



HAWAII STATE ETHICS COMMISSION

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

INFORMAL ADVISORY OPINION NO. 2013-2

State Official's Receipt of Complimentary Tickets

An organization ("Complainant") filed a charge ("Charge") with the Hawaii State Ethics Commission ("Commission") against a state official who served as a member of a board governing a state agency ("Agency"). The Charge alleged that the official received complimentary tickets from the Agency to events under the jurisdiction of the Agency in violation of the State Ethics Code, Chapter 84, Hawaii Revised Statutes ("HRS").

The Commission concluded that the official did not violate the State Ethics Code's gifts law, gifts reporting law, or conflicts of interests law. However, for the reasons discussed below, the Commission believed that in several instances the official's use of complimentary tickets appeared to have been an "unwarranted" privilege or benefit, prohibited by the State Ethics Code's fair treatment law.

The Commission recognized that several issues raised by the Charge had been addressed, generally, in the Commission's recent review of certain policies of the Agency pertaining to the distribution of complimentary tickets. The Commission resolved the Charge by issuing an Informal Advisory Opinion to the official to explain the application of the State Ethics Code specifically with respect to his receipt and use of complimentary tickets.

The Charge

The Charge related to complimentary tickets to Agency events that the official reported on gifts disclosure statements he filed with the Commission. The Charge appeared to have been prompted by action the official took as a member of the Agency's governing board ("Agency Board") on a certain matter that was opposed by the Complainant. The Charge included four "counts" and alleged that the official: (1) solicited or accepted from the Agency improper "gifts," in the form of complimentary tickets,¹ intended to influence the performance of his official duties in violation of the gifts law, HRS section 84-11; (2) failed to timely file a gifts disclosure statement in violation of the gifts reporting law, HRS section 84-11.5; (3) received "compensation or other consideration" not provided by law in the form of complimentary tickets in violation of HRS section 84-13(2); and (4) took certain official action that constituted a conflict of interest in violation of HRS section 84-14(a).

¹ The alleged improper "gifts" included certain other items the official had received from the Agency in connection with a specific event. In reviewing the Charge, the Commission did not consider the other items, because ethics issues relating to that particular event were previously addressed by the Commission.

Response to the Charge

The official reported that he received two or more complimentary tickets from the Agency to various Agency events. The official filed an answer to the Charge and later provided additional information to explain how he used the tickets.

The official generally denied that he violated the State Ethics Code. He stated that the complimentary tickets he received as a member of the Agency Board were authorized by the Agency Board, through the Agency's administrators.

The official recalled for many of the Agency events, the tickets may not have been used. The official said that to the extent that he attended any events by himself or with guests, attending the events fulfilled a small part of the many obligations of his position and therefore served an official state purpose. The official did not state who used the tickets in all instances but said that he recalled attending one event with his daughter and two grandchildren. He said he believed that their accompanying attendance served an official state purpose because it allowed him to attend, promote, and support the Agency at an event that he may not otherwise have attended on behalf of the Agency.

The official also recalled that his son and grandson may have used two complimentary tickets to an Agency event and that they attended the event in his place. The official believed the attendance of his son and grandson as his "representatives" served an official state purpose. In another situation, the official said he may have provided tickets to his son and daughter-in-law to attend an event in his place. If so, he believed that their attendance likewise served a state purpose.

In addition, the official justified receiving complimentary tickets to Agency events based on his role and responsibilities as a member of the Agency Board, which were described as follows:

- Agency Board officials receive complimentary tickets to the Agency's events to help the officials fulfill their duties for the Agency.
- Agency Board officials are the "face" of the Agency and represent the Agency. Agency Board officials are encouraged, expected, and obligated to oversee, administer, and promote the Agency's programs.
- The Agency's events are an integral part of the Agency's programs. The attendance at those events by Agency Board officials provides an opportunity for the officials to gain valuable first-hand observational knowledge of the impact and effect the events have on the Agency and the community. Agency Board officials can then formulate a plan of action to achieve their goals for the Agency.
- To the extent that the official received more than one complimentary ticket, the official emphasized that Agency Board officials must devote a significant amount of time and energy for what is a volunteer activity.²

² The Agency Board members serve without compensation.

- The State of Hawaii and the Agency should equip the individuals who serve on the Agency Board with the necessary means to carry out the high expectations of their volunteerism.
- Agency Board officials act as the Agency's ambassadors to the external community. Attendance at the Agency's events is a very effective way to accomplish this, as the events serve as a direct bridge to the external community.

