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THE HIGH ROAD

"Preserving public confidence in public servants."

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A Disappointing Legislative Session For Ethics

Government integrity was a popular topic of conversation among elected officials at the State Capitol this year. Unfortunately, the 2003 Legislature adjourned without passing any bills to better the State Ethics Code. The following were among the ethics measures supported by the Hawaii State Ethics Commission:

- A bill to expand the conflicts-of-interests section of the State Ethics Code to require recusal when a state employee takes action affecting businesses, etc., in which their siblings, parents, grown children, or household members have a substantial financial interest. At present, the law only covers the interests of a state employee and a spouse or dependent child.
- A bill to address needed conflicts-of-interests rules for legislators.
- A bill to lower the threshold from $200 to $100 for gifts that must be reported by state officials.
- A bill to close a loophole in the State Ethics Code's financial interests disclosure law by requiring state officials to report their financial interests in businesses and real property outside of the State of Hawaii.

These measures received legislative hearings, but none were passed out by the Legislature. Although it was a disappointing session for ethics, the Hawaii State Ethics Commission will continue to push for ethics reform legislation in the 2004 legislative session.

Commission Considers Ethics Charges Against State Official For Use Of State Resources To Critique Campaign Literature

The Hawaii State Ethics Commission received two separate formal Charges filed against a state official. The charges were consolidated and addressed by Informal Advisory Opinion No. 2003-1. This opinion is available on the Commission's web site: www.hawaii.gov/ethics.

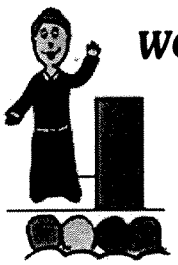
Both Charges complained that a state official used subordinate state officials and employees in criticizing the views of a candidate for statewide elective office. The criticism by the state official was directed primarily at a piece of the candidate's campaign literature. The state official's criticism was based on research done by subordinate state officials and state employees on state time at the request of the state official. The state officials and state employees also used state equipment and state facilities in performing their research. Both Charges contended that the state official's use of state resources to critique the candidate's campaign literature was a violation of the Hawaii State Ethics Code. In the state official's Answer to the Charges, the state official essentially contended that the critique of the campaign literature was a legitimate function of the official's state position, and thus it was appropriate to use state resources for the critique.

In its opinion, the Commission stated that it believed that the state official's actions in this case raised serious concerns under both HRS section 84-13 and HRS section 84-13(3). These sections prohibit a state official or employee from misusing his or her position to benefit or disadvantage a candidate for political office, and prohibit the use of state resources for political campaign purposes. The state official directed that state resources be used to analyze the candidate's campaign literature. The Commission had serious concerns as to whether this was a legitimate use of state resources in terms of the facts of the case. The circumstances surrounding the critique of the candidate's campaign literature tended to indicate that there were political motivations at work. In addition, it appeared to the Commission that the critique was performed in an unfair manner in violation of the State Ethics Code.

The Commission believed that the candidate was clearly not treated in the same manner as other similarly situated candidates. The state official's actions in this respect raised serious concerns under the Fair Treatment section of the State Ethics Code.

One Commissioner voluntarily recused herself from the consideration of the case. Of the remaining four Commissioners, two strongly believed that a formal, public contested-case hearing was clearly warranted. The other two Commissioners strongly believed that an Informal Advisory Opinion was warranted, due to the novel issues that the case presented. To avoid an unresolvable deadlock, the Commissioners who favored a hearing in this case reluctantly agreed to the issuance of an Informal Advisory Opinion.

This opinion dealt with a complex procedural history and difficult issues. Anyone who is interested in this opinion is encouraged to read the full text of the public version of this opinion, which is available on the Commission's web site.



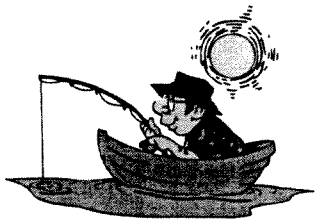
WOW! Overwhelming Response to Ethics Workshops for State Procurement and Contracts Personnel

In May, 2003, the Hawaii State Ethics Commission held ethics workshops for packed classes of state procurement and contracts personnel. Due to an overwhelming response from state agencies, additional workshop sessions were scheduled in June. Over two hundred employees representing over twenty different state departments and agencies registered for the workshops. Workshop participants included department heads, administrators, supervisors, attorneys, procurement and contracts specialists, and clerical personnel.

The two-hour workshops provided participants with a basic understanding of the State Ethics Code (Hawaii Revised Statutes Chapter 84) and ethics issues that are often faced by employees who procure goods and services, or who award or administer contracts. The workshops covered topics such as conflicts of interests for procurement personnel, outside employment with state vendors and contractors, and gifts from vendors to state employees.

Additional workshops for procurement personnel on Oahu will be scheduled later this year in the fall. The Commission also will be offering the workshops to employees on the Big Island (Hilo and Kona), Kauai, and Maui this summer.

Thank you to all state employees who attended the workshops!



Ethics Quiz

Question: Skipper is the administrator for a state office. Skipper owns a fishing boat but no longer has time to use it. Skipper hears that his office clerk, Gilligan, wants to buy a boat to go fishing on weekends. Skipper offers to sell his boat to Gilligan. Would this sales transaction be allowed under the State Ethics Code?

Answer: No. Section 84-13(4) of the State Ethics Code prohibits a state employee from soliciting, selling, or engaging in a substantial financial transaction with a subordinate. Skipper's sale of his fishing boat to Gilligan, his subordinate, would involve a substantial financial transaction, and would be prohibited. The authority exercised by a supervisor over a subordinate at work can lead to an unfair or unwarranted advantage in private sales transactions. For example, the subordinate may be disadvantaged in negotiating a fair price with the supervisor.

In cases involving private financial transactions between supervisors and subordinates, state employees are advised to contact the State Ethics Commission for advice. Remember, requests for advice are confidential by law. Thus, your request and any advice given remain confidential.

The High Road is a publication of the Hawaii State Ethics Commission.

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