



# HAWAII STATE ETHICS COMMISSION

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## Resolution of Investigation 2014-1

State Employees' Acceptance of Free Golf

September 29, 2014

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The Hawaii State Ethics Commission (“Commission”) investigated a number of state employees for accepting golf from contractors, consultants, and/or vendors that had contracts or other business relationships with the State of Hawaii. The golf in question included both charity golf tournaments and recreational rounds of golf. The Commission also examined whether the employees failed to report the golf that they appeared to have accepted on gifts disclosure statements. As part of its investigation, the Commission reviewed records from certain golf tournaments and from businesses that appeared to have paid for the employees’ golf. The Commission also interviewed employees, golf tournament organizers, and representatives of the businesses. Based on the information gathered through its investigation, including information provided by the employees, the Commission believed that there was sufficient evidence to support formal ethics charges against certain employees for violations of the State Ethics Code, Chapter 84, Hawaii Revised Statutes (“HRS”), relating to their acceptance of the free golf and, in certain instances, their failure to report the golf as a gift.

Based on the totality of the facts and circumstances, the Commission believed that it was appropriate and in the public interest to resolve part of its investigation without issuing formal charges against 21 employees. As part of the resolution, these employees paid an administrative penalty to the State of Hawaii and agreed that the Commission could issue a public document describing their alleged misconduct. The Commission emphasizes that it has not made any findings or conclusions that any of these 21 employees, in fact, violated the State Ethics Code. Such findings and conclusions would be rendered following an administrative hearing, which has not been held. See HRS section 84-31. Instead, this “Resolution of Investigation” is being issued pursuant to the Commission’s agreement with, and pertains only to, those 21 employees (hereinafter referred to as the “Settling Employees”).<sup>1</sup>

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<sup>1</sup> The Commission notes that, as a result of its investigation, formal charge proceedings have been initiated against a number of other employees who are not part of this Resolution of Investigation.

## A. THE COMMISSION'S INVESTIGATION

The Commission initiated an investigation after learning that a number of Department of Transportation ("DOT") employees appeared to have played in charity golf tournaments on teams that were sponsored by DOT contractors, consultants, and/or vendors. The Commission's investigation was narrow in scope. The Commission had sufficient information to suggest that DOT employees had played in eight specific golf tournaments and obtained records from those tournaments ("Tournament Records"). The Commission did not review records from other golf tournaments. Based on the Tournament Records, the Commission obtained records from 15 businesses ("Business Records") that appeared to have paid for teams on which DOT employees played. The Business Records also revealed that sponsored teams included employees from the Department of Accounting and General Services ("DAGS") and the University of Hawaii ("UH"). Based on the information contained in the Tournament Records and Business Records, the Commission opened investigations relating to 49 employees to examine whether they may have violated the State Ethics Code by accepting free golf. The Settling Employees were employees of DOT, DAGS, and UH. The Commission did not expand the scope of the investigation to include employees of all state agencies.

A number of the Settling Employees appeared to have accepted free golf from contractors, consultants, and/or vendors (collectively, "Firms") that had contracts or other business relationships with their respective state agencies or were significantly affected by, or involved in, the Settling Employees' official action. Some of the Settling Employees appeared to have accepted free golf on numerous occasions over a period of years from the same Firms. The free golf included golf tournaments and recreational rounds of golf. Typically, golf tournament entry fees included green fees, cart fees, food and beverages (including, in most cases, a dinner banquet after the tournament), gifts given to all participants, and prizes. The cost to play in the golf tournaments ranged from approximately \$125 to \$460 per player per tournament. In determining the value of a golf tournament, the Commission included the golf and all tournament-related gifts, prizes, and other benefits that the Settling Employees received. The cost of the recreational rounds of golf ranged from approximately \$20 to \$180 per person per round. In determining the value of a recreational round of golf, the Commission included the golf and all gifts that the Settling Employees received as part of the golf outing, including food and beverages.

