



HAWAII STATE ETHICS COMMISSION

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

Resolution of Charge **2016-3**

(Charge No. 2015-Cg-10)

Jadine Urasaki, Former Deputy Director
Conflicts of Interests

May 19, 2016

On September 16, 2015, the Hawaii State Ethics Commission (“Commission”) issued Charge No. 2015-Cg-10 (“Charge”) against Jadine Urasaki (“Respondent Urasaki”) for alleged violations of the conflicts of interests section of the State Ethics Code, specifically, Hawaii Revised Statutes (“HRS”) section 84-14(a). At the time of the actions that formed the basis of the Charge, Respondent Urasaki was the Deputy Director for Capital Improvement Projects for the Hawaii Department of Transportation (“DOT”). She served in this position from January 1, 2011 to December 1, 2014.

Respondent Urasaki agreed to resolve the Charge against her by paying an administrative penalty of \$13,000 to the State of Hawaii and the publication of this Resolution of Charge. The Commission believed that, based on the allegations detailed below, the terms of the resolution were fair and in the public interest.

I. Factual Allegations

Respondent Urasaki cooperated with the Commission throughout its investigation of this matter, providing, among other things, information about DOT’s processes and procedures that were relevant to the Commission’s inquiry. The alleged facts set forth below were gleaned from information provided by Respondent Urasaki and through the Commission’s investigation.

A. Alleged Facts Regarding Respondent Urasaki’s Interest in Parsons Brinckerhoff and Actions Affecting Parsons Brinckerhoff

Respondent Urasaki oversaw and was responsible for the administration of all DOT capital improvement projects. Parsons Brinckerhoff, Inc. (“Parsons”) served as

DOT's consultant on several capital improvement projects and other DOT projects (collectively, "DOT Parsons Projects").

During Respondent Urasaki's tenure as the DOT Deputy Director for Capital Improvement Projects ("DOT Deputy Director"), Randall Urasaki, her spouse, was employed by Parsons as a Vice President. Randall Urasaki was Parsons' principal consultant and a point of contact for the DOT Parsons Projects.

During the time she served as DOT Deputy Director, Respondent Urasaki appeared to have taken action directly affecting Parsons on numerous occasions and in a variety of ways. The Charge alleged that she took official action pertaining to twelve DOT Parsons Projects. On several of the projects, Respondent Urasaki appeared to have made a number of decisions directly related to Parsons. In some cases, it appeared that the same project involved many decisions. More specifically, Respondent Urasaki appeared to have taken the following actions that directly affected Parsons:

- Reviewed and discussed the status of a project¹ with the DOT employee who served as the project manager ("DOT project manager"), including issues relating to Parsons' performance, and provided direction and instruction regarding the management of a project to ensure that it progressed in accordance with the contract documents;
- Provided direction and instruction to Parsons personnel, including Randall Urasaki, directly and through a DOT project manager; and participated in meetings regarding a project with Parsons personnel, including Randall Urasaki;
- Reviewed Parsons' recommendations, requests, and other communications relating to a project, including correspondence from Randall Urasaki, and recommended certain action by the DOT Director;
- Planned, strategized, and conducted public meetings with Parsons to provide information to persons impacted by a project;
- Directed and edited DOT's response to a bid protest relating to a contract awarded to Parsons;
- Reviewed and recommended approval of a request to the DOT Director to approve the selection of Parsons as DOT's consultant, including review of qualification and evaluation scoring sheets prepared by DOT staff;
- Reviewed and recommended the DOT Director's approval of a request to the Governor to release funds for a project on which Parsons was the consultant;

¹ The term "a project" as used herein refers to one or more of the twelve DOT Parsons Projects.

