

INFORMAL ADVISORY OPINION 94-4

A member of a State commission was required by HRS section 84-17 to file a Disclosure of Financial Interests ("financial disclosure") with the State Ethics Commission between January 1 and April 30 of 1993. In February of 1993, the State Ethics Commission mailed a form for this purpose to this commission 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 State Ethics Commission, the records of the State Ethics Commission indicated that a financial disclosure was not received from this commission member on or before April 30, 1993, the last date for filing set out in HRS section 84-17. As a result, the State Ethics Commission wrote to this commission member on October 12, 1993, reminding him of the legal requirement to file a financial disclosure. The State Ethics Commission included with that letter a blank financial disclosure form for this commission member's use in filing. The State Ethics Commission did not receive a reply to that letter, nor did it receive a financial disclosure from this commission member.

The State Ethics Commission sent a certified letter to this commission member on November 24, 1993, requesting this commission member to complete and return a financial disclosure no later than December 14, 1993, or, in the alternative, appear at the State Ethics 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 the commission member that failure to appear at the December 15, 1993 meeting of the State Ethics Commission or to file a financial disclosure on or before December 14, 1993 would result in the State Ethics Commission filing a charge against him in accordance with HRS section 84-31(b) for failure to file. This letter was returned to the State Ethics Commission on December 11, 1993, unclaimed. In the meantime, on December 6, 1993, the State Ethics Commission's staff attempted to reach this commission member at his telephone numbers of record in order to inform him of the alternatives discussed in the letter of November 24, 1993. The telephone company reported that the two numbers had been disconnected.

At the meeting of December 15, 1993, the State Ethics Commission issued a charge against this commission 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 letter accompanying the charge explained the charge and informed this commission member that the State Ethics Commission would issue a Charge and Further Statement of Alleged Violation against him if the completed disclosure were not received by January 4, 1994.

The State Ethics Commission filed this charge against this commission member pursuant to HRS section 84-31. HRS section 84-31(a)(3) grants the State Ethics Commission power to initiate, receive, and consider charges concerning alleged violation of the ethics code. It also empowers the State 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 commission member was so notified by certified letter of December 15, 1993. The letter included a copy of the charge filed against the commission member, a copy of chapter 84, HRS, and a copy of the State Ethics Commission Rules.

On December 28, 1993, the Commission's staff again attempted to reach this commission member by telephone to discuss the charge mailed on December 15, 1993. On this occasion, the Commission's staff was successful. In that conversation, State Ethics Commission staff explained that the State Ethics Commission had issued a charge against him on December 15, 1993, that the Commission had sent the charge to him by certified mail on the same day and that the certified delivery was then at his post office waiting for him to claim delivery. In response, this commission member explained that the mailing address was actually a relative's residence and that he did not visit frequently. State Ethics Commission staff agreed to send by first-class mail another disclosure form to this commission member along with a copy of the charge and its enclosures. This was done on December 28, 1993. This commission member's completed disclosure form dated January 2, 1993 (sic) was received at the State Ethics Commission on January 10, 1994. In the meantime, the certified mail delivery of December 15, 1993 was returned unclaimed to the State Ethics Commission on December 31, 1993.

HRS section 84-31(b) empowers the State Ethics Commission, after a charge has been issued by the State Ethics 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 State Ethics 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 statement.

At its meeting of January 12, 1994, the State Ethics Commission noted that this commission member's financial disclosure dated January 2, 1993 (sic) was received at the State Ethics Commission's office on January 10, 1994. At this same meeting, the Commission deliberated whether to issue a Charge and Further Statement of Alleged Violation against this commission member for failing to file the 1993 financial disclosure in a timely fashion. The Commission decided not to do so in this instance. Instead, the Commission issued an Informal Advisory Opinion to this commission member in accordance with HRS section 84-31(b). The purpose of this opinion was to inform this Commission member again of the requirements of HRS section 84-17, and to notify him that in the future the State Ethics 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.