The Commission notes that, in many cases, the Settling Employees admitted that they had played in golf tournaments and/or recreational rounds of golf; admitted that they did not pay for the golf; and provided information regarding other golf tournaments and recreational rounds of golf in which they may have played for free that were in addition to those instances uncovered by the Commission's investigation.

Based on the Commission's investigation, including information provided by the Settling Employees, it appeared that the Settling Employees accepted free golf from the following Firms:

- Aloha Cargo Transport;
- Ameron Hawaii;
- Bowers + Kubota Consulting, Inc.;
- Central Construction, Inc.;
- Graybar Electric Company, Inc.;
- Hawaiian Telcom;
- HDR Engineering, Inc.;
- Hirata & Associates, Inc.;
- KAI Hawaii, Inc.;
- Mitsunaga & Associates, Inc.;
- Parsons Brinckerhoff, Inc.;
- PBR Hawaii & Associates, Inc.;
- R. M. Towill Corporation;
- Ronald N. S. Ho & Associates, Inc.; and
- SSFM International, Inc.

## B. APPLICATION OF THE STATE ETHICS CODE

The Hawaii State Constitution reflects the unfettered expectation that “public officers and employees must exhibit the highest standards of ethical conduct.”<sup>2</sup> The State Ethics Code was created “so that public confidence in public servants will be preserved.”<sup>3</sup> Consistent with this mandate, the legislature directed the Commission to liberally construe the provisions of the State Ethics Code “to promote high standards of ethical conduct in state government.”<sup>4</sup> It is with this foundation that the Commission investigated the free golf that the Settling Employees appeared to have accepted.

### 1. The Gifts Law, HRS section 84-11

The State Ethics Code's gifts law, HRS section 84-11, prohibits an employee from accepting or receiving any gift under circumstances in which it can reasonably be inferred that the gift is intended to influence the employee in the performance of his

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<sup>2</sup> Hawaii State Constitution, Art. XIV.

<sup>3</sup> Preamble, HRS Chapter 84.

<sup>4</sup> HRS section 84-1.

official duties or is intended as a reward for the employee's official action.<sup>5</sup> Because the gifts law is premised on a reasonable inference, i.e., perception, it is immaterial whether the employee is actually influenced by the gift or whether the entity giving the gift actually intended to influence the employee. Rather, the appropriate inquiry is whether a reasonable person -- when considering the specific circumstances surrounding the gift -- would perceive the gift as being offered to influence the employee in performing his official duties or to reward the employee for past actions.

In determining whether a gift is prohibited by the State Ethics Code, the Commission generally considers: (1) the value of the gift; (2) the relationship between the employee and the donor of the gift, including whether the donor is subject to official action<sup>6</sup> by the employee; and (3) whether the gift provides a "state benefit" or is primarily personal in nature. Where an employee's official duties include, among other things, procurement or responsibilities that affect payment or compensation to a business, there is a heightened inference that a gift offered by the business is intended to influence or reward the employee.

With respect to the first factor, i.e., the value of the gift, the cost of the golf that appeared to have been paid for by the Firms was substantial. As stated above, the Commission's investigation indicated that the cost to play in the golf tournaments ranged from approximately \$125 to \$460 per player per tournament, and the cost of the recreational rounds of golf ranged from approximately \$20 to \$180 per person per round.

With respect to the second factor, the Commission's investigation indicated that the Firms that appeared to have paid for the Settling Employees' golf had ongoing, or were interested in developing, business relationships with Settling Employees' respective state agencies. In most cases, the Settling Employees took official action directly affecting or involving the Firms that appeared to have paid for their golf: many of the Settling Employees were involved in procuring services or goods for their state agencies; several of the Settling Employees served on committees that evaluated the

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<sup>5</sup> HRS section 84-11 states:

No legislator or employee shall solicit, accept, or receive, directly or indirectly, any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, thing, or promise, or in any other form, under circumstances in which it can reasonably be inferred that the gift is intended to influence the legislator or employee in the performance of the legislator's or employee's official duties or is intended as a reward for any official action on the legislator's or employee's part.

