

INFORMAL ADVISORY OPINION NO. 96-4

The Hawaii State Ethics Commission ("Commission") issued a charge against a state official alleging violations of the State Ethics Code, Chapter 84 of the Hawaii Revised Statutes ("HRS"), in connection with his participation in five golf tournaments during the time he served as an official of a state agency. In addition, the Commission considered a request from the official for an advisory opinion regarding this matter. The official's request for an advisory opinion was made to the Commission after he had participated in the events. The Commission issued this informal advisory opinion to address both the charge and the official's request for an advisory opinion.

With respect to each golf tournament, the official was charged with violating HRS section 84-11, known as the gifts law. That provision of the State Ethics Code states as follows:

§84-11 Gifts. No legislator or employee shall solicit, accept, or receive, directly or indirectly, any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, thing, or promise, or in any other form, under circumstances in which it can reasonably be inferred that the gift is intended to influence the legislator or employee in the performance of the legislator's or employee's official duties or is intended as a reward for any official action on the legislator's or employee's part.

"Official action" is defined by the State Ethics Code as "a decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority." The gifts law prohibits a state official or employee from accepting a gift if it can "reasonably be inferred" that the gift is intended to influence or reward discretionary action on the part of the state official or employee.

The official generally denied the allegations set forth in the charge. He informed the Commission that after satisfying himself that his participation would not influence his actions and was not intended as a reward, he participated in the golf tournaments in his state capacity. He indicated that he participated in the events to demonstrate the state administration's support, as well as his personal support, for events important to the tourism industry.

The facts and circumstances relevant to the official's involvement with each of the five golf tournaments and the Commission's disposition of this case are set forth in the following paragraphs.

The Commission was informed that a certain golf tournament for professional and amateur golfers was held annually on a neighbor island. The tournament was a "by invitation only" event. The charge issued against the official pertained to his participation in that tournament in three different years. The events are hereinafter referred to as "Golf Tournament 1," "Golf Tournament 2," and "Golf Tournament 3."

(1) Golf Tournament 1

The official was invited to participate in Golf Tournament 1 by a particular individual on behalf of a certain company, hereinafter referred to as "Company A." Company A was a corporate sponsor of the event. Another business was the title sponsor and "site host" for the event. The official stated that he participated in the tournament for one day and did not stay overnight. He reported that his airfare was paid either by the State of Hawaii or with his own airline coupons. He may have accepted food served at the event.

The Commission was informed that as a corporate sponsor of the tournament, Company A was allocated a single professional-amateur ("pro-am") slot for an individual to participate in the event. The dollar value of that slot was unknown. However, the Commission was informed that the fee for a pro-am slot in a golf tournament that appeared to be similar to Golf Tournament 1 had been approximately \$4,000. It was reported that each participant in Golf Tournament 1 received a set of golf clubs and a golf bag valued at approximately \$1,200. It did not appear that those golf items came directly from Company A. The official said that they were given by the promoters of the tournament, rather than by Company A.

The official stated that he attended the tournament in his state capacity. He indicated that he represented the State at the event. It appeared that the official may have been a substitute for the Governor at the event. That information was supported by Company A. According to Company A, Company A recognized that the event would be attended by senior executives from various industries and major corporations, and believed that participation by a representative of state government would generate positive exposure for the State. Company A therefore extended an invitation to the Governor, or in his absence, to the state official.

It appeared that in his state capacity, the official took official action that directly affected Company A. It appeared that the official's state agency had an ongoing business relationship with Company A. The official explained that Company A products were included in state equipment price lists. He said that divisions of his state agency and agencies attached to his agency made requests to purchase Company A products, and during his tenure, he approved such purchases based on need, the availability of funds, and proper procurement considerations. Previously, the official had been involved in the approval or completion of his state agency's purchase of certain Company A products on a sole source basis.

