



HAWAII STATE ETHICS COMMISSION

State of Hawaii • Bishop Square, 1001 Bishop Street, ASB Tower 970 • Honolulu, Hawaii 96813

Resolution of Charge 2012-4

(Charge No. 12-Cg-3; May Ann Beamer, Respondent)

August 1, 2012

The Hawaii State Ethics Commission (Commission) issues this statement as part of a negotiated resolution of Charge No. 12-Cg-03 (Charge) against May Ann Beamer for violations of the State Ethics Code, Hawaii Revised Statutes (HRS) chapter 84. The Charge and the relevant facts alleged therein are based on and arise from the Commission's investigation of Ms. Beamer, the former Mililani High School (MHS) tennis coach. Although she denies knowing that her actions may have violated the statute, Ms. Beamer does not contest the Charge and expressly acknowledges that the allegations contained in the Charge, which are repeated in this statement, are sufficient for the Commission to find and conclude that she violated the State Ethics Code, specifically HRS section 84-13(4).

I. ALLEGED FACTS

A. Ms. Beamer's Employment at MHS and Private Tennis Lessons

In August 2011, the Commission received a written complaint from a group of parents of MHS tennis team members. The complaint alleged, among other things, that Ms. Beamer privately coached tennis players for money, and that MHS team members who declined to take private lessons from her felt "mistreated and bullied" by Ms. Beamer. The complaint alleged, further, that Ms. Beamer gave preferential treatment to players who took private lessons from her. In response to the complaint, the Commission conducted an investigation of the matter.

Ms. Beamer was employed by MHS¹ as the school's tennis coach. She coached the MHS tennis teams for 23 years. From 2008 to 2012, Ms. Beamer was employed by MHS under a series of one-year contracts entitled, "Mililani High School Athletic Employment Agreement."² Prior to 2008, Ms. Beamer was employed by MHS under

¹ MHS is a public school under the authority of the Board of Education and the Department of Education of the State of Hawaii.

² Ms. Beamer's contract was not renewed following the school year 2011-2012.

similar employment contracts. During the time that Ms. Beamer was employed under contract with MHS as a tennis coach, Ms. Beamer was a state employee for purposes of the State Ethics Code.³

As the MHS tennis coach, Ms. Beamer was responsible for the girls junior varsity, girls varsity, and boys varsity tennis teams. Her responsibilities included the selection or “cuts” of the tennis team members for each team; the ranking or relative order of team members within teams; the designation or “line-up” of team members to play in particular matches; and the coaching, instruction, and discipline of team members.

From 2004 to 2011, Ms. Beamer offered and provided private tennis lessons, for pay, to MHS tennis team members and other persons from the general public. The private tennis lessons provided by Ms. Beamer were separate from Ms. Beamer’s coaching duties for the MHS tennis teams under her annual employment contracts with the school. The private lessons were usually conducted as group lessons after school and on Saturday mornings, both during the school tennis season and in the off-season. Ms. Beamer received payments of \$25 or \$30 per lesson for private lessons.

B. The Charge and Ms. Beamer’s Answer to the Charge

On April 18, 2012, the State Ethics Commission issued Charge No. 12-Cg-03 against Ms. Beamer. The Charge contains eleven counts and is based upon alleged violations of HRS section 84-13(4), which prohibits a state employee from soliciting or engaging in a substantial financial transaction with a subordinate, or with someone who is supervised or inspected by the employee. The Charge alleges that Ms. Beamer violated HRS section 84-13(4) by soliciting nine MHS tennis team members and/or their parents to take private tennis lessons from her for pay. The Charge also alleges that Ms. Beamer violated HRS section 84-13(4) by providing private tennis lessons for pay to seven MHS tennis team members. The number of private lessons provided for pay by Ms. Beamer to individual team members, as alleged in the Charge, ranged from 15 lessons for one team member over a one-year period to 200 lessons for another team member over a four-year period. The Charge alleges that Ms. Beamer received payment of \$25 or \$30 per private lesson from team members.

³ The term “employee,” means “any nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices and judges.” HRS section 84-3 (emphasis added).

In response to the Charge, Ms. Beamer acknowledges that she provided private tennis lessons to five members of MHS tennis teams, and was paid by those members for the private lessons.⁴ However, Ms. Beamer denies that she provided as many private lessons as alleged in the Charge, and she also denies ever soliciting or coercing tennis team members to take private tennis lessons from her. Ms. Beamer further contends that MHS school officials knew she gave private tennis lessons, and that she was unaware and had received no notice that any of her activities were potentially in violation of the State Ethics Code.