<sup>6</sup> 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." HRS section 84-3. Official action is any action an employee takes in his official state capacity (including inaction) involving the exercise of discretion or personal judgment. In addition to making decisions and recommendations, official action includes but is not limited to: providing input to decision making even if one is not the final decision maker; offering opinions and recommendations; giving directions and instructions; providing supervision or oversight; performing inspections; performing evaluations; and taking any other action that is not ministerial in nature.

Firms' qualifications to provide services to their agencies and/or on committees that were involved in awarding state contracts to the Firms; some of the Settling Employees were involved in reviewing project proposals and contracts concerning the Firms; several of the Settling Employees managed state contracts and projects involving the Firms, which may have required the Settling Employees to directly oversee and inspect the Firms' work, approve payments to the Firms, and consider change orders under which the Firms were entitled to additional payments from the Settling Employees' respective agencies; some of the Settling Employees supervised other employees who had official interactions with the Firms; and other Settling Employees held relatively high level positions within an agency and, because of their positions, had broad oversight or authority over matters affecting the Firms.

Finally, with respect to the third factor, the Commission examined whether there was a substantial "state benefit" associated with the Settling Employees' acceptance of the golf to offset the reasonable inference that the golf was offered to influence or reward the Settling Employees in the performance of their official duties. The Commission was unable to determine any reasonable "state benefit" associated with the Settling Employees' participation in the golf tournaments or in playing recreational rounds of golf.<sup>7</sup> In other words, based on the Commission's investigation, including statements from the Settling Employees themselves, there did not appear to be any official purpose for the Settling Employees to have accepted free golf. Accordingly, the Commission believed the golf to have been most likely a gift that was primarily personal in nature.

Considering the totality of the circumstances surrounding the Settling Employees' apparent acceptance of golf paid by the Firms, including the value of the golf, the Settling Employees' official duties, and the likely personal nature of the golf, the Commission believed that there was sufficient information to support charges against the Settling Employees for violating the gifts law by allegedly accepting free golf.

## 2. The Gifts Reporting Law, HRS section 84-11.5

The State Ethics Code's gifts reporting law, HRS section 84-11.5, requires an employee to report any gift or gifts that the employee receives, valued singly or in the aggregate, in excess of \$200 from a single source, if: (1) the source of the gift has interests that may be affected by official action taken by the employee; and (2) the gift

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<sup>7</sup> In determining the "state benefit," the Commission examined whether and how playing golf was rationally related to the Employees' official duties and responsibilities, as well as whether and how playing golf may have assisted them in performing their state jobs.

is not exempted from the reporting requirements.<sup>8</sup>

In many cases, the value of the golf received by the Settling Employees appeared to have been more than \$200 and appeared to have been paid for by Firms that were subject to the Settling Employees' official action. None of the exceptions to the gifts reporting requirement appeared to have applied. Accordingly, the Commission believed that there was sufficient information to support charges against many of the Settling Employees for violating the gifts reporting law by allegedly failing to file a gifts disclosure statement to report the free golf (or some of the free golf) that they had received.

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<sup>8</sup> HRS section 84-11.5 states in pertinent part:

- (a) Every legislator and employee shall file a gifts disclosure statement with the state ethics commission on June 30 of each year if all the following conditions are met:
  - (1) The legislator or employee, or spouse or dependent child of a legislator or employee, received directly or indirectly from one source any gift or gifts valued singly or in the aggregate in excess of \$200, whether the gift is in the form of money, service, goods, or in any other form;
  - (2) The source of the gift or gifts have interests that may be affected by official action or lack of action by the legislator or employee; and
  - (3) The gift is not exempted by subsection (d) from reporting requirements under this subsection.
- (b) The report shall cover the period from June 1 of the preceding calendar year through June 1 of the year of the report.
- (c) The gifts disclosure statement shall contain the following information:
  - (1) A description of the gift;
  - (2) A good faith estimate of the value of the gift;
  - (3) The date the gift was received; and
  - (4) The name of the person, business entity, or organization from whom, or on behalf of whom, the gift was received.
- (d) Excluded from the reporting requirements of this section are the following:
  - (1) Gifts received by will or intestate succession;
  - (2) Gifts received by way of distribution of any inter vivos or testamentary trust established by a spouse or ancestor;
  - (3) Gifts from a spouse, fiancé, fiancée, any relative within four degrees of consanguinity or the spouse, fiancé, or fiancée of such a relative. A gift from any such person is a reportable gift if the person is acting as an agent or intermediary for any person not covered by this paragraph;
  - (4) Political campaign contributions that comply with state law;
  - (5) Anything available to or distributed to the public generally without regard to the official status of the recipient;
  - (6) Gifts that, within thirty days after receipt, are returned to the giver or delivered to a public body or to a bona fide educational or charitable organization without the donation being claimed as a charitable contribution for tax purposes; and
  - (7) Exchanges of approximately equal value on holidays, birthday, or special occasions.