Application of the State Ethics Code

HRS section 84-11 (Gifts) and HRS section 84-11.5 (Gifts Reporting)

HRS section 84-11, the gifts law, prohibits an employee, including a member of a state board³ from soliciting, accepting or receiving any gift under circumstances in which it can reasonably be inferred that the gift is offered to influence or reward the employee in the performance of his official duties.⁴ HRS section 84-11.5, the gifts reporting law, requires employees to disclose, annually, certain reportable gifts that they received during a 12-month (June 1 to June 1) reporting period.⁵

³ The State Ethics Code defines "employee" to include members of state boards.

⁴ HRS section 84-11, the gifts law, provides:

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.

⁵ HRS section 84-11.5, the gifts reporting law, states in relevant 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.

The Charge asserted that the complimentary tickets that the official received were prohibited gifts, alleging that it could be reasonably inferred that the Agency gave the tickets to the official to influence him in performing his official duties.

As part of its recent review of the Agency's policies governing the distribution of complimentary tickets to Agency events, the Commission considered whether the tickets issued by the Agency to the Agency's officials and employees were "gifts" for purposes of the State Ethics Code. The Commission concluded that the tickets were not "gifts." Rather, the Commission determined that the tickets were "state assets" and opined that the Agency's distribution of those tickets therefore had to be consistent with the State Ethics Code. Specifically, the Commission advised the Agency that the fair treatment law, HRS section 84-13, applied. The Commission explained that the fair treatment law prohibited the Agency from issuing complimentary tickets to Agency officials, Agency employees, and others absent a legitimate state purpose.

Accordingly, with respect to the official, the Commission did not believe that his receipt of complimentary tickets raised any issue under the gifts law, HRS section 84-11. Moreover, consistent with the guidance issued to the Agency regarding the distribution of complimentary tickets, the Commission did not believe that the official was required under the gifts reporting law, HRS section 84-11.5, to report his receipt of complimentary tickets on a gifts disclosure statement.

HRS section 84-14(a) (Conflicts of Interests)

HRS section 84-14(a), pertaining to conflicts of interests, prohibits a state employee or state board member from taking official action directly affecting a business or undertaking in which he has a substantial financial interest.⁶ In alleging that the official violated HRS section 84-14(a) by taking certain official action, the Charge presumed that the official had a "financial interest"⁷ in the Agency. The Commission disagreed. There were no facts to suggest that the official may have had a "financial interest" in a "business or undertaking" that was directly affected by his official action. For this reason, the Commission did not believe there was any basis to the allegation that the official's participation in certain official action constituted a conflict of interest under HRS section 84-14(a).

⁶ HRS section 84-14(a) states in pertinent part:

§84-14 Conflicts of interests. (a) No employee shall take any official action directly affecting:

A business or other undertaking in which the employee has a substantial financial interest

⁷ Pursuant to HRS section 84-3, a "financial interest" includes any of the following: (1) an ownership interest in a business; (2) a creditor interest in an insolvent business; (3) an employment, or prospective employment for which negotiations have begun; (4) an ownership interest in real or personal property; (5) a loan or other debtor interest; or (6) a directorship or officership in a business. A "business," as defined in HRS section 84-3, does not include a state entity.

HRS sections 84-13 and 84-13(2) (Fair Treatment)

HRS section 84-13, the fair treatment law, prohibits a state employee or board member from using or attempting to use his position to unfairly benefit himself or others. HRS section 84-13(2), a subsection of the fair treatment law, specifically prohibits a state employee or board member from accepting or receiving additional “compensation or other consideration” for performing his official duties except as provided by law. The fair treatment law states in pertinent 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; including but not limited to the following:

* * *

(2) Accepting, receiving, or soliciting compensation or other consideration for the performance of the legislator's or employee's official duties or responsibilities except as provided by law.

