

INFORMAL ADVISORY OPINION NO. 97-2

A member of a board was required to file his disclosure of financial interests ("financial disclosure") with the State Ethics Commission ("Commission") between January 1 and May 31 of each year. In February of 1996, the Commission mailed a form for this purpose to the board member as well as to all other individuals who are required by law to file such disclosures. On April 1, 1996, the Commission also mailed a reminder notice to the board member as a reminder about the filing deadline. The Commission did not receive a financial disclosure from the board member on or before the deadline date.

Consequently, on August 6, 1996, the Commission sent a letter to the board member again requesting that he file his financial disclosure as soon as possible. The letter notified the board member that failure to file a financial disclosure by the deadline date is a violation of the State Ethics Code. The letter further stated that if the Commission did not receive a financial disclosure by the board member by August 21, or did not hear from him as to any problems with filing the disclosure statement by August 21, 1996, the Commission would have no recourse but to consider filing a charge against him.

The Commission did not receive a financial disclosure from the board member by August 21, 1996. Nor did the Commission hear from the board member as to any problems he might have had in filing the disclosure statement. When contacted on August 22, 1996, the board member requested another copy of the financial disclosure form and the Commission mailed the additional copy on August 22, 1996. However, the Commission still did not receive a financial disclosure from the board member. When contacted by telephone on November 13, 1996, the board member stated that his completed financial disclosure was sent to the Commission in early November, 1996. The board member stated that he would fax the completed financial disclosure to the Commission on November 14, 1996. The Commission did not receive the board member's financial disclosure on November 14, 1996. Therefore, on November 20, 1996, the Commission issued a charge against the board member for failure to file a financial disclosure.

The Commission filed the charge against the board member pursuant to section 84-31, Hawaii Revised Statutes ("HRS"). Section 84-31(b), HRS, grants the Commission 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 board member was notified of the charge by letter dated November 20, 1996. Enclosed with the letter was a copy of the charge filed against the board member. The letter explained that the board member had an opportunity to respond to the charge. The letter also asked, again, that the board member submit his financial disclosure as soon as possible.

The Commission mailed the board member two copies of its letter notifying the board member of the charge: one copy was sent by certified mail and the other copy by first class mail. The board member received the certified letter on December 14, 1996, according to the postal return receipt. The board member's completed financial disclosure dated October 23, 1996 was received by the Commission on December 23, 1996. The board member did not provide any other response to the charge.

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, the board member was required to file a financial disclosure with the Commission.

The Commission stated that it regards the financial disclosure law as one of the keystones of the State Ethics Code. The requirement of financial interests disclosure 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 provisions 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 Commission to evaluate matters which might bring about conflicts of interests between public employment and private financial interests. The review of these statements allows the Commission to take action on possible conflicts of interests before problems arise.

The Commission is aware that some state officials may view the financial disclosure requirement as an unwelcome chore. However, 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 financial disclosure with the Commission each year because of the board member's state position. This information enabled the Commission to assess the potential for conflicts of interests between the board member's state position and his private financial interests. Without complete, timely information, the Commission was hindered in its administration of the State Ethics Code.

The Commission decided that because the board member filed his financial disclosure, further charge proceedings were not warranted. Instead, the Commission decided to issue the board member this Informal Advisory Opinion to emphasize the requirements of the financial disclosure law and to ensure his timely compliance in the future. The Commission informed the board member that it would consider more serious proceedings under chapter 84, HRS, should any future financial disclosures not be filed in a timely manner.

Dated: Honolulu, Hawaii, February 5, 1997.

STATE ETHICS COMMISSION

Cassandra J. L. Abdul, Vice Chairperson

Bernice Pantell, Commissioner

Carl T. Sakata, Commissioner

Note: Chairperson Bernard E. LaPorte was present during the discussion and consideration of this opinion but was unavailable for signature. Commissioner Kirk Cashmere abstained from voting on this matter.