### 3. The Fair Treatment Law, HRS section 84-13

The State Ethics Code's fair treatment law, HRS section 84-13, prohibits employees from using or attempting to use their state positions to obtain "unwarranted" benefits for themselves or others.<sup>9</sup> The Commission interprets this section of the State Ethics Code to prohibit employees from accepting gifts of substantial value that are offered to them merely because of their status as state employees where there is no reasonable benefit to the State or no other basis to justify the employees' acceptance of the gifts. In those circumstances, the gift may be an "unwarranted" benefit that the employee has received in violation of the fair treatment law.

The Commission's investigation indicated that, in some instances, a Settling Employee appeared to have been offered free golf solely because he was employed by a particular state agency, even though he did not take any direct official action affecting the Firm that appeared to have paid for his golf. It appeared that, but for his status as an employee of the agency, the Settling Employee would not have received the free golf. In those instances, the Commission believed that there was sufficient evidence to support a charge against the Settling Employee for allegedly misusing his position, i.e., for violating the fair treatment law by allegedly accepting free golf that was offered to him solely because of his state position.<sup>10</sup>

### C. SETTLING EMPLOYEES' EXPLANATIONS FOR ACCEPTING FREE GOLF

Some of the Settling Employees stated that they had not received training about the State Ethics Code and were unaware that the State Ethics Code prohibited them from accepting free golf from Firms that were subject to their official action; some noted that the golf tournaments in which they played were to benefit worthy causes; others stated that they had taken vacation leave to play golf when invited by Firms; and some explained that they had developed a friendship through work with the employees of the Firm who invited them to play golf.

An employee's claim that he has not received training or was unaware that the State Ethics Code prohibited him from accepting certain gifts does not excuse his violation of the State Ethics Code. In light of the underlying purpose of the statute, i.e., to foster public confidence in state employees, ignorance simply is not a reasonable

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<sup>9</sup> HRS section 84-13 states in relevant part:

**§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

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<sup>10</sup> The Settling Employees who appeared to have violated the gifts law, HRS section 84-11, also may have violated HRS section 84-13. However, it was unnecessary for the Commission to consider whether there were violations of HRS section 84-13 where it appeared that the Settling Employees had official responsibilities with respect to the respective businesses that appeared to have paid for their golf.

defense. Moreover, for purposes of the State Ethics Code, it is immaterial that a golf tournament benefits a charity or other worthy cause; it is immaterial that the golf is played on a weekend or holiday or that the employee has taken a vacation day to play; and, where the green fee or golf tournament fee is paid for by a company doing business with the employee's state agency, it is immaterial that the employee is invited by someone the employee knows. The only question is whether, considering the value of the gift, the employee's relationship with entity offering the gift, and any "state benefit," there is a reasonable inference that the gift is offered to influence or reward the employee. As noted above, whether an employee is actually influenced by the free golf or actually misuses his position to favor businesses that pay for his golf is immaterial to determining whether the employee's acceptance of free golf is prohibited under the State Ethics Code.<sup>11</sup>

Although the Commission has no jurisdiction over the Firms that appeared to have paid for the Employees' golf, the Commission strongly urges those Firms and others doing business with the State to consider the State Ethics Code before offering gifts to state employees, including invitations to play golf.

