# INFORMAL ADVISORY OPINION NO. 2004-17

On June 16, 2004, the Hawaii State Ethics Commission ("Commission") issued a charge ("Charge") against a state employee. The Charge alleged that the employee used state time and facilities for private business purposes, in violation of the State Ethics Code, Chapter 84, Hawaii Revised Statutes ("HRS").

On August 12, 2004, the employee submitted a payment of $100.00 in restitution to the State of Hawaii. The Commission viewed this payment as the employee's acceptance of responsibility for her conduct as set forth in the Charge. The Commission was informed that the conduct in question had ceased. In light of this, the Commission did not believe that further charge proceedings against the employee were warranted. Instead, the Commission decided to issue the employee an Informal Advisory Opinion.

Facts

The employee had been employed by a state agency for approximately thirteen years. Her job involved responsibilities that included, but were not limited to, making and receiving deliveries and performing errands for her office.

The Commission received information that the employee was involved in private business activities at her state agency relating to the sale of crafts and craft supplies. The Commission initiated an investigation, which involved interviewing witnesses and reviewing records relevant to this matter. During the course of the Commission's investigation, the employee provided testimony, under oath, concerning these alleged activities.

It was learned that the employee made crafts in the state office where she worked. The employee's crafts were sold at craft fairs and trade shows by one of the employee's co-workers. The co-worker also ran a private business involving the sale of crafts and craft supplies. The employee paid the co-worker twenty percent of the sales price of the crafts that the co-worker sold for her.

The Commission obtained information through its investigation that the employee and other employees in her state office made crafts during work hours. The employee, however, contended that her craft-making activities at work occurred during her break times. The Commission was informed that the employee was entitled to a thirty-minute lunch break and two other break periods of ten minutes each, during the work day.

The employee's co-worker, mentioned above, sold craft supplies to employees of the state agency. The employee testified that she helped deliver craft supplies to employees who had purchased them from the co-worker. The employee made private sales deliveries of craft supplies for the co-worker, to employees at different work locations at the state agency. The employee maintained that she made these sales deliveries on her break time, at lunch time, or after work, rather than during state working hours.

As discussed, the employee's official job duties for the state agency included making deliveries and running errands for her office. The employee testified that she sometimes combined private sales deliveries for the co-worker with her official job-related deliveries. The

employee contended that she performed these combined deliveries during her lunch period or on her break time.

The Charge

Based on its investigation, the Commission found reason to believe that the employee used state time and state facilities for private business activities in violation of the State Ethics Code. On June 16, 2004, the Commission a charge against the employee. The Charge alleged that the employee violated HRS section 84-13 and HRS section 84-13(3). The specific conduct that created the basis for the Charge was as follows:

- Using a state facility to make crafts for private sale;
- Using state time to assist a co-worker in making private sales deliveries of craft supplies to employees of the state agency; and
- Assisting a co-worker in making private sales deliveries on the premises of the state agency.

In accordance with HRS section 84-31(b), the employee was notified of the Charge and afforded an opportunity to respond to the Charge. In a letter to the Commission's staff, the employee discussed the conduct for which she was charged. She said that she had not been instructed that the craft-related activities in question were prohibited. She referred to these activities as "cultural practices" and "cultural activities." The employee claimed that she had been unaware of the State Ethics Code. She apologized for this and indicated that the activities in question had ceased.

Application of the State Ethics Code

The state employee was subject to the provisions of the State Ethics Code, Chapter 84, HRS. The "fair treatment" section of the State Ethics Code, HRS section 84-13, was applicable to the employee's conduct in this case. This section of the State Ethics Code states, in pertinent part, as follows:

> **§ 84-13 Fair treatment**. No legislator or employee shall use or attempt to use the legislator's or employee's official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for oneself or others; including but not limited to the following:
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> . . .
>
> (3) Using state time, equipment or other facilities for private business purposes.

HRS section 84-13 prohibits a state employee from using or attempting to use the employee's state position to obtain any unwarranted advantages. HRS section 84-13(3) specifically prohibits a state employee from using state time, state equipment, or state facilities for private business purposes or private business activities.

