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# HAWAII STATE ETHICS COMMISSION

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

## ADVISORY OPINION NO. 2024-2

September 18, 2024

The Commission received more than one request for advice regarding whether state employees such as physical education teachers or coaches (collectively, “coaches”) may offer private sports clinics for pay. The Hawai'i State Ethics Commission (“Commission”) advises that sports clinics or similar private businesses, which are open and advertised to the general public, and are not one-on-one private lessons with a student, are not prohibited by the State Ethics Code (“Code”), Hawai'i Revised Statutes (“HRS”) chapter 84. However, the Commission cautions that the clinics must be widely open to the public, and the coaches conducting these private clinics must not use state resources to market the clinics, nor may they implicitly or expressly coerce students to attend them.

### I. Facts

Sports coaches are state employees and are generally full-time teachers, part-time paid employees, or unpaid volunteers. In addition to their employment with the state government, some coaches also participate in private businesses or nonprofits, such as sports clinics either as business owners or employees. These clinics provide supplemental instruction and training to individuals for compensation. They are widely marketed to the general public as sport-specific “camps” or skill and agility camps. Current or prospective students at the coach's assigned school may, in response to the general public advertisement, attend the clinics.

### II. Application of the State Ethics Code

Coaches are State employees and are subject to the requirements of the State Ethics Code.<sup>1</sup> As discussed below, so long as the coaches exercise caution to avoid violations of the Fair Treatment law (HRS § 84-13) and the Conflicts of Interests law (HRS §

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<sup>1</sup> See HRS § 84-2 (“This chapter shall apply to every nominated, appointed, or elected officer, employee, and candidate to elected office of the State and for election to the constitutional convention . . .”).

84-14(a)), the Ethics Code does not prohibit them from being privately compensated to host or participate in private clinics that are widely marketed to the general public.

A. HRS § 84-13, Fair Treatment Law

The Fair Treatment law, HRS § 84-13(a), prohibits state employees from using their state positions to obtain unwarranted advantages or benefits for themselves or others; this law prevents employees from obtaining special perks or treatment for themselves or others as a result of their state employment.<sup>2</sup> It also specifically prohibits:

- Using state time, equipment, or other facilities for private business purposes; or
- 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.

HRS § 84-13(a)(3)&(4). The Commission previously stated that the Fair Treatment law prohibits state athletic coaches from offering paid private lessons to students under their supervision. See Resolution of Charge 2012-4, available at <https://files.hawaii.gov/ethics/advice/ROC2012-4.pdf>. In that case, the Commission stated:

The Commission has long held that the State Ethics Code prohibits teachers from privately teaching or tutoring their current students or prospective students for pay. Students have a dependent relationship with teachers and do not share equal bargaining power with teachers. HRS section 84-13(4) bars teachers from engaging in substantial financial transactions with anyone supervised by them, including their students, as well as the parents of their students. HRS section 84-13(4) similarly prohibits a coach from offering or providing private lessons, for pay, to members of the school's team who are supervised by the coach. The same dependent relationship and unequal bargaining power that exists between students and teachers also exists between school athletic team members and coaches.

See id. at 4. The Commission concluded, “[d]ue to the dependent nature of the relationship, HRS section 84-13(4) prohibits coaches from providing private lessons for pay to team members.” Id. Stated differently, the Commission has advised that the Fair Treatment law prohibits a coach from being paid to provide private lessons to a current or

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<sup>2</sup> HRS § 84-13(a) states: “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 . . . .”

prospective student. This type of insular transaction can too easily lend itself to abuse of the relationship.

However, the Commission has previously allowed state employees to conduct business activities with those they supervise in their official capacity if those activities are marketed to the general public so that the transaction is not narrowly confined to a coach and a student. For instance, the Commission has previously held that a state employee may market a service to the public generally and enter into financial transactions with a person in a subordinate relationship in response to those general marketing efforts. See Opinion No. 50, dated 12/9/69 (a university professor could rent his residential property to university students if the property was marketed to the general public, made no use of his university position, and he did not exert pressure on his students to live in his property). State employees are allowed to participate in these open transactions provided they adhere to the requirements of the Fair Treatment law.