#### D. RESOLUTION OF INVESTIGATION AND ADMINISTRATIVE PENALTIES

The Commission and the Settling Employees agreed to resolve what appeared to be violations of the State Ethics Code. As part of the resolution, the Employees paid administrative penalties to the State of Hawaii in amounts of \$250, \$500, and \$1,500, for accepting free golf that appeared to be prohibited by the State Ethics Code. In determining the penalty amount for each Settling Employee, the Commission considered the Settling Employee's specific circumstances, including his state position; his official duties, including any official duties he had with respect to the Firms that appeared to have paid for his golf; and the number of times he appeared to have accepted free golf. The Commission's investigation focused on golf that the Settling Employees appeared to have accepted from 2010 through 2013. In a few cases, where it appeared that the Settling Employee regularly or frequently accepted free golf from the same Firms and the exact years were not known, or where he may have accepted free golf within a span of years that overlapped 2010 through 2013, the Commission considered golf that appeared to have been accepted prior to 2010.<sup>12</sup>

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<sup>11</sup> The Commission emphasizes that nothing from its investigation showed that any of the Settling Employees actually misused their positions to favor the Firms that appeared to have paid for their golf.

<sup>12</sup> However, in those few cases, the Commission did not consider any free golf that the Settling Employee may have accepted prior to 2007 (six years prior to 2013) based on jurisdictional grounds. Pursuant to HRS section 84-31(6), the Commission has jurisdiction for purposes of investigation and taking appropriate action on alleged violations of the State Ethics Code in all proceedings commenced within six years of an alleged violation.

The following tables summarize the golf that was believed to have been accepted by each of the Settling Employees. The Settling Employees are grouped by the amount of the administrative fine that they paid to the State.

**I. \$250 ADMINISTRATIVE PENALTY**

EMPLOYEE	FIRM BELIEVED TO HAVE PAID FOR GOLF	GOLF 2010 through 2013 (unless otherwise indicated)
1. DOT Engineer	Bowers + Kubota Consulting, Inc.	Golf tournament, 1 time
	R. M. Towill Corporation	Lunch, 1 time  Recreational rounds of golf (including food), 2 times, but employee said he paid for his own green fees.
2. DOT Engineer	SSFM International, Inc.	Recreational round of golf, 1 time
	R. M. Towill Corporation	Golf tournaments, 2 times
3. UH Engineer	Ronald N. S. Ho & Associates, Inc.	Golf tournament, 1 time
4. UH IT Specialist	Bowers + Kubota Consulting, Inc.	Golf tournament, 1 time
	Graybar Electric Company, Inc.	Golf tournament, 1 time
	Hawaiian Telcom	Golf tournaments, 2 times

## II. \$500 ADMINISTRATIVE PENALTY

EMPLOYEE	FIRM BELIEVED TO HAVE PAID FOR GOLF	GOLF 2010 through 2013 (unless otherwise indicated)
1. DAGS Administrator	HDR Engineering, Inc.	Golf tournament, 1 time
	Ronald N. S. Ho & Associates, Inc.	Golf tournament, 1 time
2. DAGS Engineer	Central Construction, Inc.	Golf tournament, 3 times
	SSFM International, Inc.	Recreational golf, 1 time
3. DOT Engineer	SSFM International, Inc.	Golf tournaments, 3 times Recreational rounds of golf, 2 times
4. DOT Engineer	Ameron Hawaii	Golf tournaments, 2 times Additional free golf, but exact years not known.
5. DOT Engineer	R. M. Towill Corporation	Recreational golf, 2 times
	Parsons Brinckerhoff, Inc.	Golf tournament, 1 time
	Contractor	Golf tournament, 1 time
6. DOT Engineer	SSFM International, Inc.	Recreational golf, 6 times Employee may have paid for his own green fees with monthly pass.
	R. M. Towill Corporation	Golf tournaments, 2 times Recreational golf, 1 time
7. DOT Administrator	Aloha Cargo Transport	Golf tournaments, 2 times
8. DOT Manager	R. M. Towill Corporation	Recreational golf, 4 times
	SSFM International, Inc.	Golf tournament, 1 time
9. UH Coordinator	Central Construction, Inc.	Golf tournaments, 4 times
	SSFM International, Inc.	Recreational round golf, 1 time
10. UH Engineer	Bowers + Kubota Consulting, Inc.	Golf tournament, 1 time
	Hawaiian Telcom	Golf tournaments, 1 - 2 times
	Vendor	Golf tournament, 1 time 2008 - 2013

