

INFORMAL ADVISORY OPINION NO. 99-5

The Hawaii State Ethics Commission (“Commission”) received information alleging that there was a significant number of campaign documents on a state computer that had been assigned to a former state legislator during the time the former legislator served as a member of the state Legislature. The State Ethics Commission obtained copies of these documents, which were campaign documents prepared for the former legislator’s 1998 bid for a seat in Hawaii’s state Legislature.

The former legislator met with the State Ethics Commission’s executive director to discuss this matter. The former legislator was informed that the State Ethics Commission would soon be holding a meeting, and the former legislator was asked if he would like to address the Commission at that time. The former legislator was eager to address the Commission, and thus agreed to appear before the Commission at its next meeting. The Commission’s executive director gave copies to the former legislator of the documents that had been retrieved from his state office computer.

During the former legislator’s initial appearance before the Commission, the former legislator stated emphatically that he was not aware while serving as a member of the Legislature that campaign documents relating to his campaign for a legislative seat had been typed on a state computer in his state office. The former legislator stated that he believed that the documents relating to his campaign, approximately thirty in number, had been typed by an individual who in 1998 served as his committee clerk. The committee clerk had been hired by the former legislator and worked for him in her role as a committee clerk.

During the former legislator’s initial appearance before the State Ethics Commission, he stated that although he was not aware of the fact that campaign documents had been typed on one of his office computers, he was willing to take responsibility for the matter. The former legislator stated that he had not informed his staff of the restrictions pertaining to the use of state office equipment for campaign purposes. The former legislator stated that because he was the head of the office, however, he felt that he should take responsibility for any misuse of state resources.

After the first meeting with the former legislator, the State Ethics Commission directed its staff to interview the committee clerk concerning this matter. The committee clerk was thus subsequently interviewed by the Commission’s executive director and a staff attorney. The interview was taped, and a transcript of the interview was reviewed by the State Ethics Commission at a subsequent meeting of the Commission.

During the committee clerk’s interview, she stated that she sent by state computer the campaign documents to the former legislator in his state office, and that she and the former legislator “proofread” them together. The committee clerk stated that the documents were “proofread” by her referring to her copy while, according to the committee clerk, the former legislator referred to his forwarded copy.

After reviewing the transcript of the interview with the committee clerk and the transcript of the former legislator’s initial appearance before the State Ethics Commission, the Commission voted to issue a charge against the former legislator. The charge alleged that the former legislator had violated the State Ethics Code, set forth in chapter 84, Hawaii Revised Statutes (“HRS”), by using his official position to have his committee clerk prepare campaign materials for him with the use of state time, state equipment, and state facilities. These alleged violations of the State Ethics Code fell under HRS section 84-13, which reads, in pertinent part, 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:

- (1) Seeking other employment or contract for services for oneself by the use or attempted use of the legislator's or employee's office or position.
- (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.
- (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.

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HRS section 84-13 prohibits a legislator from giving himself or herself or anyone else any unwarranted advantage or preferential treatment. The Commission has long maintained that HRS section 84-13 and HRS section 84-13(3) prohibit the use of state time, equipment, facilities, and personnel for campaign purposes.

A copy of the Commission's charge was sent to the former legislator, and he was informed of his right to respond to the charge in writing, and also to appear before the Commission to address the charge. Prior to the Commission's receiving a response from the former legislator, the Commission's executive director was contacted by an individual, an attorney licensed to practice law in the State of Hawaii, who stated that he would be assisting the former legislator in this case. The attorney then met with the Commission's executive director at a later date to discuss the charge filed by the Commission against the former legislator.

In response to the charge, the former legislator filed a written "statement" with the Commission. The attorney also filed a written "statement" with the Commission on behalf of the former legislator. Thereafter, both the former legislator and the attorney appeared before the Commission at one of the Commission's meetings. During this meeting, and for the record, the attorney stated that he was assisting the former legislator as a "friend and advisor," and not as an "attorney."

The Commission's charge had attached to it twenty-four documents from the former legislator's state office computer. There was no doubt that these documents were campaign documents—either because of their explicit content or title. The former legislator's office computer indicated that these documents had been prepared during the time period of approximately May, 1998, to approximately September, 1998. In the former legislator's first meeting with the

Commission, he himself acknowledged that there were approximately thirty campaign documents on his office computer.

The campaign documents on the office computer included the following: a list of “signwavers”; a list of “workers”; a list of individuals and what campaign tasks they were likely to perform; campaign schedules; formatted tickets for a campaign dinner; flyers, press release, letters of invitation, meeting memorandum, and thank you letters for a campaign dinner; a letter soliciting campaign support and votes; lists of individuals for mass canvassing; documents relating to fundraisers; a signwaving schedule; lists of names and/or addresses for fundraising purposes; and a flyer soliciting campaign assistance.