The official informed the Commission that he disposed of the golf clubs and bag he received for participating in Golf Tournament 1. Initially, the official stated that, after consultation with the person who had extended the invitation to him on behalf of Company A, the items were sold, with the proceeds going to charity and no tax deductions taken by the official. The official indicated that the reason Company A did not take the items was that the clubs were for a right-handed golfer, and the person who had extended the invitation to the official from Company A was left-handed. The official later stated that he sold the items to one of his subordinate employees. The Commission was informed that on a work day and in the official's office, he offered to sell the clubs and bag to his subordinate. After his subordinate agreed to buy the items, it was alleged that the official directed his subordinate to negotiate a price with the official's secretary and to pay the secretary for the items. The items were sold to the subordinate. The official said that the proceeds went to various charities and that he later returned to his subordinate the money he had received from his subordinate for the items, to mitigate any ethical concerns.

The official was charged with violating HRS section 84-11 of the State Ethics Code for: (1) accepting Company A's invitation to participate in Golf Tournament 1; and (2) accepting golf clubs and a golf bag given in connection with his participation in that tournament.

The official was also charged with violating HRS section 84-13 of the State Ethics Code, which pertains to fair treatment, for selling the golf clubs and bag to his subordinate. The relevant parts of HRS section 84-13 state as follows:

§84-13 Fair treatment. No legislator or employee shall use or attempt to use the legislator's or employee's official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for oneself or others; including but not limited to the following:

...

- (3) Using state time, equipment or other facilities for private business purposes.
- (4) Soliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate or a person or business whom the legislator or employee inspects or supervises in the legislator's or employee's official capacity.

The "fair treatment" section of the State Ethics Code prohibits state officials and employees from using or attempting to use their official positions to obtain unwarranted benefits for themselves or others. The official was charged with violating HRS section 84-13 for having his secretary negotiate the purchase price of the items with his subordinate and complete the sales transaction with his subordinate, thereby giving the official an unwarranted benefit. The official was also charged with violating HRS section 84-13(4) for engaging in a substantial financial transaction with a subordinate. Finally, the official was charged with violating HRS section 84-13(3) for using state time, equipment, or other facilities for the private sale of the items to his subordinate.

(2) Golf Tournament 2

Company A also invited the official to participate in Golf Tournament 2, which was held the year after Golf Tournament 1 occurred. Company A was a corporate sponsor for Golf Tournament 2. The title sponsor and "site host" for the event was the same as in the previous year. It appeared that Company A was allocated a pro-am slot in Golf Tournament 2 and invited the official to fill that slot. The invitation was extended to the official on behalf of Company A by the same person who had extended the invitation to him for Golf Tournament 1. The dollar value of a slot to participate in Golf Tournament 2 was unknown. The Commission, however, was told that the value of a slot to participate in an event that appeared to be similar to Golf Tournament 2 had been approximately \$4,000. The official stated that he participated in Golf Tournament 2 for one day and did not stay overnight. He said that the State paid his airfare. The official may have accepted food served at the event. It was reported that each participant received a set of golf clubs and a golf bag valued at approximately \$1,200. It appeared that the golf items did not come directly from Company A. According to the official, they were given by the promoters of the event.

As in the previous year, it appeared that the official attended the event in his state capacity (possibly as a substitute for the Governor) and that he took official action that directly affected Company A, in that the official approved Company A purchases made by his state agency.

The official was charged with violating HRS section 84-11 for: (1) accepting Company A's invitation to participate in Golf Tournament 2; and (2) accepting golf clubs and a golf bag given in connection with his participation with that tournament.

The official informed the Commission that he disposed of the golf clubs and bag. His explanation of the disposition of the golf items appeared to change over time. Initially, the official indicated that the items were offered to the person who had invited him on behalf of Company A, but that person did not take them, because the clubs were for a right-handed golfer and that person was left-handed. The official then said that the clubs were given away as door prizes at a departmental golf tournament. Later, the official reported that he sold the irons portion of the set of clubs and used the proceeds to defray the expenses of a departmental golf tournament. Still later, the official reported that the clubs were sold to a relative of his, with the proceeds going to charity. The official then said that he would return the payment he received for the clubs to the relative and that the clubs were donated to a charitable organization.