Following the filing of her answer, Ms. Beamer, through her private legal counsel, and the Commission reached a negotiated resolution of the Charge. As part of the agreement, Ms. Beamer has paid an administrative fine of \$500 and will complete ethics training if she re-enters state service as either an employee or a member of a state board or commission. Ms. Beamer has also agreed that this statement may include her name and be published without any redaction.

II. APPLICATION OF THE STATE ETHICS CODE

The State Ethics Code prohibits a state employee from soliciting or engaging in a substantial financial transaction with a subordinate or with someone who is inspected or supervised by the state employee. Specifically, HRS section 84-13(4) in relevant part provides:

§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:

* * *

- (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.

⁴ Ms. Beamer's answer to the Charge was supplemented and clarified by comments and explanations made by her private attorney to Commission staff.

HRS section 84-13(4) is part of the “Fair Treatment” section of the State Ethics Code, which prohibits a state employee from using his or her official position to obtain unwarranted privileges or advantages. HRS section 84-13(4) is specifically intended to prevent potential abuses when an employee in a position of authority engages in a substantial financial transaction with a subordinate or with someone he or she supervises or inspects. The law prohibits these financial transactions due to the unequal bargaining relationship between the parties.

The Commission has long held that the State Ethics Code prohibits teachers from privately teaching or tutoring their current students or prospective students for pay. Students have a dependent relationship with teachers and do not share equal bargaining power with teachers. HRS section 84-13(4) bars teachers from engaging in substantial financial transactions with anyone supervised by them, including their students, as well as the parents of their students. HRS section 84-13(4) similarly prohibits a coach from offering or providing private lessons, for pay, to members of the school’s team who are supervised by the coach. The same dependent relationship and unequal bargaining power that exists between students and teachers also exists between school athletic team members and coaches. A coach has the power to select the members of a school’s team; a coach holds practices for and provides instruction and discipline to team members; a coach determines the level of participation or “playing time” for team members; and a coach acts as a key reference for players who seek to continue their athletic careers beyond high school. In this situation of unequal bargaining power, a team member whose coach offers to provide private lessons for pay may perceive the offer to be one that cannot be refused. Due to the dependent nature of the relationship, HRS section 84-13(4) prohibits coaches from providing private lessons for pay to team members.

The information indicates that, as the MHS tennis coach, Ms. Beamer was in a superior and supervisory position vis-à-vis the MHS tennis team players: she made all major decisions, including who would be on the tennis teams and who would receive the best playing opportunities. In this situation, team players did not have equal bargaining power and were dependent and subordinate to Ms. Beamer.

In this case, the allegations set forth in the Charge, assuming those allegations to be true, are sufficient for the Commission to reasonably find and conclude that Ms. Beamer violated HRS section 84-13(4). Although she denies soliciting members to take private lessons, Ms. Beamer admits that she provided private tennis lessons, for pay, to five members of MHS tennis teams. HRS section 84-13(4) prohibits an employee from soliciting or engaging in a substantial financial transaction with a subordinate or with someone who is supervised by the employee. Thus, an employee is prohibited from engaging or entering into a substantial financial transaction with a

subordinate even if the employee has not solicited the transaction. Ms. Beamer was in a superior relationship with the MHS tennis team members, who were subordinate to her authority. Because Ms. Beamer was in a superior position of authority vis-à-vis the team members, HRS section 84-13(4) prohibited her from providing private tennis lessons, for pay, to members of MHS tennis teams, whether or not she solicited members to take lessons from her.

III. NEGOTIATED AGREEMENT AND ISSUANCE OF RESOLUTION OF CHARGE NO. 2012-4

In light of Ms. Beamer's admission that she provided private tennis lessons for pay to five members of MHS tennis teams, her payment of the \$500 fine, and the issuance of this statement without redaction, the Commission believes that the negotiated resolution of the Charge is reasonable and that no further action against Ms. Beamer is warranted.

The Commission issues this statement to educate Ms. Beamer and others on the application of the fair treatment provisions of the State Ethics Code. Specifically, the State Ethics Code prohibits a state employee from soliciting or engaging in a substantial financial relationship with a subordinate, or a person or business who is inspected or supervised by the state employee.