The Charge alleged that the complimentary tickets the official received from the Agency were prohibited “compensation” or “consideration” in violation of HRS section 84-13(2). In reviewing this issue, the Commission considered whether the official’s receipt and use of complimentary tickets constituted an “unwarranted” privilege or benefit, prohibited under the general provisions of HRS section 84-13. The Commission believed that the official’s use of complimentary tickets in several instances appeared to have been prohibited under HRS section 84-13.⁸

⁸ See also Advisory Opinion No. 96-1 and Advisory Opinion No. 86-8. In Advisory Opinion No. 96-1, the Commission reviewed a state agency’s practice of distributing free tickets to events under the jurisdiction of the agency. The Commission opined that the receipt of free tickets by agency officials without statutory authorization and in the absence of a valid state purpose was prohibited by HRS section 84-13 and section 84-13(2). The Commission believed that the receipt of free tickets for personal guests constituted “compensation” prohibited under HRS section 84-13(2), as there was no statutory authorization for agency officials to receive free tickets for personal guests. In Advisory Opinion No. 86-8, the Commission reviewed a state board’s practice of distributing to its members tickets to events regulated by the board. The Commission, interpreting and applying the fair treatment law, believed it was an unwarranted privilege for board members to receive extra tickets to use for personal guests unless there was a state purpose related to the acceptance and use of the tickets. The Commission believed that extra tickets for guests was “compensation” or “consideration” and that their acceptance and use absent a valid state purpose or without valid statutory authorization violated HRS section 84-13(2). With respect to the instant Charge, the Commission believed that the official’s use of complimentary tickets in several instances likely was prohibited under HRS section 84-13. The Commission therefore found it unnecessary to further analyze the Charge under HRS section 84-13(2).

The Commission recognized that the Agency Board was vested with broad governance responsibilities with respect to the Agency and that the officials serving on the Agency Board were the Agency's "ambassadors" to the external community. Given the officials' responsibilities and stature, the Commission recognized that the attendance at Agency events by Agency Board officials served a "protocol" purpose and, therefore, acceptance of complimentary tickets for Agency events was consistent with the State Ethics Code. The Commission applied the guidance it had recently issued to the Agency regarding the Agency's policies for distributing complimentary tickets, and stated that Agency Board officials may accept two complimentary tickets per Agency event: one for the official and one for the official's spouse or significant other. Any additional complimentary tickets issued to the official, however, must be for a legitimate state purpose.

The Commission did not believe that the State Ethics Code prohibited the official from accepting one complimentary ticket for himself to attend Agency events. Because of the official's position as a member of the Agency Board, the Commission believed that receiving a complimentary ticket for himself served a legitimate state purpose.

Although the Commission has determined that an Agency Board official may be entitled to a second complimentary ticket for use by the official's spouse or significant other, the official did not claim to have used a second complimentary ticket for such purpose. The official indicated that tickets he received were used by family members that included his son, daughter-in-law, daughter, and grandchildren. On one occasion, it appeared that more than one additional complimentary ticket may have been used. It also appeared that the official may have provided tickets to family members to attend events in his place.

To justify his receipt and use of the additional complimentary tickets, the official asserted that the accompanying attendance of family members served an official state purpose because it "allowed" him to attend, promote, and support the Agency at an event he may not have otherwise attended on behalf of the Agency. The Commission was not persuaded by that argument.

The Commission also found it troubling that the official may have transferred complimentary tickets he received to members of his family to "represent" him at events that he did not attend, especially given the official's position that Agency Board officials are the "face" of the Agency. As such, the Commission questioned the propriety of the official's transfer of tickets to family members to "substitute" for him as the face or ambassador of the Agency.

In short, it appeared that the official's receipt and use of additional complimentary tickets for the family members he described was prohibited under HRS section 84-13.⁹

⁹ The Commission did not believe that the State Ethics Code prohibited an Agency Board official from purchasing tickets to Agency events at fair market value for immediate family members.

The Commission also believed that transferring complimentary tickets to family members to attend events in the official's place likely was in violation of HRS section 84-13.¹⁰

Notwithstanding the Commission's belief that the official's use of complimentary tickets for family members likely was prohibited under the State Ethics Code, the Commission resolved the Charge by issuing him an Informal Advisory Opinion, and did not believe that any further action against him was warranted under the circumstances. The Commission was satisfied that, henceforth, the Agency would implement ticket distribution policies consistent with the Commission's recent guidance issued to the Agency, and in accordance with the State Ethics Code. The Commission expected that the Agency's policies would serve to prevent the types of problems that arose in the official's case.

Dated: Honolulu, Hawaii, September 18, 2013.

HAWAII STATE ETHICS COMMISSION

Cassandra J. Leolani Abdul, Chair
Edward L. Broglio, Vice Chair
Susan N. DeGuzman, Commissioner
Ruth D. Tschumy, Commissioner
David O'Neal, Commissioner

¹⁰ The Commission did not believe that complimentary tickets issued by the Agency to Agency Board officials were transferable.