(3) Golf Tournament 3

Golf Tournament 3 occurred the year after Golf Tournament 2 was held. The official was invited to participate in Golf Tournament 3 by a particular individual on behalf of a certain company, hereinafter referred to as "Company B." It was reported that Company B placed advertisements in conjunction with a televised program of Golf Tournament 3. The title sponsor and "site host" for the event was the same as in the previous two years. The official said that he participated in the tournament for one day and did not stay overnight, and that the State paid his airfare. The official may have accepted food served at the event. It was reported that each player in the tournament received a plaque commemorating the event. The official received a set of golf clubs and a golf bag in connection with his participation in Golf Tournament 3. It was believed that the value of those golf items was substantial. As previously discussed, each participant in the prior two years reportedly received such items that were valued at approximately \$1,200. It was reported that the golf clubs and bags and other items, such as caps and towels, were given to participants by another company. The dollar value of an invitation was unknown. However, the Commission was informed that a slot to participate in an event that appeared to be similar to Golf Tournament 3 had been valued at approximately \$4,000.

It appeared that the official was invited to fill a slot to play in the tournament that had been given to Company B. According to the individual who had extended the invitation to the official, Company B did not deem it important to invite representatives of state government to use that slot; Company B offered the slot to those who enjoyed playing golf. The individual added that he recalled offering the slot for Golf Tournament 3 to two others before the official, but that they declined the invitation. It was Company B's understanding that the official participated in the tournament in his private capacity. The official stated, however, that he participated in the event in his state capacity. It appeared that the official's assertion was correct, as the official said that the State paid his airfare to attend the event. Moreover, it appeared that the invitation to the official could have arisen out of the business relationship that Company B had with the State.

It appeared that Company B was clearly subject to official action on the part of the official. The official stated that his state agency worked closely with another state agency in carrying out substantial financial transactions with businesses. Company B had been involved in some of those substantial financial transactions with the official's agency.

With respect to Golf Tournament 3, the charge alleged that the official violated HRS section 84-11 for: (1) accepting Company B's invitation to participate in the Golf Tournament 3; and (2) accepting golf clubs and a golf bag given in connection with his participation in that tournament.

The official informed the Commission that he did not keep the golf clubs and bag. The official said that he offered the golf items to the individual who had extended the invitation to him on behalf of Company B. According to the official, however, the individual refused them, because certain gifts statutes applicable to Company B precluded the individual from accepting the golf items. The official stated that he then donated the items to a departmental golf tournament. The official said that the items were auctioned off and that the proceeds were given to a charitable organization.

(4) Golf Tournament 4

In addition to being charged with respect to Golf Tournaments 1, 2 and 3, the official was charged in connection with his participation in another annual golf tournament held on a neighbor island. The official participated in that tournament in two different years. The events are referred to hereinafter as "Golf Tournament 4" and "Golf Tournament 5."

The official was invited to participate in Golf Tournament 4 by a certain company, referred to hereinafter as "Company C," which reportedly was the title sponsor of the event. The official participated in the tournament for two days.

According to Company C, the company paid a sponsorship fee to the producers of the tournament in order to sponsor the event. The sponsorship fee, the amount of which varied from one year to the next, entitled Company C and its guests to various privileges, including several slots in the pro-am tournament. Company C said that it had been either the title sponsor or an associate sponsor of the tournament for several years. One year, Company C reportedly paid a sponsorship fee of \$110,000, which included 16 slots. In the second year after Golf Tournament 4 occurred, the Commission received information from another source regarding the value of an individual pro-am slot to participate in the event. According to that source, the value of an individual slot had been approximately \$4,000 for the past two years. Hotel accommodations for Company C's invited guests were included in the package provided by the producers of Golf Tournament 4, in return for the sponsorship fee paid by Company C. According to Company C, guests were generally picked up by Company C staff at the airport and driven to the hotel, although guests could have rented cars at their own expense. Airfare was not included. The official stated that either the State paid his airfare or he used his own airline coupons, and that he either flew in and out each day or he stayed overnight. According to Company C, most meals were provided by the tournament and were also covered by the sponsorship fee. The official stated, however, that he paid for his own meals. The official said that he received a set of four golf clubs (woods) and candies, nuts, condiments, and canvas carry bags. It did not appear that the golf clubs came directly from Company C. According to Company C, tee-gift packages, the cost of which was covered by the sponsorship fee paid by Company C, were provided to all pro-am tournament participants.