- Reviewed and recommended the DOT Director's approval of Parsons' request to add subconsultants to a project, including confirmation that the negotiated rates were correct and consistent with Parsons' contract with DOT;
- Reviewed and recommended certain action regarding a Parsons change order and/or request for the same, including Parsons' fee proposal for a change order and DOT's notice to Parsons of accepting Parsons' fee proposal;
- Reviewed and recommended the DOT Director's approval regarding a letter to Parsons confirming the modification of a "project assignment order;"
- Reviewed Parsons' requests for changes to the scope of services, payment rates, fees, costs, time of performance, and/or other changes; recommended the DOT Director's approval regarding a contract amendment, supplemental contract, or contract extension relating to the same ("Contract Amendment"); and reviewed and recommended the DOT Director's approval of a notice to Parsons to proceed with certain work described in a Contract Amendment;
- Reviewed and recommended the DOT Director's approval of notice to Parsons that it had satisfactorily completed work specified for a project; and
- Reviewed and recommended the DOT Director's approval of a letter to the Federal Highway Administration, requesting approval of fees or additional fees that DOT had negotiated with Parsons.

In summary, much of the actions Respondent Urasaki appeared to have taken directly affecting Parsons involved reviewing documents pertaining to projects on which Parsons was DOT's consultant and recommending action by the DOT Director. It appeared that the DOT Director relied on Respondent Urasaki to review documents that required his action before routing the documents to him. In other words, if Respondent Urasaki routed a document to the DOT Director, he assumed that she had "done her work" and was recommending his approval and/or execution of the document.

B. Alleged Facts Regarding Respondent Urasaki's Interest in Hawaiian Electric Industries and Actions Affecting Hawaiian Electric Company/Hawaiian Electric Industries

During Respondent Urasaki's tenure as the DOT Deputy Director, she and Randall Urasaki owned shares of stock in Hawaiian Electric Industries, Inc. ("HEI"). In 2011,

Respondent Urasaki reported on her financial disclosure statement² that Randall Urasaki, individually, owned HEI stock valued between \$50,000 and \$100,000. Respondent Urasaki's financial disclosure statement filed in 2012 reflected that she and Randall Urasaki, jointly, owned HEI stock valued between \$100,000 and \$150,000. In both 2013 and 2014, Respondent Urasaki reported that she and Randall Urasaki, jointly, owned HEI stock valued between \$50,000 and \$100,000.

Hawaiian Electric Company, Inc. ("HECO") is a wholly owned subsidiary of HEI. Respondent Urasaki, as DOT Deputy Director, appeared to have been significantly involved in matters pertaining to HECO. In or around 2013, Respondent Urasaki notified HECO by letter that HECO had trespassed through state property without a permit, disturbing archaeological sites in violation of state law, and directed HECO to cease work in the area until HECO obtained a permit and took other necessary steps to obtain formal approval from DOT. In or around 2014, Respondent Urasaki also appeared to have drafted a letter for the DOT Director's signature notifying HECO of a second violation of state law for trespassing through state property and disturbing archaeological sites.

In addition, in or around 2012, Respondent Urasaki and other DOT employees met with HECO to discuss a number of matters relating to both DOT and HECO, including efforts to execute a "Master Utility Agreement" between DOT and HECO and to plan future DOT-HECO "Utility Coordination Meetings."

Respondent Urasaki subsequently planned and participated in meetings with HECO to discuss execution of a "Master Use and Occupancy Agreement" ("MUOA") between DOT and HECO, as well as other projects. It is the Commission's understanding that the MUOA established terms and conditions under which HECO and other utility companies might occupy state land to provide utility service to their customers. Further, in or around 2012 and 2013, Respondent Urasaki appeared to have participated in meetings and discussions with HECO regarding the drafting of the MUOA and, in or around 2013, participated in drafting the MUOA.

II. The State Ethics Code

A. The Statutory Purpose and Legislative Intent

The State Ethics Code arises from the declaration contained in the State Constitution that "[t]he people of Hawaii believe that public officers and employees must exhibit the highest standards of ethical conduct and that these standards come from the

² Respondent Urasaki, annually, was required to file a financial disclosure statement with the Commission, reporting, among other things, shares of stock that she and her spouse owned. HRS section 84-17(c)(2). Respondent Urasaki's financial disclosure statement is a public record. HRS section 84-17(d).

personal integrity off each individual in government.”³ To this end, the State Constitution further directs that the legislature enact a code of ethics that applies to all appointed and elected state officials and employees.

