

INFORMAL ADVISORY OPINION NO. 2005-4

The Hawaii State Ethics Commission ("Commission") issued a Charge against a state board member for failure to file a disclosure of financial interests statement ("financial disclosure" or "disclosure"). The Commission was prompted to take this action against the board member 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 board member after he failed to respond to the Charge filed against him. After he was served with the Further Statement of Alleged Violation, the board member still failed to submit to the Commission a financial disclosure statement. The board member finally filed his disclosure long after it was due, and after the Commission's staff informed the board member that the Commission would convene a public hearing in this case if compliance was not obtained.

In light of the fact that the board member finally filed his disclosure, the Commission did not believe that further charge proceedings were warranted. The Commission instead decided to issue the board member an Informal Advisory Opinion, to emphasize the requirements of the financial disclosure law and to ensure the board member'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 board member held in state government, he was required to file a financial disclosure. The board member had been filing a financial disclosure with the Commission, on an annual basis, since 1999.

The Commission's records indicated that prior to the deadline for filing the financial disclosure, the Commission's staff had provided the board member 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 reminded the board member in writing about filing his disclosure. The board member, however, did not file his financial disclosure by the due date.

After the board member's financial disclosure had become delinquent, the Commission's staff made numerous attempts to have the board member file his disclosure. These efforts involved speaking to the board member by telephone and writing to him over an extended period of time. The board member 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 board member gave assurances that he would be filing his disclosure by a certain date, but failed to do so.

The board member was informed that the Commission understood that there were in certain instances legitimate reasons for not filing a financial disclosure, and the board member was asked to contact the Commission if this was the case. In addition, the board

member 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 board member as to any problems he might have had in filing his disclosure.

The Commission issued a Charge against the board member, 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 board member was given an opportunity to respond to the Charge by a certain date.

The Commission issued a Further Statement of Alleged Violation against the board member after he failed to respond to the Charge filed against him. The board member did not submit his disclosure until long after he was served with the Further Statement of Alleged Violation.

The Commission expended a considerable amount of time and effort in its attempt to have the board member file his financial disclosure. The board member 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, and after repeated telephone calls and letters from the Commission's staff asking him to file. At times, the board member had given assurances, which he did not act upon, that he would be filing his disclosure. Throughout the period of time leading up to the Charge, the Commission did not hear from the board member as to any problems he might have had in filing his disclosure. The Commission found the board member's conduct to be unacceptable.

However, in light of the fact that the board member finally filed his disclosure, the Commission did not believe that further charge proceedings against the board member 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 requires certain high-ranking state officials to file public disclosures. Others, because of privacy concerns, file "confidential" disclosure statements.

Public disclosures allow the public and the Commission the opportunity to evaluate matters that might bring about conflicts of interests between public employment and private financial interests. The Commission reviews confidential disclosure statements in order to take action on possible conflicts of interests before problems arise. The financial disclosure statement of the board member in this case was 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 board member 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 board member had been filing financial disclosures with the Commission since 1999, and thus should have been familiar with the filing requirements. It appeared that the board member did not take seriously the requirements of the financial disclosure law. The Commission could not condone the board member's conduct in this case.

The Commission informed the board member that although it would not be taking further action in this case, 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, April 6, 2005.

HAWAII STATE ETHICS COMMISSION

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