



HAWAII STATE ETHICS COMMISSION

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

Resolution of Charge **2016-7**

(Charge No. COMPL-C-15-00650)

Edward N. Chu, Chief Financial Officer
Conflict of Interest

November 21, 2016

On May 19, 2016, the Hawaii State Ethics Commission (“Commission”) issued a Charge against Respondent Edward N. Chu (“Respondent Chu”), the Chief Financial Officer of the Hawaii Health Systems Corporation (“HHSC”) and Interim Chief Financial Officer of the HHSC Oahu Regional System (Charge No. COMPL-C-15-00650), for allegedly violating the State Ethics Code, Chapter 84, Hawaii Revised Statutes (“HRS”).

The Charge alleged that Respondent Chu violated the conflicts of interests section of the State Ethics Code, HRS section 84-14(a), by taking official action with respect to a supplemental agreement between HHSC and a business (“Business X”) that employed Respondent Chu’s spouse. Under the terms of a 2013 master agreement, Business X provided certain professional services to HHSC. The supplemental agreement, which was approved and executed by Respondent Chu in September 2015, expanded Business X’s scope of services to provide for a certain project. Business X hired Respondent Chu’s spouse to provide clerical support services for that project.

The Commission and Respondent Chu agreed to resolve the Charge without any further administrative proceedings, by Respondent Chu’s payment of \$1,000 to the State of Hawaii and the publication of this Resolution of Charge. The Commission believes that the terms of the resolution are fair and in the public interest.

This Resolution of Charge does not constitute an admission by Respondent Chu, or a determination by the Commission, of any wrongdoing; however, if the allegations in the Charge were found to be true, the Commission could conclude that Respondent Chu’s actions violated the State Ethics Code.

I. Alleged Facts

The Commission conducted an investigation after receiving an anonymous complaint regarding this matter. Based on the Commission’s investigation, the alleged facts are as follows:

- Respondent Chu, as the HHSC Corporate Chief Financial Officer of HHSC, was responsible for overseeing HHSC's corporate fiscal operations.
- As the Interim Chief Financial Officer of the HHSC Oahu Regional System, Respondent Chu was also responsible for overseeing the fiscal operations of that regional system.
- HHSC contracted Business X to provide certain professional services pursuant to the terms of a master agreement ("Master Agreement") between HHSC and Business X. Respondent Chu, in his capacity as the Corporate Chief Financial Officer and on behalf of HHSC, reviewed, approved, and executed the Master Agreement on or about February 2013.
- An employee of HHSC was responsible for coordinating the services delivered by Business X ("HHSC Coordinator"). The HHSC Coordinator was a subordinate employee to Respondent Chu.
- In or around early August 2015, Business X sought to expand the scope of services of the Master Agreement to include Business X's delivery of services for a project for HHSC's Oahu Regional System ("Project").
- Business X asked the HHSC Coordinator to submit to Business X the names of possible candidates for a part-time clerical support position for the Project, to be located on-site at HHSC. The HHSC Coordinator asked Respondent Chu and others within HHSC if they knew of anyone who might be considered for the position.
- Respondent Chu informed the HHSC Coordinator that his spouse might be interested in applying for the position and if so, he would have her contact the HHSC Coordinator.
- Respondent Chu informed his spouse that the position was available and Respondent Chu's spouse contacted the HHSC Coordinator to express her interest in applying for the position.
- The HHSC Coordinator forwarded Respondent Chu's spouse's contact information to Business X and informed Business X that the candidate for the position was Respondent Chu's spouse. It did not appear that the HHSC Coordinator provided Business X with the names of any other candidates for the position.
- In or around late August or early September 2015, Business X emailed new hire information and paperwork for the position to Respondent Chu's spouse and initiated steps to hire her.
- Respondent Chu's spouse's "date of hire" with Business X was on or about September 14, 2015.

- Business X assigned Respondent Chu's spouse to work on-site at HHSC at the same facility where Respondent Chu worked.
- On or about September 16, 2015, Respondent Chu, in his capacity as HHSC Chief Financial Officer and on behalf of HHSC, reviewed, approved, and executed a supplemental agreement ("Supplemental Agreement") to expand the scope of services of the Master Agreement to provide for the Project, which included the position that Respondent Chu's spouse was hired by Business X to fill.
- Respondent Chu's spouse, as an employee of Business X, worked on-site at HHSC from approximately September 17 to October 2, 2015.
- The HHSC Oahu Regional Compliance Office received a complaint concerning the placement of Respondent Chu's spouse at HHSC.
- On or around October 2, 2015, Business X removed Respondent Chu's spouse from her assignment at HHSC.

II. HHSC's "Conflict of Interest" Policy

During the investigation, the Commission learned that HHSC had an administrative policy pertaining to conflicts of interests ("HHSC Conflicts Policy")¹ that was in effect during the time period relevant to the Charge. Under that policy, a "director," "principal officer," or "member of a committee with governing board delegated powers" was required to submit an annual "Conflict of Interest Reporting Form"² to HHSC's governing body to disclose the existence of any "potential or real conflict of interest." The HHSC Conflicts Policy prohibited those persons and/or their family members from engaging in activities where they stood to benefit financially by having a "financial interest" in entities doing business with HHSC. According to the policy, persons with possible conflicts had a duty to disclose the existence of any financial interest. HHSC's Conflict of Interest Reporting Form contained a number of questions, including whether the person had discussed with, and received advice from, the State Ethics Commission regarding a potential conflict of interest.

