

INFORMAL ADVISORY OPINION NO. 94-7

In February of 1993, an individual registered with the State Ethics Commission ("Commission") as a lobbyist for a certain organization. As a result of this registration, the 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 the 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 the lobbyist on or before January 31, 1994, the last day for filing set out in HRS section 97-3. As a result, the Commission wrote to the lobbyist on February 2, 1994, requesting that he 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 the lobbyist that failure to file the required expenditures statement on or before February 22, 1994, or to appear at the February 23, 1994, meeting of the Commission, would result in the Commission filing a charge against him in accordance with HRS section 84-31(b) for failure to file. The letter of February 2, 1994, was sent to the lobbyist by certified mail. The postal authorities returned the receipt for the certified letter, which indicated that delivery was made on February 4, 1994.

The Commission did not receive the required expenditures statement from the lobbyist on or before February 22, 1994, nor did he appear at the Commission's meeting of February 23, 1994, in order to explain why the expenditures statement had not been filed as required by law. 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 this charge 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 filed against him, copies of chapters 84 and 97, HRS, and Title 21, State Ethics Commission Rules.

The letter also notified the lobbyist that the Commission would issue a charge and further statement of alleged violation against him in accordance with HRS section 84-31(b), if the Commission did not receive from him by March 10, 1994, either an adequate explanation for failure to file the expenditures statement or the expenditures statement. The letter was sent by certified mail and a copy was sent by first-class mail. The postal authorities returned the receipt for certified letter, which indicated that delivery was made on February 24, 1994.

The Commission did not receive the lobbyist's expenditures statement on or before March 10, 1994, nor did it receive from him by that date an adequate explanation for his failure to file the expenditures statement due no later than January 31, 1994. For this reason, on March 16, 1994, the Commission issued a further statement of alleged violation in connection with the charge filed against the lobbyist on February 23, 1994.

The State Ethics Commission filed this further statement of alleged violation pursuant to HRS section 84-31. HRS section 84-31(b) grants the Commission power to initiate and issue further statements of alleged violation in connection with charges issued by the Commission. HRS section 84-31(b) requires that any person against whom a charge and a further statement of alleged violation have been filed shall be served by personal service or by registered or certified mail, with request for a return receipt and marked deliver to addressee only. If after due diligence service cannot be effected successfully by personal service or registered or certified mail, service may be made by publication if so ordered by the circuit court of the circuit wherein the alleged violator last resided. The alleged violator shall have 20 days after service thereof to respond in writing to the charge and statement. HRS section 84-31(d) states that if, after 20 days following personal service, a majority of the members of the Commission conclude that there is reason to believe that a violation of chapter 97, HRS, has been committed, then the Commission shall set a time and place for a hearing, giving notice to the alleged violator.

On March 16, 1994, the Commission delivered the charge filed against the lobbyist, the further statement of alleged violation, and a notification of the charge and further statement of alleged violation, to the Office of the Sheriff, Civil Division, Honolulu, Hawaii, for personal service. The Commission also sent copies of these documents to the lobbyist by first-class mail. The Office of the Sheriff personally served the lobbyist with the charge and the further statement of alleged violation on April 5, 1994, according to the return of service of charge and further statement of alleged violations; statement of fact and notice, which was completed and returned to the Commission by the Sheriff's office on May 12, 1994.

The Commission's staff reached the lobbyist by telephone on April 25, 1994, at which time he was informed that HRS section 84-31(b) allowed him 20 days after service of the charge and further statement of alleged violation to respond in writing. In response, the individual filed the expenditures statement which was due on January 31, 1994. A facsimile copy of the expenditures statement was received by the Commission on April 25, 1994, and the original on April 29, 1994.

At its meeting of April 27, 1994, the Commission deliberated whether to proceed with the charge and further statement of alleged violation filed against the lobbyist. The Commission decided not to do so, noting that he had filed the required expenditures statement on April 25, 1994. The Commission decided instead to issue this Informal Advisory Opinion to him.

HRS section 84-31(b) empowers 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 the majority of the members of the Commission determine that there is probable cause to believe 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 or served by registered or certified mail, and the alleged violator shall have 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 him 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
K. Koki Akamine, Chairperson
Sharon "Shay" Bintliff, Vice Chairperson
Cassandra J.L. Abdul, Commissioner
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Carl T. Sakata, Commissioner