It appeared that the official participated in Golf Tournament 4 in his state capacity. The official explained that he attended the event in order to represent the State. That was supported by Company C. According to Company C, it was Company C's practice to invite a cross-section of community leaders to attend the tournament, and that the company felt it would be a breach of protocol not to invite representatives of state government. It was Company C's understanding that the official's participation signified the State's support of the event being held in Hawaii, and afforded the official and other representatives of the State the opportunity to promote tourism or other business opportunities for the State.

It appeared that the official took official action affecting Company C. According to Company C, the company entered into a variety of contracts with the State during the official's tenure with the State. In his official capacity, the official was involved in the selection of Company C for a sole source contract with the State. The official said that his staff negotiated the contract with Company C and that the official signed the contract on behalf of the State. The official explained that Company C was the only local service provider for the type of services that were being utilized at that time. The official explained that generally, his role in contracts with Company C was to execute the contract on behalf of the State after his staff had determined the need and executed the bid or the sole source award of the contract.

The official was charged with violating HRS section 84-11 for: (1) accepting Company C's invitation to participate in Golf Tournament 4; and (2) accepting golf clubs given in connection with his participation in that tournament.

The official informed the Commission that he did not keep the golf items that were given in connection with his participation in the event. The official stated that he gave the golf clubs and canvas carry bags to Company C. The official said that the other items were either left in his hotel room or were given to office staff.

(5) Golf Tournament 5

Golf Tournament 5 occurred the year after Golf Tournament 4 was held. The official stated that he participated in Golf Tournament 5 for two days, upon the invitation of Company C. Company C reportedly was an associate sponsor of the tournament that year. The Commission was informed that the fee for a pro-am slot was approximately \$4,000. It was also reported that participants received, as part of their entry fee, a gift package that included a set of golf clubs, golfing apparel, and golf balls, estimated at a retail value of \$2,000. Other facts and circumstances pertaining to the official's participation in Golf Tournament 5 appeared to be essentially the same as they were in the previous year. The official stated that either the State paid his airfare or he used his own airline coupons, and that he either flew in and out each day or stayed overnight. It appeared that hotel accommodations, if accepted, might have been included in the package provided by the producers of the tournament, in return for the sponsorship fee paid by Company C. The official said that he paid for his own meals. He said that he received a set of four golf clubs (woods) and candies, nuts, condiments, and canvas carry bags. It did not appear that the golf clubs came directly from Company C. As in the previous year, it appeared that the official participated in the event in his state capacity and that Company C was subject to his official action.

The official was charged with violating HRS section 84-11 for: (1) accepting Company C's invitation to participate in Golf Tournament 5; and (2) accepting golf clubs in connection with his participation in that tournament.

The official informed the Commission that he did not keep the golf items. He said that as in the previous year, he gave the golf clubs and canvas carry bags to Company C and that the other items were either left in his hotel room or were given to office staff.

In summary, the official was charged with violating the gifts law, HRS section 84-11, for accepting the invitations to participate in the various golf tournaments described above, and for accepting golf clubs and bags that were given to him in connection with his participation in those tournaments, under circumstances where it was reasonable to infer that the gifts were intended to

influence the official in the performance of his official duties or as a reward for official action on his part.

Acceptance of Invitations

In rendering this informal advisory opinion, the Commission noted that in determining whether it was "reasonable to infer" that a gift was given to influence or reward a state official or employee, the Commission considered all relevant factors, such as the value of the gift and the nature of any discretionary action the state official or employee had taken or might take with respect to the donor of the gift. The Commission further stated that a state official or employee's contention that a gift would not actually influence him or her was not a factor in determining the legality of accepting a gift under HRS section 84-11. The Commission noted that the gifts law was based on the appearance of impropriety, not the actuality of such.