The HHSC Conflicts Policy defined a "conflict of interest" as a situation where financial considerations had the potential to compromise professional judgment and objectivity, or risk professional judgment because the decision was unduly influenced by a secondary interest; or a situation where one party in authority to decide a financial transaction used that position for direct or indirect financial gain. A "financial interest" was defined to include a situation where a person had — directly or indirectly, through business, investment, or family — a compensation arrangement with HHSC or with any entity with which HHSC had a transaction or arrangement.

¹ HHSC Policy No. CMP 016A, effective October 13, 2011.

² HHSC Policy No. CMP 016B, effective October 13, 2011.

It did not appear that Respondent Chu submitted any Conflict of Interest Reporting Form in accordance with the HHSC Conflicts Policy to disclose his spouse's employment with Business X. Nor did Respondent Chu contact the State Ethics Commission to request advice about a possible conflict of interest due to his spouse's employment.

III. Respondent Chu's Response

Respondent Chu filed a response to the Charge, dated June 27, 2016, in which he denied taking any official action that violated the State Ethics Code. Respondent Chu made the following assertions:

- The selection of Business X for the Project was one of necessity due to a federal mandate to change certain standards applicable to a system used by HHSC.
- Respondent Chu, the HHSC Chief Executive Officer, and the HHSC Oahu Region Chief Executive Officer all approved and signed a "purchase request form" for the Project. That form was executed before any employment discussions took place between Respondent Chu's spouse and Business X.
- Respondent Chu signed the Supplemental Agreement for the Project because he had been delegated signing authority by HHSC's Chief Executive Officer. Respondent Chu's review of the Supplemental Agreement was focused on meeting the requirements of the State Procurement Code and HHSC general conditions and contract terms. HHSC Corporate officers manage over 500 contracts for HHSC.
- The Department of the Attorney General investigated allegations of wrongdoing against Respondent Chu and did not issue any findings of wrongdoing on his part.

IV. The State Ethics Code, HRS Chapter 84

A. Constitutional Mandate and Statutory Purpose

The State Ethics Code arises from a declaration contained in the Hawaii State Constitution, Article XIV, 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 personal integrity of each individual in government." To this end, the State Constitution directs that the legislature enact a code of ethics that applies to all appointed and elected state officers and employees. In accordance with this constitutional mandate, the legislature enacted the State Ethics Code and charged the Commission with administering and enforcing the law "so that public confidence in public servants will be preserved."³ It is in this context that the Commission examines every employee's actions.

³ HRS Chapter 84, Preamble.

B. Conflicts of Interests Law: HRS section 84-14(a)

HRS section 84-14(a), part of the conflicts of interests law, prohibits a state employee from taking official action directly affecting a business or other undertaking in which the employee has a substantial financial interest. The State Ethics Code defines “official action” as “a decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority.”⁴ A “financial interest” is defined to include “an employment or prospective employment for which negotiations have begun.” Under the State Ethics Code, a state employee’s financial interests include the financial interests of the employee’s spouse and dependent children.⁵ The Commission has deemed an employment interest to be a substantial financial interest under the State Ethics Code.

Respondent Chu appeared to have recommended his spouse’s employment with Business X by informing his subordinate employee that his spouse might be interested in the clerical support position for the Project, and by further informing his subordinate that his spouse would contact her about applying for the position. Thus, it appeared that he took official action with respect to his spouse’s prospective employment with Business X for the Project in violation of HRS section 84-14(a).

When Respondent Chu later reviewed, approved, and executed the Supplemental Agreement with Business X for the Project, his spouse either was already employed with Business X or was negotiating prospective employment with Business X. By reviewing, approving, and executing the Supplemental Agreement with Business X, it appeared that Respondent Chu took official action directly affecting a business in which he had a substantial financial interest in violation of HRS section 84-14(a).

V. Summary

Based on the Commission’s investigation, it appeared that Respondent Chu violated the State Ethics Code’s conflicts-of-interests law by: (1) taking official action directly affecting his spouse’s prospective employment with Business X; and (2) taking official action directly affecting Business X at the time his spouse was being hired by, or had become an employee of, Business X. It did not appear that Respondent Chu’s review, approval, and execution of the Supplemental Agreement was merely a ministerial act; the action he took was necessary to authorize Business X’s implementation of the Supplemental Agreement.

In the Commission’s view, Respondent Chu’s assertions that it was necessary to select Business X for the Project and that his involvement in approving the Project occurred before any employment discussions took place between his spouse and Business X are not relevant to whether he had a conflict of interest. Similarly, Respondent Chu’s assertion that the Department of the Attorney General did not issue any findings of wrongdoing, in the Commission’s opinion, is not relevant. The Commission is the state agency responsible for administering and enforcing the State Ethics Code, HRS Chapter 84. The Commission’s

⁴ HRS section 84-3.

⁵ HRS section 84-3.

investigations are separate and distinct from, and not dependent upon, investigations conducted by other state agencies.

VI. Resolution of the Charge

The Commission believes that, given his high corporate position with HHSC, coupled with the HHSC Conflicts Policy (which required disclosure and recommended consultation with the Commission regarding potential or real conflicts of interests), Respondent Chu should have been particularly aware of, and sensitive to, situations that could place him in a conflict of interest with his official duties. The Commission further believes that, had Respondent Chu sought guidance from the Commission about his situation, he could have avoided a prohibited conflict of interest under the State Ethics Code.

This Resolution of Charge is being issued pursuant to the Commission's agreement with Respondent Chu to resolve the Charge without any further administrative proceedings. The Commission believes it is reasonable, fair, and in the public interest to resolve the Charge with Respondent Chu's payment of an administrative penalty of \$1,000 to the State of Hawaii, and the Commission's publication of this Resolution of Charge.