



# HAWAII STATE ETHICS COMMISSION

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

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## INFORMAL ADVISORY OPINION NO. 2016-01

On February 18, 2016, the Hawaii State Ethics Commission (“Commission”) issued a Charge against Jane Doe for an alleged violation of the conflicts of interest law, Hawaii Revised Statutes (“HRS”) section 84-14(d). Having investigated the allegations in the Charge, the Commission is closing its review of this matter with the issuance of this Informal Advisory Opinion.

### I. Factual Background

The following alleged facts were obtained through the Commission’s investigation. Jane Doe is employed by a state agency (“Agency”) as a full-time, permanent state employee.

In addition, Jane Doe maintains outside employment as a private security officer for a company (“Company”). The Company is contracted by the Agency to provide security services at certain state facilities.

In her private capacity as a security officer, Jane Doe was assigned to work at the same facility where she worked as a state employee. Jane Doe’s duties as a security officer were to monitor security posts and conduct random security checks and inspections to ensure that personnel entering secured areas had valid security clearances and did not possess any prohibited items.

If a security violation or incident occurred, the Company’s security officers were required to submit incident reports and written statements. Security reports were reviewed and approved by one of the Company’s security managers and later submitted to the Agency for final review.

### II. Application of the Hawaii State Ethics Code, HRS Chapter 84

The State Ethics Code, HRS chapter 84, establishes mandatory standards of conduct that apply to all state employees.<sup>1</sup> The law requires the Commission to administer and enforce the State Ethics Code so that public confidence in public servants will be preserved.<sup>2</sup>

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<sup>1</sup> HRS section 84-3.

<sup>2</sup> Preamble, HRS chapter 84.

### HRS Section 84-14(d), Conflicts of Interests

The State Ethics Code includes a conflicts of interests law, HRS section 84-14, which prohibits employees from engaging in certain activities that may conflict with their state duties. HRS section 84-14(d) prohibits a state employee from assisting or representing any person or business, for pay, on matters before the employee's state agency. Specifically, HRS section 84-14(d) provides:

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 the legislator or employee has participated or will participate as a legislator or employee, nor shall the legislator or employee assist any person or business or act in a representative capacity for a fee or other compensation on such bill, contract, claim, or other transaction or proposal before the legislature or agency of which the legislator or employee is an employee or legislator.

The purpose of HRS section 84-14(d) is to prevent influence-peddling, or the appearance of influence-peddling, i.e., to prevent a state employee from using the employee's contacts within his or her state agency to obtain unfair advantages or preferential treatment for private interests. Thus, HRS section 84-14(d) prohibited Jane Doe from assisting or representing any business, for pay, on a matter before her state agency.

Jane Doe was assigned as a private security officer to monitor various security check points and secured areas at state facilities that were operated and managed by the Agency. Her outside employment as a private security officer required Jane Doe to conduct security inspections of other Agency employees on a regular basis and notify Agency administrators regarding security incidents or threats. In performing these actions for the Company, Jane Doe appeared to be assisting or representing her private employer, for pay, on official matters before her state agency. Based on this, Jane Doe's actions appear to have violated HRS section 84-14(d).

### **III. Issuance of an Informal Advisory Opinion**

It appeared that Jane Doe was unaware her outside employment duties created a prohibited conflict of interest under the State Ethics Code. Jane Doe was informed that the State Ethics Code does not prohibit her from maintaining outside employment with the Company, as long as: (1) the outside employment is performed during non-state work hours, (2) the outside employment duties do not require Jane Doe to communicate with other Agency employees on official matters on behalf of the Company, and (3) in her capacity as a state employee, Jane Doe is not required to take official action that may directly affect the Company. Having been so informed, Jane Doe agreed to notify her private employer and request a new post assignment that

would not require her to assist or represent the Company on matters before her own state agency, to ensure future compliance with the requirements of the State Ethics Code.

Considering the totality of circumstances in this case, the Commission believed it was appropriate to resolve this matter with an Informal Advisory Opinion to educate and advise Jane Doe about the application of the State Ethics Code, and in particular, HRS section 84-14(d). The Commission strongly recommended that Jane Doe seek advice from the Commission should she have any questions about the code's application to outside employment activities in the future.

This redacted public version of the Informal Advisory Opinion that was issued to Jane Doe is published pursuant to HRS section 84-31(f) and is intended to provide information and education on the application of the State Ethics Code.

Dated: Honolulu, Hawaii, June 16, 2016.

HAWAII STATE ETHICS COMMISSION

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