The Commission considered a number of factors in reviewing the official's situation. The dollar value of a slot to play in any one of the subject golf tournaments appeared to have been substantial--as high as \$4,000. The official accepted those gifts from companies that were subject to his official action. The Commission believed that as an official of his state agency, the official exercised significant discretionary authority in matters that directly affected Company A, Company B, and Company C, in that he participated in, approved, or executed contracts or other transactions involving the State of Hawaii and each of those companies. On the one hand, because it appeared that the official took significant official action with respect to each of the donors of the golf tournament invitations, and because the invitations received by the official were of substantial value, serious questions arose as to whether his acceptance of the invitations was permissible under HRS section 84-11. On the other hand, based on the representations of Company A and Company C, it appeared that those donors were seeking someone from state government to represent the State at the golf tournaments. Although Company B did not appear to share this view with Company A and Company C, the Commission noted that the State paid the official's airfare to allow him to accept the Company B invitation. The Commission also accepted the official's representation that he participated in each of the subject golf tournaments in his state capacity. Moreover, the Commission observed that the official could have been an appropriate individual to represent the State at those events, or to serve as a substitute for the Governor, based on the fact that the official was a high-ranking official in state government. Finally, the Commission recognized that it appeared to have been customary for companies in the private sector to invite members of government and the business community to participate in such events.

The Commission determined that while certain facts might have established that the official's participation in the golf tournaments ran afoul of HRS section 84-11, other facts supported the argument that his participation fulfilled the need for a high-ranking representative of state government to be present at those events, in which case it appeared that his participation served a legitimate state purpose. The Commission believed that the official's acceptance of the invitations raised serious questions under HRS section 84-11 and that he came close to being in violation of that provision of the State Ethics Code. The Commission, however, did not believe that the official's acceptance of the invitations rose to the level of a violation of the law. The Commission observed, nevertheless, that the official's circumstances presented the type of situation for which an advisory opinion from the Commission should have been sought from the very beginning. The Commission informed the official that had he requested an advisory opinion from the Commission prior to his acceptance of any of the invitations as to whether acceptance of any of them was permissible, the questions that arose regarding the propriety of his acceptance of those gifts might have been

avoided. The Commission further stated that the advisory opinion process was established to assist state officials and employees in avoiding violations of the State Ethics Code. The Commission noted that the advisory opinion process was also utilized to point out those situations in which the appearance of a significant violation might arise, such that a state official or employee might want to voluntarily refrain from engaging in a particular activity. The official was informed that had the Commission received a timely request for an advisory opinion from him, any potential problems could have been identified at that time, and perhaps someone else might have been selected to represent the State at the events so as to avoid any possible appearance of an infraction of the State Ethics Code.

The Commission noted that because the official's acceptance of the invitations was not in violation of the State Ethics Code, his acceptance of anything to facilitate his participation in the tournaments, such as hotel accommodations and meals, and any items of nominal value to commemorate or advertise the events, was not prohibited.

Acceptance of Golf Items

The Commission believed, however, that the official's acceptance of golf clubs and golf bags given in connection with the tournaments was prohibited by the State Ethics Code.

The Commission applied the "fair treatment" section of the State Ethics Code, HRS section 84-13, and its subpart, HRS section 84-13(2), to this issue. Those sections state as follows:

§84-13 Fair treatment. No legislator or employee shall use or attempt to use the legislator's or employee's official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for oneself or others; including but not limited to the following:

...

- (2) Accepting, receiving, or soliciting compensation or other consideration for the performance of the legislator's or employee's official duties or responsibilities except as provided by law.

The Commission explained that HRS section 84-13 prohibits state officials and employees from using or attempting to use their state positions to obtain unwarranted benefits for themselves or others. The Commission stated that in particular, HRS section 84-13(2) prohibits state officials and employees from accepting or soliciting any "compensation" or other "consideration" for the performance of official duties unless the compensation or consideration is provided for by law. The Commission explained that the term "compensation" is defined in section 84-3 of the State Ethics Code as "any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by oneself or another." It was noted that because the term "compensation" includes any thing of value or of economic benefit, "compensation" also includes any gift that might be given to a state official or employee "for the performance of" that individual's official duties or responsibilities. It was further noted that the term "consideration" in its general legal sense also includes gifts or anything of economic benefit. The Commission explained that it interprets HRS section 84-13(2) as prohibiting state officials and employees from unjustly enriching themselves by soliciting or accepting anything of value simply because of the performance of their official duties.

It appeared that the official's participation in each of the golf tournaments in question was in the performance of his state duties. The Commission therefore believed that the golf clubs and bags given in connection with his participation in the events would be deemed "compensation" given "for the performance of" his official duties or responsibilities. The official thus was prohibited from accepting the golf items under HRS section 84-13(2).