In accordance with the constitutional mandate, the legislature expressed, in the State Ethics Code’s preamble, its unambiguous intent that one of the purposes of statute is to preserve public confidence in public servants.⁴ To emphasize the importance of such intent, the legislature directed that the State Ethics Code “shall be liberally construed to promote high standards of ethical conduct in state government.”⁵

It is in this context that the Commission examines every employee’s actions, including the actions of Respondent Urasaki.

B. Application of the State Ethics Code to Respondent Urasaki

As DOT Deputy Director, Respondent Urasaki was an “employee” for purposes of the State Ethics Code.⁶ As such, she was subject to, and was required to comply with, all provisions of the statute, including the conflicts of interests law, HRS section 84-14.

1. Respondent Urasaki’s Actions Affecting Parsons Brinckerhoff

One of the sections of the State Ethics Code’s conflicts of interest law prohibits an employee from taking “official action” that directly affects the employee’s financial interests. This provision is intended to prevent conflicts of interests or the appearance of conflicts of interests to ensure the public’s confidence in public servants. Specifically, HRS section 84-14(a) provides:

(a) No employee shall take any official action directly affecting:

- (1) A business or other undertaking in which the employee has a substantial financial interest; or

³ Hawaii State Constitution, Art. XIV.

⁴ Preamble, HRS Chapter 84.

⁵ HRS section 84-1.

⁶ The State Ethics Code defines an “employee” as “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, justices and judges.” HRS section 84-3.

- (2) A private undertaking in which the employee is engaged as legal counsel, advisor, consultant, representative, or other agency capacity.

“Official action” is defined as “a decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority.”⁷

“Financial interest” is defined to include, among other things, an ownership interest in a business, an employment with a business, and an officership in a business. An employee’s financial interests include the employee’s own financial interests as well as those financial interests held by the employee’s spouse and the employee’s dependent children.⁸

Here, Respondent Urasaki appeared to have a substantial financial interest in Parsons due to her spouse’s employment and officership with Parsons. Stated differently, Respondent Urasaki had a substantial financial interest in Parsons because Randall Urasaki had a substantial financial interest in Parsons.

Respondent Urasaki, however, asserted that she did not take “official action” with respect to Parsons because the DOT Director, not she, had final decision making authority for matters concerning DOT Parsons Projects. Respondent Urasaki’s understanding of what constitutes “official action,” for purposes of the conflicts of interest law, is incorrect. Official action is not limited to a final decision maker; rather, providing input in the decision making process, exercising discretionary judgment, expressing opinions, giving advice, making recommendations, and taking other action that is non-ministerial in nature constitute “official action” under the State Ethics Code.

In this case, it appeared that the DOT Director relied upon Respondent Urasaki to review documents before they came to him for action. As previously stated, if Respondent Urasaki routed a document to him, the DOT Director assumed that Respondent Urasaki had “done her work” and was recommending that he approve and/or execute the document. Respondent Urasaki’s actions with respect to the DOT Parsons Projects, as described above, required the exercise of her discretionary authority. It appeared that she was a key participant in the decision making process. Although Respondent Urasaki may not have been the final decision maker with respect to the DOT Parsons Projects, it appeared that her input and participation in the decision making process constituted “official action” directly affecting Parsons.

⁷ HRS section 84-3.

⁸ Id.

Because of her spouse's employment and officership with Parsons, Respondent Urasaki's actions that directly affected Parsons likely constituted a conflict of interest.⁹ By taking such action on numerous occasions, Respondent Urasaki likely violated the State Ethics Code. Where, as here, Respondent Urasaki took action affecting a source of her income, i.e., her spouse's employer, her actions appeared to be contrary to statute's intent to foster public trust in government employees.

The Commission's investigation did not indicate that Respondent Urasaki's connection to Parsons unduly influenced her actions with respect to Parsons or that she actually accorded Parsons preferential treatment. However, the determination of a conflict of interest under the State Ethics Code turns on whether the employee takes any type of official action directly affecting a business in which the employee has a substantial financial interest. Whether the employee's action is actually influenced by the employee's ties to the business or whether the action is actually favorable to the business are not relevant.

