

INFORMAL ADVISORY OPINION NO. 94-8

An individual was appointed to a state council ("Council") in August of 1993. As a member of this Council, the individual was required by HRS section 84-17 to file a Disclosure of Financial Interests ("financial disclosure") with the State Ethics Commission ("Commission") within 30 days of his appointment.

On September 21, 1993, the Commission mailed a form for this purpose together with an explanatory letter to this individual and to all other newly-appointed persons to state boards and commissions who were required to file financial disclosures with the Commission. The letter alerted newly-appointed board and commission members that HRS section 84-17(b) required filing of a financial disclosure within 30 days of appointment. In view of the possibility that these newly-appointed persons may not have been aware of this filing requirement, the Commission asked this individual and all other newly-appointed persons to file their financial disclosures within 30 days of the date of the letter. This meant that the individual's financial disclosure was due no later than October 20, 1993, the date 30 days after the letter of September 21, 1993.

All but a few of the newly-appointed board and commission members who were required by HRS section 84-17 to file financial disclosures 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 individual on or before October 20, 1993, the last day for timely filing set out in the Commission's letter of September 21, 1993. As a result, the Commission wrote to this individual on November 30, 1993, reminding him of the legal requirement to file a financial disclosure. The Commission included with that letter a blank financial disclosure form for his use in filing. The Commission did not receive a reply to that letter, nor did it receive a financial disclosure from the individual.

For this reason, the Commission's staff telephoned the individual on January 21, 1994, at his telephone number of record, leaving a message reminding him of the legal requirement to file a financial disclosure. The Commission did not receive a reply to that telephone call, nor did it receive a financial disclosure from the individual.

The Commission next sent a letter to the individual on February 22, 1994, requesting that he complete and return a financial disclosure form no later than March 15, 1994, or, in the alternative, appear at the Commission's March 16, 1994, meeting in order to explain why his financial disclosure had not been filed as required by law. The letter of February 22, 1994, also notified the individual that failure to file a financial disclosure on or before March 15, 1994, or to appear at the March 16, 1994, meeting of the Commission, would result in the Commission filing a charge against the individual in accordance with HRS 84-31(b) for failure to file.

One copy of the Commission's letter of February 22, 1994, was sent by certified mail and another by first-class mail. The postal authorities returned the receipt for the letter sent by certified mail, which indicated that delivery was made on March 8, 1994. On the same day, the Commission's staff telephoned the individual, leaving a message for him on his recorder that failure to file a financial disclosure on or before March 15, 1994, or to appear at the Commission's meeting of March 16, 1994, would result in the Commission filing a charge against him for failure to file his financial disclosure. On March 15, 1994, not having received his financial disclosure or any other communication from him, the Commission's staff again telephoned the individual, leaving a message for him on his recorder alerting him to the fact that the Commission would issue a charge

against him the following day if the Commission did not receive his financial disclosure by 4:30 p.m. on March 15, 1994.

The Commission did not receive a financial disclosure from the individual on or before March 15, 1994, nor did he appear at the March 16, 1994, meeting of the Commission to explain why the financial disclosure had not been filed as required by law. For this reason, the Commission issued a charge against the individual for failure to file a financial disclosure. One copy of the charge was sent by certified mail and another by first-class mail. The postal authorities returned the receipt for the certified letter, which indicated that delivery was made on March 28, 1994.

The Commission filed this charge against the individual pursuant to HRS section 84-31. HRS section 84-31(a)(3) grants the Commission power to initiate, receive and consider charges concerning alleged violations of the Ethics Code. It also empowers the 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 individual was so notified by letter of March 16, 1994. The letter included a copy of the charge filed against him, a copy of chapter 84, HRS, and a copy of the Commission's rules. The letter accompanying the charge explained the charge and informed the individual that the Commission would proceed to issue a charge and further statement of alleged violation against him if the Commission did not receive his financial disclosure by April 4, 1994.

The individual's financial disclosure was not received by the Commission on or before April 4, 1994, nor did the Commission receive any communication from the individual with respect to his financial disclosure. For this reason, the Commission's staff telephoned the individual on April 20, 1994, in order to inform him that the Commission would consider issuing a charge and further statement of alleged violation against him at its meeting of April 27, 1994. The individual responded by saying that he resigned from the Council approximately two weeks earlier. He agreed to send a copy of his letter of resignation to the Commission. That letter was received by the Commission on April 25, 1994.

At its meeting of April 27, 1994, the Commission deliberated issuing a charge and further statement of alleged violation against the individual for failing to file his financial disclosure in a timely fashion. The Commission decided not to do so in this instance, noting that the individual resigned from the Council approximately two weeks earlier, and had sent a copy of his letter of resignation to the Commission on April 25, 1994. Furthermore, in his telephone conversation of April 20, 1994, with Commission staff, the individual stated that he attended only two Council meetings, but did not take part in the deliberations at these meetings because he had not familiarized himself with the matters that were the subject of these meetings.

Although the Commission decided not to file a charge and further statement of alleged violation against the individual, the Commission did decide, as an alternative, to issue this Informal Advisory Opinion to him 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 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 determines 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.

The purpose of this Informal Advisory Opinion was to inform this individual again of the requirements of HRS section 84-17, and to notify him that in the future, should he be appointed to another state position requiring the filing of a financial disclosure, the State Ethics Commission would have to consider more serious proceedings under chapter 84, HRS, should a financial disclosure 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
Don J. Daley, Commissioner
Carl T. Sakata, Commissioner