



HAWAI'I STATE ETHICS COMMISSION

State of Hawai'i · Bishop Square, 1001 Bishop Street, ASB Tower 970 · Honolulu, Hawai'i 96813

ADVISORY OPINION NO. 2020-2

December 17, 2020

A state legislator (“Legislator”) requested an advisory opinion as to whether the State Ethics Code, Hawai'i Revised Statutes (“HRS”) Chapter 84, permits Legislator to compensate an otherwise-unpaid legislative intern with Legislator's private funds, such that the intern could receive compensation for working at the Capitol.

As discussed below, the Commission believes that any arrangement in which a legislative intern receives private compensation from Legislator – whether as an employee or through some other understanding – is prohibited by the Fair Treatment law, HRS § 84-13(a)(4).

I. FACTS

The Commission understands the facts to be as follows:

Legislator would like additional staff support for legislative work, but budget constraints prevent Legislator from hiring more employees. Legislator would like to have interns assist with legislative work; however, Legislator recognizes that many would-be interns simply cannot afford to work for free, particularly given the current economic crisis. As such, Legislator is interested in finding another method to compensate an intern, such as by hiring the intern as an employee through a private business arrangement or using Legislator's private funds to award an essay prize, or some other one-time monetary benefit, to an individual (after which the individual would work as an unpaid intern in Legislator's legislative office).

Legislator requested guidance from the Commission to ensure that there would be no concerns under the State Ethics Code if Legislator tried to compensate an otherwise unpaid intern using private funds.

II. ISSUE PRESENTED

The issue before the Commission is whether the State Ethics Code prohibits Legislator from employing, or otherwise compensating, a legislative intern by using private funds.

As discussed more fully below, the Commission concludes that, under the circumstances described herein, the Ethics Code does not allow the arrangement the Legislator has proposed.

III. APPLICATION OF THE STATE ETHICS CODE

Legislators are subject to the requirements of the State Ethics Code. The purpose of the State Ethics Code is to prescribe a code of ethics for elected officers and employees of the State as mandated by Article XIV of the State Constitution. The Commission is charged with the responsibility of administering the Ethics Code so that public confidence in public servants will be preserved.¹

The Fair Treatment law HRS § 84-13(a), contains the following provision:

(a) 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; including but not limited to the following:

...

(4) Soliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate or a person or business whom the legislator or employee inspects or supervises in the legislator's or employee's official capacity.

A volunteer "intern" in a legislator's office is supervised by the legislator in the legislator's official capacity. Indeed, the Commission has long considered legislative interns to be "employees" for the purposes of the Ethics Code:

The Commission thus concludes that both the Constitution of the State of Hawaii and the State Ethics Code mandate that interns be subject to the State Ethics Code.

Since the Commission believes that interns are subject to the State Ethics Code, the various provisions of the State Ethics Code would thus apply to interns.

Advisory Opinion No. 2006-1, 2006 WL 8426540, at *2.²

¹ Preamble, HRS chapter 84.

² Available at <https://files.hawaii.gov/ethics/advice/AO2006-1.pdf>.

Inasmuch as Legislator would have a supervisor-subordinate relationship with the intern in Legislator's legislative capacity, the Commission advises that Legislator not engage in a substantial financial transaction with the intern. As such, the Commission advises that Legislator neither hire the intern as an employee using private funds nor arrange to award a prize of some kind to a would-be intern.

This provision of the Ethics Code – HRS § 84-13(a)(4) – seeks to prevent supervisors from using a private financial transaction to exert pressure on a subordinate or otherwise using the supervisor's position to obtain personal favors from the subordinate. See, e.g., Resolution of Investigation ("ROI") 2019-03³ ("A supervisor's ability to impose fair, impartial, and reasonable discipline upon a subordinate employee can be compromised when that subordinate employee has done personal favors for the supervisor."). This provision of the Ethics Code also exists to prevent private financial disputes from disrupting workplace dynamics: an ordinary landlord-tenant dispute, for example, becomes significantly more fraught when one's landlord is also one's boss at work.

The Commission recognizes that, in this case, some of the typical concerns about significant financial transactions between supervisors and subordinates do not exist: indeed, Legislator is attempting to help a would-be intern by offering this person compensation for the position. Nevertheless, the Ethics Code is clear about avoiding substantial financial transactions, such that even Legislator's generous gesture would be prohibited.

The Commission noted one other concern in Advisory Opinion No. 2006-01:

[T]he State Ethics Commission, in enforcing the State Ethics Code, would have to address, on a case-by-case basis, whether an individual is in fact an intern, should questions arise. For example, an individual who is well versed in the legislative process but serves as an "intern" while being paid by his or her company or organization when the company or organization has business before the Legislature, may raise questions as to whether the individual's service is really more of a "gift" to a legislator made by the company, in violation of the State Ethics Code's Gifts Law, HRS section 84-11.

Similarly, a legislator might be in violation of the "Fair Treatment" section of the State Ethics Code (HRS section 84-13) if the legislator uses an intern, who is well versed in legislative matters, for the purpose of giving a company that employs the intern preferential access to legislative business.

³ Available at <https://files.hawaii.gov/ethics/advice/ROI2019-3.pdf>.

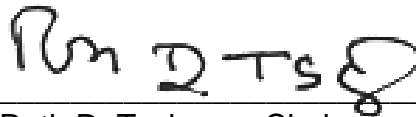
Advisory Opinion No. 2006-1, 2006 WL 8426540, at *3. In the instant case, however, the Legislator would be contributing the Legislator's own private funds, such that these private funds would not constitute an improper gift. This issue may arise, however, in other circumstances in which a private entity seeks to fund a legislative intern position.

IV. CONCLUSION

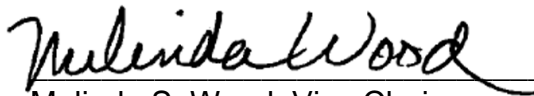
For the reasons discussed above, the Commission believes that Legislator may not use private funds to compensate a legislative intern. The Commission thanks the Legislator for seeking guidance on this issue.

Dated: Honolulu, Hawai'i, December 17, 2020.

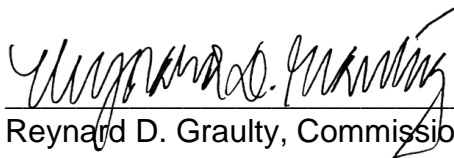
HAWAI'I STATE ETHICS COMMISSION



Ruth D. Tschumy, Chair



Melinda S. Wood, Vice Chair



Reynard D. Gaulty, Commissioner



Wesley F. Fong, Commissioner

Note: There was a vacancy on the Commission when this Advisory Opinion was considered.