The State Ethics Commission issued a charge in this case based on statements from the committee clerk. These statements were credible and were given by the committee clerk in a direct and matter-of-fact manner. Despite the committee clerk’s statements, the former legislator maintained that he was unaware that his committee clerk had been doing campaign work on a computer in his office. In his written statement to the Commission, the former legislator stated that he had no recollection that he proofread campaign documents with his committee clerk. He further stated that in order for any proofreading to have taken place, the documents would have to have been sent to him by computer in the office. He stated that the “nature of these materials is such that they would not have been” sent by computer in the office. Finally, the former legislator noted that his committee clerk’s “recollection might well be incorrect” because she may have confused the campaign work she did voluntarily for the former legislator’s campaign with daily legislative work.

It was apparent that the committee clerk worked on the former legislator’s campaign extensively. The former legislator stated that he gave his committee clerk “notes” to be typed up for his campaign, and had his committee clerk drive him to many campaign meetings and events. The State Ethics Code does not, of course, prohibit an individual who serves as a committee clerk from doing volunteer campaign work. However, both the committee clerk and the former legislator would be precluded from doing such work using state time, equipment, or facilities. Further, HRS section 84-13 would have prohibited the former legislator from misusing or attempting to misuse his state position to have state personnel perform campaign tasks for him.

It was clear that the committee clerk should not have done campaign work on a state computer in the former legislator’s office. The Commission believed, however, that it may well have been difficult for the committee clerk to recollect the nature of documents typed for the former legislator and proofread with him. The Commission noted that legislative work--such as schedules or lists typed for community hours--might have been easily confused by the committee clerk with campaign work. In any event, the Commission believed that there was insufficient evidence to show that the former legislator was aware of his committee clerk’s campaign work in the office, since this work would have to have been either discussed with him or sent by computer to him in order for him to have been aware of the campaign work.

The State Ethics Commission believed that there was insufficient reason to charge the committee clerk in this case. The Commission believed that any campaign work the committee clerk performed on her state office computer was done by her unknowingly because she was given no information--as the former legislator attested--as to what work was legislative work and what was not. The former legislator stated that he did not inform his staff of the rules regarding campaign work in his legislative office. Although legislators may believe these rules are understood, the

Commission believes that legislative staff who assist in campaigns should be explicitly informed and reminded of the restrictions pertaining to performing campaign work using state time, state equipment, and state facilities. Obviously, anyone who derives campaign assistance from the use of state time, equipment, facilities, or personnel, is accorded an unwarranted advantage in an election, resulting ultimately in an unfair election.

The Commission would like to note that it filed a charge in this case because it believed the former legislator had personal knowledge of the fact that campaign documents were being typed on his office computer. The Commission believed when it issued its charge that these documents were either discussed with the former legislator during proofreading, or were sent by computer to him in his state office. The Commission did not base its charge on what it believed merely happened in the former legislator's office, but on the belief that he had knowledge of these matters either through personal discussions or because the documents had been sent by computer to him in the office.

The Commission also noted that the former legislator contended that the magnitude of the campaign work done in his office on the office computer was rather minor, and that the time spent producing the documents on the computer may not have taken up more than two days. While this may be true, the Commission also considered what appeared to be the time spent by the former legislator providing the committee clerk with the notes and materials to be typed, as well as the time during which follow-up discussions may have taken place. The documents themselves also ranged over a time period of approximately four months. Assuming that the time spent preparing the campaign documents was not extensive, the Commission still believed that having office staff use an office computer to work on twenty-four campaign documents was an unacceptable level of campaign activity. The Commission did not see this case as involving activity of a de minimis nature. State employees are hired and paid to perform state work only. Performing campaign work on state time with state equipment deprives the public of the services of state employees. Further, if campaign work is performed on state time with state equipment, one candidate receives a clearly unwarranted advantage in an election, which can be decided by as little as a single vote. In this context, it can hardly be argued that any contribution to a campaign in terms of campaign work is de minimis in nature.

Dated: Honolulu, Hawaii, September 1, 1999.

HAWAII STATE ETHICS COMMISSION
Cassandra J.L. Abdul, Chairperson
Ronald R. Yoshida, Vice Chairperson
Carl Morton, M.D., Commissioner
Dawn A. Suyenaga, Commissioner

Note: Commissioner Pantell was not at the meeting at which this opinion was approved.