

## INFORMAL ADVISORY OPINION NO. 94-9

An individual was appointed to a state board ("Board") in July of 1993. As a member of this Board, 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 sent a letter to this individual and to all other newly-appointed members of 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 filed by newly-appointed board and commission members, records of the Commission indicated that the Commission did not receive a financial disclosure 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's staff telephoned this individual on January 21, 1994, at which time the individual stated that he planned to file his financial disclosure in the near future. However, the Commission did not receive a financial disclosure from him, nor did it receive any other communication with respect to his financial disclosure over the next month.

For this reason, the Commission sent a second letter to this individual on February 22, 1994, requesting that he complete and return a financial disclosure 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 also notified this individual that failure to file a financial disclosure on or before March 15, 1994, or to appear in the March 16, 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. One copy of the letter was sent by certified mail and another by first-class mail. The postal authorities returned the receipt for certified mail, which indicated that delivery was made on February 25, 1994.

On March 7, 1994, not having received his financial disclosure, the Commission's staff again telephoned the individual to remind him that failure to file his 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 him for failure to file. In that conversation, the individual reported that he had completed his financial disclosure and would personally deliver it to the Commission. On March 15, 1994, not having received his financial disclosure, the Commission's staff telephoned the individual a third time, leaving a message on his voice mail 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 individual did not file a financial disclosure on or before March 15, 1994, nor did he appear at the March 16, 1994, Commission meeting. For this reason, the Commission issued a

charge against him for failing to file his 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 18, 1994.

The State Ethics Commission filed this charge against this 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 notified of the charge and the opportunity to respond by certified 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 of March 16, 1994, also notified the individual that if the Commission did not receive his financial disclosure by April 4, 1994, or an adequate explanation for his failure to file, the Commission would proceed to file a charge and further statement of alleged violation against him in accordance with HRS section 84-31(b). His financial disclosure was not received by April 4, 1994, nor did the Commission receive an adequate explanation from him by that date for his failure to file a financial disclosure.

On April 21, 1994, as a result, the Commission's staff telephoned the individual to alert him to the fact that at its meeting of April 27, 1994, the Commission would consider filing a charge and further statement of alleged violation against him for failure to file his financial disclosure. His financial disclosure dated April 21, 1994, was received by the Commission on April 22, 1994.

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 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 April 27, 1994, the Commission deliberated whether to file a charge and further statement of alleged violation against this 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's financial disclosure was received by the Commission on April 22, 1994. As an alternative, the Commission decided to issue this Informal Advisory Opinion to him in accordance with HRS section 84-31(b).

The purpose of this Informal Advisory Opinion was to inform the individual 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 enforcement proceedings under chapter 84, HRS, should any future 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