Therefore, the Commission believes coaches employed by the state may host or participate in generally marketed sports clinics for pay.<sup>3</sup> “Generally marketed” means that there is widespread dissemination of information available to the public through various formats and channels, such as mass media, digital platforms, publications, public events, or advertising, so that it reaches a broad audience.

However, the Commission cautions that the Fair Treatment law still prohibits the use of state resources (including state time, facilities, email or other resources) for a private business purpose.<sup>4</sup> Thus, for example, a coach employed by the state may not conduct private clinic related phone calls on state time. That said, the Commission has long recognized that certain state facilities also serve as public spaces that are available, on certain terms, to businesses or organizations. Coach-affiliated private organizations may use the school facilities in the same manner that other organizations do, provided they do not receive any preferential treatment. Similarly, advertising the business is also allowed, even on a school campus, if the information is displayed in the same manner and

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<sup>3</sup> In July 2012, the Commission also determined that state employees who are also employees of a private tutoring business were not personally entering into a “financial transaction” with students. See “Application of the State Ethics Code to DOE Teachers Regarding Private Instruction for Pay,” dated July 2012, at 1-2. Coaches privately employed by businesses that provide clinics are not personally entering into substantial financial transactions with those they supervise in violation of the Fair Treatment law. However, they still may not use their state position to provide unwarranted benefits or preferential treatment themselves or a business that employs them.

<sup>4</sup> For instance, the use of confidential information such as student data to market sports clinics to students or parents is strictly prohibited.

location where other afterschool program vendors post their information (e.g., public bulletin board, etc.). Coaches may not, however, recommend or advertise any private business in a manner that amounts to a misuse of their positions. For example, they may not recommend to their class that they participate in the coach's private clinic.

The Fair Treatment law also prohibits coaches from using their state position to provide their private businesses with preferential treatment or unwarranted advantages. Thus, the Commission believes that coaches or other State employees may not:

- Promote a private business during any school events;
- Pressure or coerce students or their parents to sign up for private lessons, or clinics by any particular private business;
- Unfairly reward or provide preferential treatment to students for participating in private clinics or tutoring, such as by doling out playing time based on whether students have participated in any private clinics or events hosted by the employee's private business; or
- Use any state resources, such as state facilities or state time, to assist or promote a private business in any manner.

Finally, the Commission recognizes that coaches may have name recognition that could encourage students and parents to attend their clinics. The Commission urges coaches (or businesses employing them) not to use language in advertisements capitalizing off of the coach's state government position. For instance, clinics should avoid language in advertisements suggesting that someone is a coach at a school and could help with making the school team.

B. HRS § 84-14(a), Conflicts of Interests Law

The Conflicts of Interests Law, HRS § 84-14(a),<sup>5</sup> prohibits state employees from taking any official action directly affecting any business in which they have a substantial financial interest. Coaches have a "financial interest" in any private employer (such as a sports clinic that pays them) or any businesses they own or operate. See HRS § 84-3. "Official action" means a decision, recommendation, approval, disapproval, or any other action which involves the exercise of discretionary authority. The Conflicts of Interests law prohibits coaches from taking any discretionary state action affecting their private clinics. This includes encouraging students under their supervision to attend sports clinics that employ them, or events hosted by their private businesses.

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<sup>5</sup> HRS § 84-14(a)(1) states: "(a) No employee shall take any official action directly affecting: (1) A business or other undertaking in which the employee has a substantial financial interest . . . ."

### **III. Conclusion**

For the reasons discussed above, the Commission believes that the Conflicts of Interest and Fair Treatment laws allow coaches employed by the state to teach or host sports clinics for pay even if students under their supervision attend, so long as the clinic is marketed generally to the public and the coaches abide by the other requirements of the Fair Treatment law.

Dated: Honolulu, Hawai'i, September 18, 2024.

HAWAI'I STATE ETHICS COMMISSION

Wesley F. Fong, Chair

Beverley Tobias, Commissioner

Robert Hong, Commissioner

Cynthia Thielen, Commissioner

Note: Commissioner Roderick Becker was excused from the meeting at which this opinion was considered.