act in situations where a conflict of interests exists or to disclose confidential State information with impunity. The Commission believes that this was not the intent of the Legislature when enacting the State Ethics Code.

That interns are subject to the State Ethics Code is also supported by Article XIV of the Constitution of the State of Hawaii. Article XIV provides for the creation of the State Ethics Commission and the State Ethics Code, and mandates that the State Ethics Code shall apply to all state employees, including board and commission members. Article XIV calls for the "highest standards of ethical conduct" on the part of those in state

government. The Commission thus concludes that both the Constitution of the State of Hawaii and the State Ethics Code mandate that interns be subject to the State Ethics Code.

Since the Commission believes that interns are subject to the State Ethics Code, the various provisions of the State Ethics Code would thus apply to interns. Thus, interns, for example, would be prohibited from making recommendations or taking official action regarding any company or organization they may work for, or with respect to any situation that creates a conflict of interest pursuant to HRS section 84-14(a). Likewise, interns could not divulge confidential information (information not available to the public) under HRS section 84-12. Interns would also be barred from using state resources for private business purposes (HRS section 84-13(3)), and prohibited from misusing their positions as interns to give themselves or others any unwarranted advantages or preferential treatment (HRS section 84-13).

Of particular importance to interns is HRS section 84-14(d), which reads, in its entirety, as follows:

> **§ 84-14 Conflicts of interests.**
> . . . .
>
> (d) No legislator or employee shall assist any person or business or act in a representative capacity for a fee or other compensation to secure passage of a bill or to obtain a contract, claim, or other transaction or proposal in which he has participated or will participate as a legislator or employee, nor shall he assist any person or business or act in a representative capacity for a fee or other compensation on such bill, contract, claim, or other transaction or proposal before the legislature or agency of which he is an employee or legislator.

This section of the State Ethics Code would bar an intern who is paid by someone, or his or her company, from assisting or representing the person or their company before the Legislature. This law bars legislators and state employees from “lobbying” their own agencies on behalf of others for pay. Hence, an intern could not lobby on behalf of his or her company or organization if the intern were to receive compensation from the company or organization for doing so. Interns would also be barred from doing the work of other paid state employees, as this would accord these employees an unwarranted advantage. Interns, however, would not have to file disclosures of their financial interests, since this requirement only applies to the “permanent” employees of the Legislature.

Although interns are generally considered to be individuals who are recent graduates or students embarking upon a profession, the State Ethics Commission believes that it has no authority to bar individuals who are advanced in their careers and who decide to intern to acquire information about the legislative process. The State Ethics Commission believes that such a restriction would have to be imposed by the Legislature itself. The Commission realizes that there may well be individuals whose careers demand at some point that they become familiar with the legislative process.

However, the Commission believes that these individuals must still fit the basic definition of "intern," in so far as their purpose at the Legislature is to acquire information about the legislative process.

Because the Legislature does not appear to have an established definition for legislative interns, to the extent that individuals who serve as interns deviate from what would normally be construed to be an intern, the State Ethics Commission, in enforcing the State Ethics Code, would have to address, on a case-by-case basis, whether an individual is in fact an intern, should questions arise. For example, an individual who is well versed in the legislative process but serves as an "intern" while being paid by his or her company or organization when the company or organization has business before the Legislature, may raise questions as to whether the individual's service is really more of a "gift" to a legislator made by the company, in violation of the State Ethics Code's Gifts Law, HRS section 84-11.

Similarly, a legislator might be in violation of the "Fair Treatment" section of the State Ethics Code (HRS section 84-13) if the legislator uses an intern, who is well versed in legislative matters, for the purpose of giving a company that employs the intern preferential access to legislative business. These are examples only, for the purpose of illustration, and are not meant to reflect on the conduct of any particular individual.

In summary, the State Ethics Commission believes that interns may be used by the Legislature or legislators. However, interns are subject to the State Ethics Code, and care must be taken to assure that interns serve for the purpose of acquiring information about the Legislature and the legislative process.

The State Ethics Commission appreciates your interest in promoting high ethical standards in state government, and for bringing these issues to the attention of the Commission.

Dated: Honolulu, Hawaii, September 7, 2006.

Hawaii State Ethics Commission

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