

### INFORMAL ADVISORY OPINION 94-3

A member of a State board was required by HRS section 84-17 to file a Disclosure of Financial Interests ("financial disclosure") with the State Ethics Commission ("Commission") between January 1 and April 30 of 1993. In February of 1993, the Commission mailed a form for this purpose to this board member and to all other individuals required by law to file such disclosures. All but a few of the approximately 1600 individuals required to file financial disclosures in 1993 did so in a timely fashion.

After processing all the financial disclosures that were filed with the Commission, the records of the Commission indicated that a financial disclosure was not received from this board member on or before April 30, 1993, the last day for filing set out in HRS section 84-17. As a result, the Commission wrote to this board member on October 12, 1993, reminding him of the legal requirement to file a financial disclosure. The Commission included with that letter a blank financial disclosure form for this board member's use in filing. The Commission did not receive a reply to that letter, nor did it receive a financial disclosure from this board member.

The Commission sent a certified letter to this board member on November 24, 1993, requesting this board member to complete and return a financial disclosure no later than December 14, 1993, or, in the alternative, appear at the Commission's December 15, 1993 meeting in order to explain why the financial disclosure had not been filed as required by law. This letter also notified this board member that failure to appear at the December 15, 1993 meeting of the Commission or to file a financial disclosure on or before December 14, 1993 would result in the Commission filing a charge against him in accordance with HRS section 84-31(b) for failure to file. The Certified Mail Receipt was returned to the Commission by the Post Office indicating that delivery of the certified letter had been made on November 29, 1993. On December 6, 1993, the Commission's staff telephoned this board member at his telephone number of record and left a message for him reiterating the alternatives discussed in the letter of November 24, 1993.

This board member did not appear at the December 15, 1993 meeting, nor did the Commission receive a financial disclosure from him on or before December 14, 1993. For this reason, the Commission issued a charge against this board member for failing to file the financial disclosure due no later than April 30, 1993. The charge was sent by certified mail on December 15, 1993.

The State Ethics Commission filed this charge against this board member pursuant to HRS section 84-31. HRS section 84-31(a)(3) grants the Ethics Commission power to initiate, receive, and consider charges concerning alleged violations of the ethics code. It also empowers the Ethics Commission to investigate and hold hearings. HRS section 84-31(b) requires that any person against whom a charge has been filed be notified in writing of the charge and be given an opportunity to explain the conduct alleged to be in violation of the law. This board member was so notified by certified letter of December 15, 1993. The Certified Mail Receipt returned to the Commission by the Post Office indicated that delivery of the letter was made on December 16, 1993. The letter included a copy of the charge filed against him, a copy of chapter 84, HRS, and a copy of the State Ethics Commission Rules. The letter accompanying the charge explained the charge and informed him that the Commission would issue a Charge and Further Statement of Alleged Violation against him if the completed disclosure were not received by January 4, 1994. On December 22, 1993, this board member's completed financial disclosure form dated December 20, 1993 was received by the Commission.

HRS section 84-31(b) empowers the Commission, after the charge has been issued by the Commission to render an Informal Advisory Opinion to an alleged violator on a confidential basis. If the Informal Advisory Opinion indicates a probable violation, the person charged shall either request a formal opinion or within a reasonable time comply with the Informal Advisory Opinion. If the person charged fails to comply with the Informal Advisory Opinion or if a majority of the members of the Commission determine that there is probable cause for belief that a violation of chapter 84 might have occurred, a copy of the Charge and Further Statement of Alleged Violation shall be personally served upon the alleged violator and the alleged violator shall have 20 days after service thereof to respond in writing to the Charge and Further Statement of Alleged Violation.

At its meeting of January 12, 1994, the Commission noted that this board member's financial disclosure was received on December 22, 1993. In accordance with the Commission's letter of December 15, 1993, the Commission did not issue a Charge and Further Statement of Alleged Violation against this board member in this instance. Instead, the Commission issued an Informal Advisory Opinion to this board member in accordance with HRS section 84-31(b). The purpose of this opinion was to inform this board member again of the requirements of HRS section 84-17, and to notify him that in the future the Commission will have to consider more serious proceedings under chapter 84, HRS, should any future disclosure of financial interests not be filed in a timely manner.

Dated: Honolulu, Hawaii, April 6, 1994.

STATE ETHICS COMMISSION  
Rev. David K. Kaupu, Chairperson  
Cynthia T. Alm, Commissioner  
Sharon "Shay" Bintliff, Commissioner  
Don J. Daley, Commissioner

Note: Vice Chairperson K. Koki Akamine was not present during the discussion and consideration of this opinion.