



# HAWAII STATE ETHICS COMMISSION

State of Hawaii • Bishop Square, 1001 Bishop Street, ASB Tower 970 • Honolulu, Hawaii 96813

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## INFORMAL ADVISORY OPINION NO. 2014-1

The Hawaii State Ethics Commission (“Commission”) issued a charge (“Charge”) against a state employee, John Doe, alleging that the employee violated the conflicts of interests section of the State Ethics Code, chapter 84, Hawaii Revised Statutes (“HRS”), by assisting or representing a private business for pay on matters before his state agency. John Doe filed an answer to the Charge admitting most of the material facts alleged in the Charge, but denying that his actions violated the State Ethics Code. Having investigated the allegations in the Charge, the Commission closed its review of this matter with the issuance of an Informal Advisory Opinion to John Doe.

### Facts

Based upon its investigation, the Commission understood the following facts to be true:

John Doe worked for an Inspection Branch (“Inspection Branch”) of a state agency (“Agency”) as an inspector of certain equipment (“equipment”). John Doe was hired for that position by the Agency’s supervising inspector at the time.

The Agency administered and enforced state safety laws relating to the equipment. Through its Inspection Branch, the Agency enforced safety standards and rules for the operation of the equipment. The Inspection Branch issued permits to operate the equipment and conducted inspections of the equipment.

A national board of equipment inspectors (“National Board”) published a national code applicable to the installation, inspection, repair and/or alteration of equipment (“National Board Inspection Code”), and commissioned individuals to perform inspections related to the repair of equipment. John Doe was a National Board commissioned inspector and was authorized to perform equipment inspections in Hawaii.

The Agency’s rules required that equipment repairs be performed in accordance with the National Board Inspection Code and that repair companies file a National Board Report of Repair (“Report”) with the Inspection Branch. Among other things, the Report contained a certification by an independent commissioned inspector certifying that he inspected the repair work described in the Report and that, to the best of his knowledge and belief, the work performed by the repair company complied with the National Board Inspection Code. After a Report was filed, the Inspection Branch reviewed the Report and was authorized to require the repair company and/or the commissioned inspector

to provide further explanation and/or to perform additional action to ensure the safety of the equipment.

Prior to his state employment with the Agency, John Doe was employed by a private business ("Private Employer") as a commissioned equipment inspector. Private Employer, among its various services, acted as an independent inspection agency to inspect equipment repair work performed by repair companies, as required by the Agency.

Shortly before John Doe began working for the Agency, he informed the Agency's supervising inspector that he had ongoing and unfinished inspection jobs for Private Employer related to equipment repairs being performed by a certain repair company ("Repair Company"). John Doe asked to be allowed to complete those jobs and said he could delay starting his state employment until those jobs were done. The Agency's supervising inspector replied that John Doe could start work for the Inspection Branch immediately and simultaneously complete the ongoing Private Employer inspections, so long as the private inspections were done on his own time and not during Agency work hours.

For approximately four months after John Doe began working for the Agency, he inspected Repair Company's equipment repairs at two separate locations. John Doe performed the inspections on his own time as an employee of Private Employer. John Doe did not perform the inspections during his state work hours and did not use any state equipment for the inspections. Repair Company prepared Reports related to its equipment repairs. Each Report was signed by John Doe as an employee of Private Employer, and contained John Doe's certification that he inspected Repair Company's equipment repair work and that the work was performed in compliance with the National Board Inspection Code. John Doe was paid by Private Employer for his inspection services related to each of the Reports. Repair Company submitted the Reports to the Inspection Branch for review and possible further action.

