



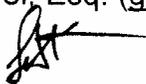
HAWAII STATE ETHICS COMMISSION

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

MEMORANDUM

Via Email

TO: Members of the Mortgage Foreclosure Task Force
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FROM: Leslie H. Kondo 
Executive Director and General Counsel

SUBJECT: Mortgage Foreclosure Task Force

DATE: May 26, 2011

It has come to our attention that some members of the Mortgage Foreclosure Task Force ("Task Force") may have testified and/or otherwise lobbied on mortgage foreclosure issues before the Hawaii State Legislature during the 2011 session on behalf of non-governmental entities, either as a paid lobbyist or as an employee of the entity. If true, such conduct raises concerns under the State Ethics Code.

We understand that the Task Force was created by Act 162, Session Laws of Hawaii, 2010, to study and recommend policies and procedures to improve the manner in which mortgage foreclosures are conducted in the State; that the Task Force is comprised of seventeen members, representing a number of government agencies and

non-governmental organizations;¹ that the Task Force is within the Department of Commerce and Consumer Affairs for administrative purposes; that the Task Force adopted several recommendations and submitted proposed legislation as part of its preliminary report to the 2011 Legislature; that the proposed legislation primarily involved the non-judicial foreclosure process; and that the Task Force will sunset on June 30, 2012.

We are also aware of a number of bills that the 2011 Legislature considered relating to foreclosure issues, such as H.B. 879 (Relating to Mortgage Foreclosures), H.B. 1411 (Relating to Mortgage Foreclosures), S.B. 651 (Relating to Mortgage Foreclosures), and S.B. 1519 (Relating to Mortgage Loan Originators).

The State Ethics Code, Hawaii Revised Statutes Chapter 84, applies to state legislators and state employees. The State Ethics Commission interprets “employee,” as defined in the State Ethics Code, to include volunteer members of a legislative-created task force such as the Mortgage Foreclosure Task Force.² Accordingly, as an “employee,” Task Force members are subject to and must comply with the State Ethics

¹ We understand the members of the Task Force to be:

- (1) Stephen H. Levins, Department of Commerce and Consumer Affairs, Office of Consumer Protection;
- (2) Marvin S.C. Dang, Hawaii Financial Services Association;
- (3) Michelle Kauhane, Hawaii Community Assets;
- (4) Ryker J. Wada, Legal Aid Society of Hawaii;
- (5) Neal Okabayashi, Hawaii Bankers Association of Hawaii;
- (6) Linda Nakamura, Mortgage Bankers Association of Hawaii;
- (7) Stefanie Sakamoto and Francis Hogan, Hawaii Credit Union League;
- (8) Jane Sugimura, Hawaii Council of Associations of Apartment Owners;
- (9) Steven Guttman, Hawaii State Bar Association Collection Law Section;
- (10) Jerrold K. Guben, Hawaii State Bar Association Bankruptcy Law Section;
- (11) Julia H. Berbrugge, State of Hawaii Judiciary;
- (12) D.B. Griffin, Department of Commerce and Consumer Affairs, Division of Financial Institutions;
- (13) Lorrin Hirano, Title Guaranty of Hawaii, Inc.;
- (14) Joan Takano, Hawaii Government Employees Association;
- (15) Steven Tam, AARP Hawaii Volunteer;
- (16) Colin Yost, attorney; and
- (17) George J. Zweibel, attorney.

We note that a number of the members of the Task Force are also registered lobbyists.

² Section 84-3, HRS, provides in relevant part:

“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, justices and judges.

(Emphasis added); see also HRS § 84-1 (requiring that the State Ethics Code be “liberally construed”).

Code. The State Ethics Code prohibits, among other things, an “employee” from being paid to assist or represent another person or business on a matter in which the employee has participated or in which he will participate.³

The State Ethics Code prohibits a member of the Task Force from being compensated to represent non-governmental organizations, such as businesses, both for-profit and not for-profit, trade organizations, or other groups, on matters in which the Task Force participated or will participate. For example, a member of the Task Force who is an employee of a company may not receive a salary to lobby on behalf of the company on legislation that was recommended by the Task Force. Similarly, a member of the Task Force may not otherwise be paid to privately lobby on behalf of a company, trade organization, or other group on legislation that was recommended by the Task Force.

We emphasize that the State Ethics Code does not prohibit a member of the Task Force from testifying on behalf of the Task Force. We also note that private, non-governmental organizations are not prohibited from lobbying on any matter. As explained above, in certain situations, the State Ethics Code prohibits a member of the Task Force from being compensated to lobby on behalf of an organization. Individuals other than the members of the Task Force may testify on behalf of the organization.

We are providing you with this letter to alert members of the Task Force of our concerns that members who are paid lobbyists or employees of non-governmental organizations may have testified on bills that were drafted or recommended by the Task Force. As noted above, such action appears to be in violation of the State Ethics Code. Staff, however, does not intend to recommend any further action by the State Ethics Commission relating to any lobbying by Task Force members on Task Force-related matters this past legislative session. We strongly advise members of the Task Force against testifying, in the future, as paid representatives of non-governmental organizations on matters in which the Task Force participated or will participate.

If you would like to discuss this matter further or have other concerns relating to the State Ethics Code, you are welcome to contact us. Thank you for your attention to this matter.

LHK/pms

³ Specifically, section 84-14(d), HRS, reads in relevant part:

No legislator or employee shall assist any person or business or act in a representative capacity for a fee or other compensation to secure passage of a bill or to obtain a contract, claim, or other transaction or proposal in which he has participated or will participate as a legislator or employee[.]