### III. \$1,500 ADMINISTRATIVE PENALTY

EMPLOYEE	FIRM BELIEVED TO HAVE PAID FOR GOLF	GOLF 2010 through 2013 (unless otherwise indicated)
1. DOT Engineer	R. M. Towill Corporation	Recreational golf, 3 times
	Parsons Brinckerhoff, Inc.	Golf tournaments, 3 times
	SSFM International, Inc.	Golf tournaments, 2 times
	Ameron Hawaii	Golf tournaments, 4 times
2. DOT Engineer	R. M. Towill Corporation	Recreational golf, 5 times
	KAI Hawaii, Inc.	Golf tournaments, 2 times
	Parsons Brinckerhoff, Inc.	Golf tournaments, 3 times
	Consultant or contractor	Golf tournament, 1 time 2010 or prior
3. DOT Engineer	SSFM International, Inc.	Recreational golf, 2 times Golf tournaments, 2 times
	Ameron Hawaii	Golf tournament, 1 time
	Hirata & Associates, Inc.	Golf tournament, 1 time
4. DOT Engineer	R. M. Towill Corporation	Golf tournaments, about 5 times 2009 - 2013
	Mitsunaga & Associates, Inc.	Golf tournaments, about 5 times 2009 - 2013
	KAI Hawaii, Inc.	Golf tournaments, 1 or more times
5. UH Architect	Bowers + Kubota Consulting, Inc.	Golf tournaments, 4 times
	Consultant	Golf tournament, 1 time 2009 - 2010
6. UH Manager	Bowers + Kubota Consulting, Inc.	Golf tournament, 1 time
	Hawaiian Telcom	Golf tournaments, 6 times
	Graybar Electric Company, Inc.	Golf tournaments, 1 - 2 times 2009 - 2013
7. UH Manager	Bowers + Kubota Consulting, Inc.	Golf tournaments, 3 times
	PBR Hawaii & Associates, Inc.	Golf tournaments, 4 times Also once a year in prior years.

The Commission is authorized by law to initiate charges concerning alleged violations of the State Ethics Code and to hold hearings on the charges. As noted above, the Commission did not initiate formal administrative proceedings against the Settling Employees.<sup>13</sup> However, the Commission's investigation provided a reasonable basis to believe that the acceptance of free golf by the Settling Employees was prohibited by the State Ethics Code. Had the Commission and the Settling Employees not resolved these matters, the Commission believes that the information obtained from the investigation would have been sufficient to support a formal charge against each of the Settling Employees.

In considering the totality of facts and circumstances, the Commission believes that the resolution of each Settling Employee's case is reasonable, fair, and consistent with preserving the public's confidence in government employees. The Commission believes that no further action against the Settling Employees is warranted and hereby determines that these cases are closed.

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<sup>13</sup> The Commission has the authority to initiate a charge against an employee concerning an alleged violation of the State Ethics Code, which commences formal proceedings against the employee. The employee has an opportunity to respond to the charge. If the Commission determines that there is probable cause to believe that a violation of the State Ethics Code might have occurred, the Commission will issue a further statement of the alleged violation and afford the employee an opportunity to respond to the further statement of the alleged violation. If the Commission concludes that there is probable cause to believe that a violation of the State Ethics Code has been committed, the Commission will issue a notice of hearing. The charge, the further statement of alleged the violation, and the employee's written response thereto will then be made public. The hearing is a public proceeding conducted in accordance with HRS chapter 91. The Commission's decision and findings from the hearing will be a matter of public record. HRS section 84-31.