

INFORMAL ADVISORY OPINION NO. 96-2

A member of a state board was required by the State Ethics Code, chapter 84, Hawaii Revised Statutes ("HRS"), to file a completed disclosure of financial interests form ("financial disclosure") with the Hawaii State Ethics Commission ("Commission") within 30 days of his appointment to the Board. In October, 1994, after the person was appointed to the Board, the Commission mailed a form for this purpose to him. In December, 1994, the Commission mailed a reminder notice, noting that the board member had missed the 30-day deadline.

In July, 1995, still not having received a financial disclosure from the board member, the Commission again sent a letter and enclosed another form.

The Commission still did not receive a financial disclosure. Therefore, on August 30, 1995, the Commission issued Charge No. 95-Cg-8 for failure to file a financial disclosure.

The Commission filed this charge pursuant to section 84-31, HRS. Section 84-31(a)(3), HRS, grants the Commission the authority to initiate, receive, and consider charges concerning alleged violations of the ethics code. It also authorizes the Commission to investigate and hold hearings.

Section 84-31(b), HRS, 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 Commission mailed the charge by both regular first-class mail and by certified mail. The certified letter came back undelivered. In telephone conversations with the Commission's staff, the board member stated that he would file the disclosure. Staff also received assurances from another state employee who had discussed the matter with the board member that the board member had told him that he would take care of the matter.

The Commission still did not receive a financial disclosure, and on October 11, 1995, the Commission issued a Charge and Further Statement of Alleged Violation, after finding that probable cause existed that a violation of the State Ethics Code had occurred. This was personally served on the board member on October 24, 1995, as required by section 84-31(b), HRS.

Again, the board member continued to fail to file a disclosure or notify the Commission of any problems he was having in doing so. Therefore, on January 10, 1996, pursuant to section 84-31(c), HRS, the Commission unanimously voted to set the matter for a hearing to be held on February 21, 1996. Prior to issuing the Notice of Hearing, the Commission determined it was necessary to postpone the hearing until March 13, 1996. After voting on the new hearing date, a Notice of Hearing was personally served on the board member, along with another copy of the Charge and the Charge and Further Statement of Alleged Violation, on February 14, 1996.

On February 29, 1996, the Commission finally received a financial disclosure from the board member.

Section 84-17(c)(9), HRS, provides that members of every state board or commission whose original terms of office are for periods exceeding one year and whose functions are not solely advisory must file financial disclosures. The board member's original term of office was for a period exceeding one year, and his functions as a board member were not solely advisory. Thus, he was required to file a disclosure of financial interests with the Commission.

The Commission stated that it regarded the financial disclosure law as one of the keystones of the ethics code. The requirement of disclosure of financial interests is rooted in the Hawaii State Constitution. Article XIV of the Constitution mandates the establishment of a state ethics code. The Constitution requires that the ethics code include provisions on financial disclosure. In relevant part, Article XIV states:

The financial disclosure provision shall require all elected officers, all candidates for elective office and such appointed officers and employees as provided by law to make public financial disclosures. Other public officials having significant discretionary or fiscal powers as provided by law shall make confidential financial disclosures. All financial disclosure statements shall include, but not be limited to, sources and amounts of income, business ownership, officer and director positions, ownership of real property, debts, creditor interests in insolvent businesses and the names of persons represented before government agencies.

The Commission explained that the financial disclosure law allows the public the opportunity to evaluate matters which might bring about conflicts of interests between public employment and private financial interests. In the interests of privacy, certain non-elected officials and employees, including board and commission members, file confidential financial disclosure statements that are reviewed only by the Commission. The Commission noted that the review of these statements allowed it to take action on possible conflicts of interests before problems arose.

The Commission was aware that some state officials viewed the financial disclosure requirement as an unwelcome chore. The Commission pointed out, however, that individuals who accept appointment to state government service also accept the legal responsibilities that accompany government service. These responsibilities include complying with the State Ethics Code.

The board member was required to file a confidential financial statement with the Commission each year because of his state position. This information enabled the Commission to assess the potential for conflicts of interests between his state position and his private financial interests. The Commission stated that without complete, timely information, it was hindered in its administration of the ethics code.

At its meeting of March 13, 1996, the Commission decided that because the board member filed a financial disclosure statement, further proceedings were not warranted. Instead, the Commission decided to issue this Informal Advisory Opinion to emphasize the requirements of the financial disclosure law and to ensure future timely compliance. The Commission informed the board member that it would 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, March 13, 1996.

STATE ETHICS COMMISSION

Cassandra J.L. Abdul, Chairperson
Carl T. Sakata, Commissioner
Arlene Kim Ellis, Commissioner
Bernard E. LaPorte, Commissioner

Note: There was a vacancy on the Commission when this opinion was signed.