Moreover, since the official was participating in the events in his state capacity, the Commission stated that the golf items at most would have been considered gifts to the State as opposed to personal gifts to the official. Therefore, the official was prohibited by HRS section 84-13 from accepting the items to personally benefit himself or others.

The Commission noted that it did not appear that the golf items given in connection with each of the tournaments in which the official participated came directly from the companies who extended invitations to the official. All of the donors of those golf items, however, were not identified. The Commission informed the official that he might have been prohibited under the gifts law, HRS section 84-11, from accepting the items if he took official action affecting the donors. The official was informed that in any event, he was prohibited from accepting the items under HRS sections 84-13(2) and 84-13, for the reasons previously discussed.

Disposition of Golf Items

It appeared that the official disposed of the golf items he received in various ways.

The official sold the golf clubs and bag he received in connection with Golf Tournament 1 to his subordinate. The Commission believed that the manner in which the official disposed of the golf items was in violation of the State Ethics Code. It appeared that the official misused his official position to derive an unwarranted benefit for himself in violation of HRS section 84-13 by having his secretary negotiate a price for the items with his subordinate and carry out the sales transaction. It also appeared that the official violated HRS section 84-13(4) by engaging in a substantial financial transaction with a subordinate employee. Furthermore, it appeared that the official violated HRS section 84-13(3) by using state time, equipment, or other facilities to conduct a private business transaction. It appeared that the official later attempted to cure those problems, as he reported that the proceeds of the sale were given to charity and that he later returned the payment for the items to his subordinate, in order to mitigate any ethical concerns.

It is somewhat unclear as to how the official might have disposed of the golf items he received in connection with Golf Tournament 2, as his explanation appeared to change over time. The official's disposition of the golf items would have raised concerns if he profited from the sale of the golf items to his relative. It appeared, however, that the official took corrective action to mitigate such a benefit, as he said that the proceeds were donated to charity, the golf items were donated to a charitable organization, and the payment he received for the golf items would be returned to his relative.

As for the golf clubs and bag the official received for participating in Golf Tournament 3, the official reported that he first offered the items to the person who had invited him to participate in the event on behalf of Company B. The official said that when that person refused to accept them due to the restrictions of certain gifts statutes applicable to Company B, the golf items were donated to a departmental golf tournament. The official reported that the items were auctioned off with the proceeds going to a charitable organization. The Commission recognized that the organization was

a charitable organization that was officially supported by the State of Hawaii. Therefore, the manner in which the official disposed of the items did not raise concerns for the Commission.

The official's reported disposition of the golf clubs from Golf Tournament 4 and Golf Tournament 5 was not problematic for the Commission, either. The official said that he gave the items to Company C, which sponsored the official in the tournaments. The official explained that although the items came from the promoter of the tournaments (not Company C), the official felt it was appropriate to give the items to Company C, since Company C had extended the invitations to him. The official stated that since his reason for participating was merely to represent the State, he did not have any inclination to participate to receive the gifts and, therefore, they were given to his sponsor. The Commission noted that it might have been more appropriate to return the golf items to the promoter, if the promoter had been the actual donor, but in any case, it was appropriate that the official did not keep the gifts, since he participated in the tournaments in his state capacity.

The Commission observed that it appeared to have been customary for private companies to extend invitations to members of government to participate in golf tournaments such as the events in question. In the official's case, it appeared that he was invited to participate in the five events as a representative of state government, and in some instances, as a substitute for the Governor. The Commission noted that under the circumstances, there might have been a misunderstanding on the official's part that it was permissible to accept the golf items that were given in connection with his participation in the events. The Commission also noted that the official apparently became aware of the ethical problems that arose from his acceptance of the golf items and attempted to take corrective action, by disposing of them and taking measures to come into compliance with the State Ethics Code. For those reasons, the Commission elected not to pursue the issue of the official's acceptance of the golf items any further.

