

INFORMAL ADVISORY OPINION NO. 94-6

In January of 1993, an individual registered with the State Ethics Commission ("Commission") as a lobbyist for a certain organization. As a result of this registration, this lobbyist was required by HRS section 97-3 to file with the Commission no later than January 31, 1994, a statement of expenditures ("expenditures statement") for the period March 1 through December 31, 1993. In December of 1993, the Commission mailed a form for this purpose to this lobbyist and to all other lobbyists who were required by law to file expenditures statements due no later than January 31, 1994. All but a few of the approximately 200 lobbyists required to file such expenditures statements did so in a timely fashion.

The Commission did not receive an expenditures statement from this lobbyist on or before January 31, 1994, the last date for filing set out in HRS section 97-3. As a result, the Commission wrote to the lobbyist on February 2, 1994, requesting that she file the required expenditures statement on or before February 22, 1994, or, in the alternative, appear at the Commission's meeting of February 23, 1994, to explain why the expenditures statement had not been filed as required by law. This letter also notified her that failure to appear at the February 23, 1994, meeting of the Commission or to file the required expenditures statement on or before February 22, 1994, would result in the Commission filing a charge against her in accordance with section 84-31(b) for failure to file.

The letter of February 2, 1994, was sent to the lobbyist by certified mail. According to postal records, notices of delivery of the certified mail were sent to her by postal authorities on February 4 and February 17, 1994. The certified letter went unclaimed and was returned to the Commission on March 7, 1994. In addition to sending this letter, the Commission's staff telephoned the lobbyist on February 11 and February 15, 1994. On both occasions, messages were left for the lobbyist notifying her that failure to file the required expenditures statement by February 22, 1994, or to appear at the Commission's meeting of February 23, 1994, would result in the Commission issuing a charge against her for failing to file the required expenditures statement.

The lobbyist did not appear at the February 23, 1994, meeting, nor did the Commission receive the required expenditures statement from her on or before February 22, 1994. For this reason, the Commission issued a charge against the lobbyist for failing to file the required expenditures statement due no later than January 31, 1994.

The State Ethics Commission filed a charge against the lobbyist pursuant to HRS section 84-31. 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. The lobbyist was so notified by letter dated February 23, 1994. The letter included a copy of the charge, copies of chapters 84 and 97, HRS, and Title 21, State Ethics Commission Rules. The letter was sent by certified mail and a copy was sent separately by first-class mail. According to post office records, notices of delivery of the certified letter dated February 23, 1994, were sent to the lobbyist by postal authorities on February 28 and March 8, 1994. The certified letter dated February 23, 1994, went unclaimed and was returned to the Commission on March 18, 1994. The copy of the letter dated February 23, 1994, sent by first-class mail, was not returned to this office.

An expenditures statement dated January 25, 1994, was received by the Commission on March 10, 1994. At the meeting of March 16, 1994, the Commission noted that the lobbyist had

filed the required expenditures statement by the deadline set out in the letter of February 23, 1994, to avoid a charge and further statement of alleged violation. Hence, the Commission did not file a charge and further statement of alleged violation against the lobbyist. Instead, the Commission decided to issue an informal advisory opinion to the lobbyist in accordance with HRS section 84-31(b).

HRS section 84-31(b) empowers the Commission, after a 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 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 97 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 twenty (20) days after service thereof to respond in writing to the charge and statement.

The purpose of this Informal Advisory Opinion was to inform the lobbyist again of the requirements of HRS section 97-3, and to notify her that in the future the Commission will have to consider more serious enforcement proceedings should any future expenditures statement not be filed in a timely manner.

Dated: Honolulu, Hawaii, August 10, 1994.

STATE ETHICS COMMISSION
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