

### **INFORMAL ADVISORY OPINION NO. 2005-3**

The Hawaii State Ethics Commission (“Commission”) issued a Charge against an employee for failure to file a disclosure of financial interests statement (“financial disclosure” or “disclosure”). The Commission was prompted to take this action against the employee because his financial disclosure had become seriously delinquent and he had been unresponsive to repeated reminders from the Commission to file his disclosure.

The Commission issued a Further Statement of Alleged Violation against the employee after he failed to respond to the Charge filed against him. After he was served with the Further Statement of Alleged Violation, the employee submitted to the Commission a financial disclosure statement. In light of this, the Commission did not believe that further charge proceedings were warranted. The Commission instead decided to issue the employee an Informal Advisory Opinion, to emphasize the requirements of the financial disclosure law and to ensure the employee’s future timely compliance.

The State Ethics Code, Chapter 84, Hawaii Revised Statutes (“HRS”), requires certain state officials and employees to file a disclosure of financial interests with the Commission each year. Due to the position the employee held in state government, he was required to file a financial disclosure. The employee had been filing a financial disclosure with the Commission, on an annual basis, for sixteen years.

The Commission’s records indicated that prior to the deadline for filing the financial disclosure, the Commission’s staff had provided the employee with a financial disclosure form and instructions, and informed him of the due date. The Commission’s records further indicated that prior to the filing deadline, the Commission’s staff in writing reminded the employee about filing his disclosure. The employee, however, did not file his financial disclosure by the due date.

After the employee’s financial disclosure had become delinquent, the Commission’s staff made numerous attempts to have the employee file his disclosure. These efforts involved speaking to the employee by telephone and writing to him over an extended period of time. The employee was afforded every opportunity to file his disclosure in order to avoid the matter having to be presented to the Commission for formal action. The employee gave assurances that he would be filing his disclosure by a certain date, but failed to do so. The employee was informed that the Commission understood that there were in certain instances legitimate reasons for not filing a financial disclosure, and the employee was asked to contact the Commission if that were the case. In addition, the employee was informed that the Commission had the authority to issue a charge and assess a monetary penalty against him for failure to file a financial disclosure. Throughout the period of time leading up to the Charge, the Commission did not hear from the employee as to any problems he might have had in filing his disclosure.

The Commission issued a Charge against the employee, pursuant to HRS section 84-31. Pursuant to HRS section 84-31(b), the Commission has the authority to initiate, receive, and consider charges concerning alleged violations of the State Ethics Code. This

section also authorizes the Commission to investigate and hold hearings. The employee was given an opportunity to respond to the Charge by a certain date.

The Commission issued a Further Statement of Alleged Violation against the employee after he failed to respond to the Charge filed against him. After he was served with the Further Statement of Alleged Violation, the employee submitted to the Commission a financial disclosure statement.

The Commission expended a considerable amount of time and effort in its attempt to have the employee file his financial disclosure. The employee eventually filed his disclosure, but not until after it had become seriously delinquent and he had been issued a Charge and then a Further Statement of Alleged Violation. Until that time, the employee had not responded to repeated reminders from the Commission's office, or at times had given assurances, which he did not act upon, that he would be filing his disclosure. Moreover, throughout the period of time leading up to the Charge, the Commission did not hear from the employee as to any problems he might have had in filing his disclosure. The Commission found the employee's conduct to be unacceptable.

However, in light of the fact that the employee finally filed his disclosure, the Commission did not believe that further charge proceedings against the employee were warranted. In lieu of pursuing the Charge, the Commission believed it was appropriate to issue him an Informal Advisory Opinion, to emphasize the requirements of the financial disclosure law and to ensure his future timely compliance.

The Commission regards the financial disclosure law as one of the keystones of the State Ethics Code. The requirement of disclosure of financial interests is rooted in the Hawaii State Constitution. Article XIV of the Constitution mandates the establishment of a state ethics code, and requires that the State Ethics Code include provisions on financial disclosure. Article XIV states, in relevant part, as follows:

The financial disclosure provisions shall require all elected officers, all candidates for elective office and such appointed officers and board members as provided by law to make public financial disclosures. Other public officials having significant discretionary or fiscal powers as provided by law shall make confidential financial disclosures. All financial disclosure statements shall include, but not be limited to, sources and amounts of income, business ownership, officer and director positions, ownership of real property, debts, creditor interests in insolvent businesses and the names of persons represented before government agencies.

The financial disclosure law allows the public the opportunity to evaluate matters that might bring about conflicts of interests between public employment and private financial interests. In the interests of privacy, certain non-elected officials and board members file confidential financial disclosure statements that are seen only by the Commission. A review of these statements allows the Commission to take action on possible conflicts of

interests before problems arise. The financial disclosure statement of the employee in this case was considered a confidential disclosure.

Some state officials and board members might view the financial disclosure requirement as an unwelcome chore. Individuals in government service, however, must accept the legal responsibilities that accompany government service. Those responsibilities include complying with the State Ethics Code.

In this case, the employee had been unresponsive to the Commission's repeated efforts to have him fulfill his legal obligation to file a financial disclosure. The Commission noted that the employee had been filing financial disclosures with the Commission for sixteen years, and thus should have been familiar with the filing requirements. It appeared that the employee did not take seriously the requirements of the financial disclosure law. The Commission could not condone the employee's conduct in this case.

The Commission informed the employee that although it would not be taking further action with respect to the Charge against him, the Commission in the future would consider more serious proceedings against him in accordance with Chapter 84, HRS, should he fail to file a required financial interests disclosure statement in a timely manner.

Dated: Honolulu, Hawaii, February 2, 2005.

STATE ETHICS COMMISSION

Ronald R. Yoshida, Chairperson  
Dawn A. Suyenaga, Vice Chairperson  
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