The Charge alleged that by inspecting equipment repairs performed by Repair Company and by signing and certifying the Reports for those repairs on behalf of Private Employer, John Doe assisted or represented a business for pay on a matter before his state agency in violation of HRS section 84-14(d), which is part of the State Ethics Code's conflicts of interests law.<sup>1</sup> In his answer, John Doe admitted most of the

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<sup>1</sup> HRS section 84-14(d) states:

No legislator or employee shall assist any person or business or act in a representative capacity for a fee or other compensation to secure passage of a bill or to obtain a contract, claim, or other transaction or proposal in which the legislator or employee has participated or will participate as a legislator or employee, nor shall the legislator or employee assist any person or business or act in a representative capacity for a fee or other compensation on such bill, contract, claim, or other transaction or proposal before the legislature or agency of which the legislator or employee is an employee or legislator.

material facts alleged in the Charge, including the fact that he was paid by Private Employer to inspect Repair Company's equipment repairs while employed with the Agency and that he signed and certified Reports as an employee of Private Employer, which reports were then submitted by Repair Company to the Agency's Inspection Branch for review and possible further action. John Doe denied, however, that his actions violated HRS section 84-14(d).

#### Application of the State Ethics Code

HRS section 84-14(d) prohibits a state employee from being paid to assist or represent a business in transactions before the employee's own state agency. See supra, note 1. This section of the State Ethics Code is intended to prevent influence peddling or the appearance of influence peddling in which a state employee is paid to use the connections he has within his state agency to influence the agency's actions or decisions.

Based upon its investigation, the Commission had reason to believe that John Doe violated HRS section 84-14(d). By conducting private inspections of equipment repair work and by signing and certifying Reports on behalf of Private Employer while employed with the Agency, it appeared that John Doe assisted or represented a private business<sup>2</sup> for pay on a matter before the Agency. In other words, by signing and certifying Reports, which were then submitted to the Agency's Inspection Branch for review and possible further action, John Doe assisted or represented a private business on a matter before his own state agency. John Doe's actions likely constituted a conflict of interest with his state employment and likely were prohibited by HRS section 84-14(d). See supra, note 1.

It appeared that John Doe was unaware that the State Ethics Code prohibited him from continuing to perform private services as an equipment inspector after he began his state employment with the Agency. It also appeared that John Doe's state supervisor was similarly unaware of that prohibition when he gave John Doe permission to begin his Agency employment and at the same time complete his ongoing inspection jobs for Private Employer.<sup>3</sup>

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<sup>2</sup> In addition to Private Employer, it appeared that by inspecting and certifying equipment repairs, John Doe also assisted or represented (1) Repair Company, the company whose repair work John Doe inspected and certified as being in compliance with the National Board Inspection Code, and (2) the owners of the equipment that was repaired by Repair Company.

<sup>3</sup> The Commission noted, however, that, under the National Board's rules, a commissioned inspector must be employed exclusively by a single authorized inspection agency. In other words, it appeared John Doe was prohibited from being simultaneously employed as a commissioned inspector by Private Employer and the Agency. John Doe stated that he was aware of this rule at the time he was hired by the Agency, but that he believed his state supervisor had the authority to waive the rule.

Indeed, shortly after John Doe disclosed his ongoing private inspection jobs and offered to delay his state employment until those jobs were completed, the Agency's supervising inspector hired John Doe as an Agency inspector and apparently gave John Doe explicit permission to finish the jobs for Private Employer so long as they were done "on [John Doe's] own time." The Commission was unaware of any evidence suggesting that John Doe attempted to use state time or state resources in connection with his inspections for Private Employer, or that he took any official action as an Agency inspector with respect to the Reports for those inspections.

Consequently, based on the totality of circumstances, the Commission believed it was appropriate to resolve this matter with an Informal Advisory Opinion to educate and advise John Doe about the application of the State Ethics Code, and in particular HRS section 84-14(d), to this situation. The Commission very strongly recommended that John Doe attend an ethics training class to become more familiar with the State Ethics Code and that he seek advice from the Commission should he have any questions about the code's application in the future.

This redacted public version of the Informal Advisory Opinion that was issued to John Doe is published pursuant to HRS section 84-31(f) and is intended to provide information and education on the application of the State Ethics Code.

Dated: Honolulu, Hawaii, January 16, 2014.

HAWAII STATE ETHICS COMMISSION

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