

### INFORMAL ADVISORY OPINION NO. 2000-3

By letter, an elected state official filed a formal charge against a legislator with the Hawaii State Ethics Commission ("Commission"). In the state official's charge statement, the state official alleged a possible misuse of position for political purposes on the legislator's part based on an inquiry by the legislator as to whether the state official had hired additional staff to help with the re-election of the state official and another state official during the time leading up to the 1998 general election.

The facts of the case were as follows. By a letter sent to a particular state department, the legislator asked for information regarding "personnel spending" by month by the state official's office from January through December of 1998. The legislator's request was made by the legislator in his official capacity as a legislator. The legislator also requested the "total personnel count" by month for the state official's office from January to December, 1998.

In the legislator's letter to the department, the legislator stated that his request was based upon a "confidential assertion" he had received. The confidential assertion was "that there may have been extra people hired by the [state official's] office during the election period. Their job, I am told, was to help with the re-election of [the state official and another state official]." In the legislator's letter, he stated that he had to take "such allegations seriously and follow-up."

The state department contacted by the legislator responded to the legislator's letter. The head of the state department attached to his letter a worksheet showing that four agencies were attached to the state official's office.

In his letter to the legislator, the head of the state department stated as follows:

The information you received that asserts the hiring of extra people in the [state official's] office for the purposes of helping with the re-election of the [state official and another state official] is not true. The only increase in payroll spending occurred in [an office attached to the state official's office] just prior to the election. This, of course, was to address workload related to election services provided to Hawaii citizens.

By letter, the legislator filed a response with the Hawaii State Ethics Commission to the state official's charge against him. In his response, he labeled the state official's charge against him as "outrageous," and stated that he was performing his responsibilities as a legislator. "My action was nothing more than a request for public information from [a state department] for the purpose of investigating very serious allegations of misuse of public funds and resources for political campaign purposes."

In the legislator's response to the charge, the legislator stated that his initial inquiry to the particular state department was based on "information" he had received that "extra people" may have been hired by the state official's office during the last election period to assist in re-election efforts for the state official and another state official. In his response to the charge, the legislator also pointed out that aside from his initial inquiry to the particular state department, he did not disclose his concerns about the state official's office to anyone. The legislator also stated that the information he requested from the state department was public information.

In the legislator's response to the charge, the legislator stated that his request to the particular state department was "not politically motivated," and that he was "merely investigating"

a “constituent’s very serious allegations of wrongdoing in the [state official’s office].” The legislator asserted that it was his “duty” to “investigate these charges.” In the legislator’s response to the charge, he also asserted that the “[state official’s] complaint is without substance and is nothing more than a bold assertion, without any basis in fact that my request to [the particular state department] was politically motivated.”

In a letter to the state official, the legislator informed the state official that there was “nothing Machiavellian or evil behind my request for information regarding personnel spending in the [state official’s] office. It was not politically motivated. Honest. I received an anonymous phone call that prompted me to request the information. . . . Not to follow up on this confidential assertion would have been derelict on my part.”

In regard to the state official’s charge, the Commission’s executive director received a telephone call from the legislator. During the telephone call, the legislator stated that he had received an anonymous telephone call from someone working in the state department he had initially contacted. The anonymous caller was a woman who claimed that “everyone knew” that state employees in the state official’s office were compiling lots of “overtime” for campaign purposes. The legislator characterized or quoted the woman as saying “choke overtime” was being accumulated for campaign purposes. The legislator also stated that this woman contended that additional state employees had been hired in the state official’s office for campaign purposes.

During the telephone conversation, the Commission’s executive director asked the legislator when the anonymous telephone call had been made. The legislator stated that he had received the call during the [1999] legislative session, and placed the matter on his “to do” list. When talking to the Commission’s executive director, the legislator stated that the caller was a constituent of his.

In a follow-up telephone call made by the executive director to the legislator, the legislator stated that a lady had telephoned the legislator from the state department referred to above. The legislator stated that the caller seemed genuine, had seen time cards, and that overtime in the state official’s office had “gone through the roof.” The legislator stated that he thought the caller provided a first name, but was unsure if he had received the caller’s full name. In any event, the legislator could not recall the caller’s first or last name.

It was evident to the Commission, from the foregoing, that the accusation of campaign abuses by the state official prior to the 1998 general election was unsupported by any facts. The Commission also believed that there was insufficient evidence that the legislator’s actions in this case were politically motivated.

However, the State Ethics Commission had several concerns about this case. First, the anonymous caller made her serious allegations of campaign abuses during the 1999 legislative session--months after the time the alleged campaign abuses allegedly took place. Secondly, the legislator did not follow up on these serious allegations until August of 1999, months after the legislator received the telephone call alleging serious campaign abuses. The legislator stated that he put the matter on his “to do” list, and that his legislative duties, et cetera, had precluded him from following up until August of 1999, approximately a year after the alleged violations took place. There were no facts that indicated that the caller had contacted anyone else regarding the alleged abuses. The State Ethics Commission itself had received no complaints regarding this matter from anyone, nor had heard of any rumors of campaign violations by the state official or by the state official’s office.

The legislator characterized the allegations as “very serious.” The State Ethics Commission agreed that, if true, the allegations indeed would have been very serious. Since the accusations were serious, and since establishing the veracity of the accusations would have been of the utmost importance in regard to the election, the State Ethics Commission was concerned that prompt action was not taken in regard to the anonymous accusations.

The State Ethics Commission noted that the legislator may not have been able to more promptly address the anonymous complaint because of the numerous serious matters that the legislator needed to address as a legislator, particularly during the legislative session. The State Ethics Commission pointed out that the Commission was specifically created to investigate the kinds of accusations regarding election misconduct that were alleged in this case. The Commission thus recommended that in the future, if allegations of serious wrongdoing were to arise, the Commission should be contacted promptly, particularly if the matter could not be pursued in a timely manner due to a state official's other responsibilities.

Dated: Honolulu, Hawaii, August 7, 2000.

HAWAII STATE ETHICS COMMISSION  
Ronald R. Yoshida, Vice Chairperson  
Carl Morton, M.D., Commissioner  
Dawn Suyenaga, Commissioner

Note: Commissioners Leolani Abdul and Eloise Lee participated in the discussion and consideration of this matter, but were not available at the time this opinion was signed.