2. Respondent Urasaki's Actions Affecting Hawaiian Electric Company/
Hawaiian Electric Industries

Under the State Ethics Code, a financial interest includes an "ownership interest in a business."¹⁰ An ownership interest includes not only an interest an employee has in a closely held business but also an interest an employee has in a large corporation, no matter how small the ownership interest is relative to the size of the business. For example, an employee who owns shares of common stock in a publicly traded company has an ownership interest in that company. Based on the information reported on her financial disclosure statements, Respondent Urasaki and her spouse owned shares of HEI common stock, the value of which was relatively substantial.

The Charge alleged that Respondent Urasaki had a substantial financial interest in HEI based on her and her spouse's ownership of HEI stock. HECO is a wholly owned subsidiary of HEI. The Commission has determined that, while a parent company and its subsidiary company may be separate legal entities, the benefits gained by a subsidiary company ultimately flow to the parent company.¹¹

As discussed above, the State Ethics Code prohibited Respondent Urasaki from taking "official action" directly affecting her financial interests, which included a business in which she and/or her spouse had a substantial ownership interest. It appeared that Respondent Urasaki took action directly affecting HECO, as previously described.

⁹ To avoid a conflict of interest under HRS section 84-14(a), an employee must disqualify himself or herself from taking any official action directly affecting a business or other undertaking in which the employee has a substantial financial interest.

¹⁰ HRS section 84-3.

¹¹ See Advisory Opinion No. 544.

Because HECO is a wholly owned subsidiary of HEI, Respondent Urasaki's actions with respect to HECO appeared to have constituted official action directly affecting HEI, in violation of HRS section 84-14(a).

III. Resolution of Charge

It did not appear that Respondent Urasaki was aware that her actions with respect to Parsons and HECO likely were prohibited under the State Ethics Code. Her apparent ignorance of the State Ethics Code, however, does not excuse her actions.

The Commission believes that Respondent Urasaki, as an appointed deputy director tasked with overseeing and administering a state department, should have been much more aware of the State Ethics Code's provisions and its applications to situations involving her and other DOT employees.¹² The Commission notes that Respondent Urasaki attended a two-hour mandatory ethics training. The course, administered by the Commission, included information about the purpose of the State Ethics Code and the requirements of the various sections of the statute, including the conflicts of interests law.¹³

¹² The Commission notes that the DOT Director was aware that Respondent Urasaki's spouse worked for Parsons and apparently did not recognize that the State Ethics Code prohibited Respondent Urasaki from taking the actions that she took relating to the DOT Parsons Projects.

¹³ Part V of the State Ethics Code, which pertains to Mandatory Ethics Training, states in relevant part:

§84-41 Applicability of part. This part applies to legislators, elected members of the board of education, trustees of the office of Hawaiian affairs, the governor, the lieutenant governor, and executive department heads and deputies. This part does not apply to any other officer or employee of the State.

§84-42 Mandatory ethics training course. All state officers and employees enumerated in section 84-41 shall complete an ethics training course administered by the state ethics commission as provided in this part. For the purposes of this part, "ethics training" includes education and training in:

- (1) The ethics laws set forth in [HRS chapter 84]

§84-43 Ethics training course. (a) The state ethics commission shall establish, design, supervise, and conduct ethics training designed specifically for the officers and employees to whom this part applies.

- (b) The ethics training course shall include:

- (1) Explanations and discussions of the ethics laws, administrative rules, and relevant internal policies;
- (2) Specific technical and legal requirements;
- (3) The underlying purposes and principles of ethics laws;
- (4) Examples of practical application of the laws and principles; and
- (5) A question-and-answer participatory segment regarding common problems and situations.

This Resolution of Charge is being issued pursuant to the Commission's agreement with Respondent Urasaki to resolve the Charge without any further administrative proceedings. The resolution of this Charge does not constitute an admission by Respondent Urasaki, or a determination by the Commission, that Respondent Urasaki violated the State Ethics Code. However, if the allegations in the Charge were found to be true, the Commission could conclude that her actions violated the State Ethics Code.

The Commission believed it was reasonable, fair, and in the public interest to resolve Charge No. 2015-Cg-10 by issuing this Resolution of Charge and by Respondent Urasaki's payment of an administrative penalty of \$13,000 to the State of Hawaii.