

INFORMAL ADVISORY OPINION NO. 2005-5

An individual filed a formal Charge against a legislator with the Hawaii State Ethics Commission ("Commission"). The individual alleged that the legislator had misused her official position and state resources for campaign purposes by issuing a legislative newsletter with her campaign web site address printed in a highlighted block on the bottom of each page of her legislative newsletter. The highlighted block also included the legislator's state telephone number and state email address. The newsletter contained a number of pages, and the cost of mailing each newsletter was 22¢, according to information obtained by the Commission. The Commission learned that approximately 9,000 copies of the newsletter were mailed to the legislator's constituents. The individual filing the Charge contended in his Charge that the inclusion of the reference in bold letters to the legislator's campaign web site violated the State Ethics Code's provision that barred using state resources for campaign purposes. In response to the Charge, the legislator filed an Answer with the Commission. In her Answer, in various ways, the legislator denied any wrongdoing.

The State Ethics Code is set forth in chapter 84 of the Hawaii Revised Statutes ("HRS"). The applicable sections of the State Ethics Code in this case were HRS sections 84-13 and 84-13(3). HRS section 84-13 reads, in its entirety, 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:

- (1) Seeking other employment or contract for services for oneself by the use or attempted use of the legislator's or employee's office or position.
- (2) Accepting, receiving, or soliciting compensation or other consideration for the performance of the legislator's or employee's official duties or responsibilities except as provided by law.
- (3) Using state time, equipment or other facilities for private business purposes.
- (4) Soliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate or a person or business whom the legislator or employee inspects or supervises in the legislator's or employee's official capacity.

Nothing herein shall be construed to prohibit a legislator from introducing bills and resolutions, serving on committees or from making statements or taking action in the exercise of the legislator's legislative functions. Every legislator shall file a full and complete public disclosure

of the nature and extent of the interest or transaction which the legislator believes may be affected by legislative action.

The first paragraph of HRS section 84-13 prohibits a legislator from misusing his or her state position to give himself or herself any unwarranted advantage, treatment, or privilege. HRS section 84-13(3) specifically prohibits a legislator from using state time, equipment, or facilities for any private business purpose. The Commission has long interpreted HRS section 84-13(3) to bar the use of any state resources for campaign purposes. Likewise, the Commission has long maintained that using state resources to further campaign purposes also violates the initial paragraph of HRS section 84-13.

The main task for the Commission in this case was to determine whether the web site was indeed a campaign web site. Although the web site had been taken down shortly before the Charge was filed, the Commission was able to retrieve most of the pages of the web site. After reviewing these pages, the Commission concluded that the web site was in fact a campaign web site.

In reaching its determination that the web site was a campaign web site, the Commission noted that in the right-hand corner of the home page of the web site was a photograph of campaign workers waving campaign signs for the legislator. At the bottom of the campaign signs was a campaign web site address. This, alone, indicated that the web site address on the legislative newsletter, which was the same, was the legislator's campaign web site address. The web site also had information about the legislator that was campaign-related, including a section entitled "Qualifications," and bold, enlarged language proclaiming "new leadership" for a certain legislative district on Oahu. Below the picture of the legislator on the home page of the web site, the legislator clearly talked about what she would do for her district if elected. The bottom of the home page of the web site stated that the web site was paid for by the legislator's campaign committee. There was other information on the web site that indicated that this was a campaign web site. The information on the web site did not reference a prior campaign, and thus, if viewed, would have appeared to relate to the legislator's upcoming campaign.

That the web site was a campaign web site was also indicated by the legislator's "Application for nomination papers," which the legislator took out to run for office. In block 13 of the application form, the legislator listed the same web site address that appeared on the legislative newsletter. In block 12 of the form, the legislator listed her email address, which referenced the same web site. It is the policy of the Office of Elections not to allow a state web site address or state email address to be used on its application form, since the application form is for election purposes. It was evident that the application documents filed with the Office of Elections supported the conclusion that the web site address listed on the legislative newsletter was the legislator's campaign web site.

The Office of Elections also produces for each candidate a "candidate profile." The legislator's profile listed her web page in this profile, which was the same as the web site referenced in her legislative newsletter. The legislator's email address in the candidate

profile also referenced the web site address in question. Again, the Office of Election does not allow state telephone numbers, state email addresses, or state web site addresses to be used in a candidate's profile.

Given the above, the Commission concluded that the web site referenced in the legislator's newsletter was indeed her campaign web site, and should not have been included or referred to in the legislator's legislative newsletter. Constituents who received the legislator's legislative newsletter would have been led by the newsletter to the legislator's campaign web site, which promoted the legislator as a candidate, and, in this way, the legislator's legislative newsletter was used for a campaign purpose, in violation of HRS sections 84-13 and 84-13(3).

The Commission noted that there was other information on the web site, such as prior legislative news releases, that were not, alone, campaign material. However, it was evident to the Commission that the legislator's web site was primarily a campaign web site. The Commission also obtained one of the large canvas banners that had been displayed in a yard during the legislator's campaign. At the bottom of the banner was the same web site address that appeared at the bottom of the pages of the legislator's legislative newsletter. There was no doubt in the Commission's mind that the web site address was the legislator's campaign web site.

The Commission has long maintained that legislative newsletters cannot be used for campaign purposes, and that there should be no references in legislative newsletters to campaign-related information or events, such as information about upcoming fundraisers, or other information that would serve to promote a candidate.

The Commission's executive director discussed with the legislator the fact that the web site clearly appeared to be a campaign web site, and therefore should not have been referenced in the legislator's legislative newsletter. After discussions with the legislator, the legislator agreed to reimburse the State \$200 for the reference to her campaign web site in her legislative newsletter.

While the total cost of the legislative newsletter was approximately \$2,000, the Commission determined that \$200 in restitution would be appropriate, since the campaign web site was referenced only at the bottom of the pages of the newsletter. Although it was arguable that the legislator should have been required to pay more restitution for the use of her legislative newsletter because each newsletter referenced her campaign web site for each recipient, the Commission took the more lenient position that a lesser amount of restitution was appropriate because this particular issue had not arisen before. Further, although the reference to the web site did appear on every page of the legislative newsletter, the web site address appeared at the bottom of the page, and therefore was not displayed as prominently as it might have been.

The Commission agreed that if the legislator paid restitution to the State in the amount of \$200, it would conclude this case with an informal advisory opinion to the

legislator. The Commission received a check from the legislator for \$200, which was deposited in the State's General Fund. The purpose of this informal advisory opinion was to inform the legislator and others that referencing a campaign web site in a legislative newsletter is violative of the State Ethics Code. Again, the Commission has long maintained that campaigning must not take place at taxpayer expense, including campaigning via a legislative newsletter.

Because the legislator paid the restitution the Commission had deemed appropriate in this case, the Commission believed that this informal advisory opinion was appropriate in order to terminate this case at this point, and that further proceedings were not warranted.

The Commission believes that legislators should exercise great care regarding the content of their legislative newsletters. Legislative newsletters are for a legislative purpose, and are paid for by taxpayers. Legislators may not receive a taxpayer-provided subsidy for their political campaigns.

Information that a legislator wishes to incorporate in a legislative newsletter that might be construed as campaign-related should be brought to the attention of the Commission for review before the newsletter is sent out at taxpayer expense. Campaigns must be conducted in a fair manner. No legislator should receive an unwarranted advantage at taxpayer expense in furtherance of his or her campaign for public office.

Dated: Honolulu, Hawaii, May 18, 2005.

HAWAII STATE ETHICS COMMISSION

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