HAWAII
STATE
ETHICS
COMMISSION
State of Hawaii • Bishop Square, 1001 Bishop Street, ASB Tower 970 • Honolulu, Hawaii 96813

INFORMAL ADVISORY OPINION NO. 2012-2

The Hawaii State Ethics Commission ("Commission") issued a formal charge against a state employee for alleged violations of the State Ethics Code, Chapter 84, Hawaii Revised Statutes ("HRS"). The charge alleged that the employee did not comply with the reporting requirements of HRS section 84-17, the financial disclosure law, in that the financial disclosure statements the employee had filed in several previous years did not contain complete information. The employee filed an answer to the charge and did not deny the allegations in the charge.

The employee agreed to, and paid, a fine of $500 to the State's general fund, whereupon the Commission issued the employee an informal advisory opinion, pursuant to HRS section 84-31(b). The informal advisory opinion is summarized herein.

The employee was the head of a state institution. He had served in this position for a number of years. Due to the employee's position in state government, he was required to file an annual financial disclosure statement with the Commission. His financial disclosure statement was a public record. The financial disclosure law required the employee to annually disclose his financial interests as well as the financial interests of his spouse. The charge alleged that, for several years, the employee had failed to report complete information on his annual financial disclosure statements regarding his financial interests and the financial interests of his spouse.

Before the charge was issued, the employee became aware of comments made by a member of the public about apparent deficiencies in the employee's annual financial disclosure filings in 2010 and 2011. The employee responded by immediately contacting the Commission's office. The employee met with the Commission's staff, who discussed with him the reporting requirements of HRS section 84-17, and reviewed with him all of the financial disclosure statements he had filed with the Commission since the time he began his state position as the head of the institution. The time period covered several years. In some of his early financial disclosure statement filings, the employee reported having some financial interests. However, for the most part, he did not report any information on his financial disclosure statements over the years.

Through the employee's discussions with the Commission's staff, it became evident that the employee failed to report a substantial number of financial interests. The employee said that he married a few years after he began his state position. He was required to report his spouse's financial interests on the annual financial disclosure statements he filed thereafter, but failed to do so.

The employee subsequently filed amended financial disclosure statements for each of the annual financial disclosure statements he had filed since the time he began his state position. The employee's amended filings revealed that he and his spouse had a substantial number of financial interests that he did not initially report.

On March 21, 2012, the Commission issued a charge against the employee for alleged violations of the financial disclosure law, HRS section 84-17. The charge was based on various types of financial interests that he did not initially disclose, but later reported, on his amended financial disclosure statements. The financial disclosure statements the employee had filed over the years contained deficiencies with respect to four categories of financial interests: (1) income for services rendered;[1] (2) ownership or beneficial interests in businesses held and/or transferred;[2] (3) directorships, officerships, trusteeships, or other fiduciary relationships held in businesses;[3] and (4) creditors.[4]

With regard to income for services rendered, the employee failed to disclose income he earned from his state employment and income his spouse earned from businesses and rental property.

With regard to ownership or beneficial interests in businesses held and/or transferred, the employee failed to disclose his spouse's ownership interests in several businesses, and the sale of one of the interests.

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[1] HRS section 84-17(f)(1) requires disclosure of the source and amount of all income of $1,000 or more received, for services rendered, during the preceding calendar year, and the nature of the services rendered.

[2] HRS section 84-17(f)(2) requires disclosure of the amount and identity of every ownership or beneficial interest held during the disclosure period in any business having a value of $5,000 or more or equal to ten percent of the ownership of the business, and, if the interest was transferred during the disclosure period, the date of the transfer.

[3] HRS section 84-17(f)(3) requires the disclosure of every officership, directorship, trusteeship, or other fiduciary relationship held in a business during the disclosure period, the term of office, and the annual compensation.