The Commission has, for many years, informed state employees that they may not conduct private business activities at work. Private business activities include activities that facilitate the sale of goods or services. In the employee's case, the making of crafts for sale at craft fairs and trade shows, as well as assisting in the private sale of craft supplies, constituted private business activities. While the employee characterized her craft-related activities as "cultural activities" and "cultural practices," these activities related to the private sale of goods, and therefore, constituted private business activities. The State Ethics Code prohibited the employee from engaging in these activities at her state agency.

The Commission's investigation indicated that the employee engaged in private business activities in the office where she worked. The employee acknowledged that she made crafts in her state office. The Commission obtained information that the employee and other employees made crafts in the office during work hours. However, the employee claimed that these activities occurred during her break times. Pursuant to HRS section 84-13 and section 84-13(3), the employee's use of the office, a state facility, to make crafts intended for private sale was prohibited, regardless of whether it took place on state time.

The Commission's investigation further indicated that the employee engaged in private business activities on state premises, by assisting a co-worker with private sales deliveries of craft supplies to employees at the agency. The employee acknowledged that she made private sales deliveries for the co-worker on the premises of the state agency. This was prohibited by HRS section 84-13 and section 84-13(3).

The employee contended, however, that she did not make private sales deliveries during work hours. The employee said that she sometimes combined private sales deliveries for the co-worker with official job-related deliveries. The employee testified that if she combined a private sales delivery with a job-related delivery, she did so during her lunch or break period. The employee staunchly maintained that these combined deliveries did not occur on state time. The Commission found that the employee's testimony in that regard was not credible. In light of the fact that performing delivery errands for the office was a requirement of the employee's job and it did not appear that she was entitled to a substantial amount of free time during the work day, it defied logic that the employee would perform these errands on her own time.

Contrary to the employee's testimony, it appeared that the private sales deliveries she made for the co-worker occurred on state time, in violation of HRS section 84-13 and section 84-13(3). The fact that the employee made these private sales deliveries on the premises of the state agency was prohibited under HRS sections 84-13 and 84-13(3) as well.

In her letter to the Commission's staff regarding the Charge, the employee asserted that she was not aware that the conduct for which she was charged was prohibited under the State Ethics Code. She apologized for not knowing of the State Ethics Code and stated that she had expressed to others the importance of being aware of the State Ethics Code.

Although the employee claimed that she did not know anything of the State Ethics Code, she repeatedly asserted that her involvement in craft-related activities occurred during her break times. The employee's unwavering position in that regard suggested, to the

contrary, that she knew she should not have engaged in these activities on state time. The Commission noted that, even assuming, for the sake of argument, that the employee had been unaware of the State Ethics Code, her conduct was inexcusable.

The Commission was informed that the employee's business activities at the state agency relating to crafts and the sale of craft supplies had ceased. The agency had taken steps to ensure that no private business activities were conducted at the agency, and that employees were made aware of the requirements of the State Ethics Code.

The employee indicated that she did not wish to contest the charges against her in a public hearing before the Commission. The employee expressed a willingness to settle this case by paying restitution to the State of Hawaii. The Commission accepted a check in the amount of $100.00 from the employee, payable to the State of Hawaii. The Commission viewed the employee's payment to the State as demonstrating her acceptance of responsibility for her conduct. In light of these factors, the Commission did not believe that further charge proceedings against the employee were warranted in this case.

Conclusion

In light of the foregoing, the Commission decided that it would not take further action with respect to the Charge. It was the Commission's intent that this opinion would emphasize the provisions of the State Ethics Code that were applicable in this case and to ensure the employee's future compliance with the law.

Dated: Honolulu, Hawaii, November 23, 2004.

HAWAII STATE ETHICS COMMISSION

Dawn Suyenaga, Vice Chairperson
Nadine Y. Ando, Commissioner
Robert R. Bean, Commissioner
Carl Morton, M.D., Commissioner

Note: Chairperson Ronald R. Yoshida was not present at the meeting during which this Informal Advisory Opinion was considered.