The Commission noted that in the official's response to the charge, he raised a defense that the statute of limitations had run with respect to events that occurred in connection with Golf Tournament 1, and that the Commission therefore was barred from commencing any proceedings with respect to Golf Tournament 1. At the time of the official's alleged violations of the State Ethics Code in connection with Golf Tournament 1, the statute of limitations for commencing proceedings was three years from the date of an alleged violation, pursuant to HRS section 84-31(a)(6). Section 84-31(a)(6), however, did not bar the Commission from commencing proceedings beyond the three-year limit, if the alleged violator prevented discovery of a violation by "fraud" or "other device."

The Commission did not consider the official's "statute of limitations" defense to be valid, as it was believed that the official provided the Commission with misleading information with respect to Golf Tournament 1. In an initial letter to the Commission's staff from the official in response to questions regarding gifts the official had received and what had happened to them, the official reported that each participant in Golf Tournament 1 was given a set of golf clubs and a golf bag. The official stated that, after consultation with the person who had extended the invitation to him on behalf of Company A, the clubs and bag were sold, with the proceeds donated to charity and no tax deductions taken by the official. The official indicated that the reason Company A did not take the items was that the clubs were for a right-handed golfer, and the person who had extended the invitation to the official from Company A was left-handed. The information the official provided in his initial letter to the Commission's staff later proved to be misleading. By way of a subsequent letter to the Commission's staff that was dated beyond three years of the alleged violations, the official then reported that the clubs and bag had been sold to someone who the Commission learned was the official's subordinate. It thus became evident that the official had in fact accepted

the golf items and then sold them to a subordinate. Because it was believed that the official provided the Commission with misleading information, whether intended or not, the Commission charged the official with a violation of HRS section 84-11 for accepting the invitation; a violation of HRS section 84-11 for accepting the golf items; and violations of HRS sections 84-13, 84-13(4), and 84-13(3) in connection with his sale of the items to his subordinate. The Commission thus believed that with respect to Golf Tournament 1, the charge issued against the official was appropriate. As previously discussed, the Commission determined that the official's acceptance of the invitation was not prohibited by the State Ethics Code. Also as previously discussed, although the official's acceptance of the golf items was prohibited by the State Ethics Code, the Commission did not pursue that issue, as it appeared that the official took sufficient corrective action to come into compliance with the law.

Pursuant to HRS section 84-31(b), the Commission is authorized to render an "informal advisory opinion" in lieu of pursuing further charge proceedings. The Commission believed that an informal advisory opinion was appropriate in this case, as the Commission did not intend to pursue the charge against the official. In addition, the Commission believed that through an informal advisory opinion, the Commission could respond to the official's request for an advisory opinion regarding his situation.

The Commission informed the official that while the charge against him would not be pursued, the Commission wished to stress that as a state official, he was held to the highest standards of ethical conduct. The Commission stated that as mandated by Article XIV of the Hawaii State Constitution, the State Ethics Code was established on the premise that "[t]he people of Hawaii believe that public officers and employees must exhibit the highest standards of ethical conduct" In interpreting the State Ethics Code, the Commission was guided by HRS section 84-1, which states that the State Ethics Code "shall be liberally construed to promote high standards of ethical conduct in state government." [Emphasis added.] The Commission further stated that a state official or employee should be mindful that his or her acceptance of gifts of substantial value were of potential concern under the State Ethics Code.

The Commission recognized that at times, a state official or employee might be invited to participate in a golf tournament such as the events in question as a representative of the State or in place of the Governor, but that questions might arise if the recipient of the invitation took official action with respect to the donor of the invitation. The Commission therefore encouraged one who received such an invitation to seek advice from the Commission prior to accepting the invitation, so that the nature of the official action and other relevant factors could be reviewed and a determination could be made as to whether acceptance of the invitation would be permissible under the State Ethics Code. The Commission observed that requesting an advisory opinion on the propriety of accepting the gift of an invitation to participate in the golf tournament prior to acceptance of the invitation would go far to avoid questions arising under HRS section 84-11 and the erosion of the public's confidence in state government. The Commission stated that in any case, one who participated in such a golf tournament in his or her official capacity would be prohibited from accepting a gift of golf clubs given in connection with that event.

The Commission appreciated the cooperation the official had shown throughout the Commission's investigation and review of this matter.

Dated: Honolulu, Hawaii, June 28, 1996.

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

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