[4] HRS section 84-17(f)(4) requires the disclosure of the name of each creditor to whom the value of $3,000 or more was owed during the disclosure period, and the original amount and amount outstanding, except for debts arising out of retail installment transactions for the purchase of consumer goods.

With regard to directorships, officerships, trusteeships, or other fiduciary relationships held in businesses, the employee filed incomplete financial disclosure statements with regard to his own interests, and failed to disclose any of the several interests held by his spouse.

With regard to creditors, the employee failed to report a line of credit and several mortgages.

The employee filed an answer to the charge. He did not deny the allegations in the charge. He asserted that he did not intend to conceal any information about himself or his spouse. He stated that he was careless in completing the first financial disclosure statement he filed when he began his state position, which he said led to similar omissions in subsequent years. The employee said that when he married, his failure over the years to report his spouse's financial interests as required by law was due to his own carelessness.

The employee stated that it was difficult for him to obtain his spouse's reportable information. However, the employee maintained that he was not attempting to use this as an excuse for the deficiencies in his financial disclosure statements. He described his failure to file complete financial disclosure statements over the years as a lapse in judgment.

The Commission noted that the employee immediately sought out guidance from the Commission's staff upon learning that his financial disclosure statements had apparent deficiencies. The employee cooperated fully with the Commission's staff and acted quickly to amend his financial disclosure statements. He voluntarily provided information in his financial disclosure statements and met with the staff several times to go over the statements.

Despite the employee's cooperation, however, the Commission was troubled by the substantial deficiencies in the financial disclosure statements he initially filed. It did not appear that the omissions resulted from a lack of understanding of the financial disclosure law on his part. The Commission was particularly concerned by the employee's failure to report any of his spouse's financial interests, and by the fact that in more than one year, the employee indicated on his financial disclosure statements that he had nothing to report or had no changes to report since his previous filing.

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. The Constitution requires that the ethics code include provisions on financial disclosure. Article XIV states in relevant part:

> The financial disclosure provisions shall require all elected officers, all candidates for elective office and such appointed officers and employees as provided by law to make public 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, HRS section 84-17, required the employee to file a public financial disclosure statement with the Commission each year because of his position in state government. He also was required to completely and accurately report his financial interests, including the financial interests of his spouse. The financial disclosure law allows the Commission, as well as the public, the opportunity to assess matters which might bring about conflicts of interests between public employment and private financial interests. A review of the financial disclosure statement allows the Commission to take action on possible conflicts of interests before problems arise.

Given the fact that there were substantial omissions in the employee's financial disclosure statements over the years and he did not, in the Commission's view, provide any reasonable explanation for those omissions, there appeared to be a sufficient basis for the Commission to pursue further action against him that potentially could have involved a public hearing and resulted in the assessment of administrative fines.[5]

However, because the employee did not deny the allegations in the charge and quickly took action to amend his previous financial disclosure statements, the Commission did not believe it was necessary to expend additional time or resources in further proceedings against the employee. At the same time, the Commission believed that the employee should be penalized. The employee agreed to, and paid, a fine of $500 to the State's general fund, which the Commission determined was appropriate.

[5] If the Commission determines that there is probable cause to believe that a violation of HRS Chapter 84 has occurred, the Commission has the authority to hold a public hearing. (HRS section 84-31.) The Commission has the authority to impose an administrative fine against a person who is found to have violated a provision of HRS Chapter 84, not to exceed $500 for each violation. (HRS section 84-39.)

The Commission concluded this matter by issuing the employee an informal advisory opinion, which is summarized herein.

Dated: Honolulu, Hawaii, July 18, 2012.

HAWAII STATE ETHICS COMMISSION

Maria J. Sullivan, Esq., Chairperson
Cassandra J. Leolani Abdul, Vice Chairperson
Edward L. Broglio, Commissioner

Note: Commissioner Les M. Knudsen was excused when this Informal Advisory Opinion was considered. There also was a vacancy on the Commission when this Informal Advisory Opinion was considered.