



# HAWAII STATE ETHICS COMMISSION

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

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## **Resolution of Charge 2013-1**

(Charge No. 13-Cg-7)

Golf from State Vendors

November 20, 2013

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On June 26, 2013, the Hawaii State Ethics Commission (“Commission”) issued a charge (“Charge”) against John Doe, a State Department of Transportation (“DOT”) engineer, for violations of the gifts and gifts reporting provisions of the State Ethics Code, Chapter 84, Hawaii Revised Statutes (“HRS”). The Charge alleged that John Doe improperly accepted an invitation to play in a charity golf tournament paid for by DOT vendors Mitsunaga & Associates, Inc. and/or TM Designers, Inc., and accepted prizes arising from his participation in the golf tournament, including a Rolex wristwatch. The Charge also alleged that John Doe failed to file a gifts disclosure statement with the Commission reporting the entry fee to the golf tournament and the prizes from the golf tournament.

During its investigation, the Commission obtained information indicating that John Doe had accepted invitations to play in a number of other charity golf tournaments and recreational golf at Mauna Lani Resort. On each occasion, it appears that his golf was paid for by a DOT vendor. John Doe asserted that he was unaware that the State Ethics Code prohibited him from accepting complimentary golf from DOT vendors.

The Commission and John Doe agreed to a resolution of the Charge and other possible violations of the State Ethics Code arising from his acceptance of other complimentary golf identified by the investigation. As part of the negotiated resolution, John Doe paid an administrative penalty in the amount of \$7,500 to the State’s General Fund.

### **Alleged Facts**

In his capacity as a DOT engineer, John Doe was directly involved in awarding and managing DOT contracts. John Doe served as the DOT contact for vendors responding to requests issued by the DOT for professional services and served on a number of selection committees that awarded DOT contracts. John Doe also reviewed submissions by vendors in response to DOT requests for proposals and other similar procurement mechanisms, scored proposals, and ranked vendors as part of the process of awarding DOT contracts. Once the contracts were awarded, John Doe was directly responsible for managing certain projects and overseeing the vendors performing work relating to those projects.

The information that the Commission obtained through its investigation, including information provided by John Doe and records obtained from DOT vendors and charity golf tournament organizers, appears to establish that, during the years 2007 through 2010, John Doe accepted invitations to play golf paid for by a number of DOT vendors directly subject to his official action as a DOT engineer. The DOT vendors that appear to have paid for John Doe's golf are Mitsunaga & Associates, Inc., TM Designers, Inc., Bowers + Kubota Consulting, Inc., and R. M. Towill Corporation.<sup>1</sup>

The entry fees to the various charity golf tournaments in which John Doe participated ranged from \$150 to \$800, which generally included green fees, food and beverages provided at the event, and gifts given to all participants. The Commission construes the value of the invitation to John Doe, i.e., the "gift," to be the total amount paid on his behalf to participate in the particular charity golf tournament, including any charitable donation. The cost of the recreational golf at Mauna Lani Resort, including pre- and post-golf meals, was approximately \$200.

In addition to the gifts given to all tournament participants, it appears that John Doe won a number of prizes, some of which were of significant monetary value. In the Commission's view, John Doe would not have won those prizes but for his acceptance of the invitations to participate in the various charity golf tournaments. The prizes that John Doe appears to have won include the following:

- Rolex wristwatch, valued at approximately \$5,000;
- Round of golf at a Maui golf resort (won twice);
- Round of golf at a Kauai golf resort, including airfare worth \$100 and a one-day car rental;
- Interisland airfare;
- One-night Maui hotel stay, including breakfast;
- Round-trip travel for two and car transportation on the Hawaii Superferry;
- Waialae Country Club gift certificate to host one team;
- Oakley sunglasses valued at \$160;
- Golf shop \$100 gift certificate;
- Golf balls;
- Long sleeve shirt; and
- Free car wash and coupons for auto detailing.

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<sup>1</sup> The Commission notes that there was no administrative hearing with respect to the allegations against John Doe. For that reason, the Commission has not made any findings of fact or otherwise concluded that the golf was paid for by any of the identified DOT vendors. Rather, the Commission's investigation, which includes information from John Doe, provides a reasonable basis to believe that the vendors may have paid for the golf. If the Commission and John Doe had not resolved this matter, the information which appears to indicate that the DOT vendors paid for John Doe's golfing activities would have been sufficient to support a charge against him.

## Application of the State Ethics Code

To achieve the underlying purpose in creating a code of ethics applicable to state employees, the Hawaii State Legislature created the Commission to enforce the provisions of the law so that public confidence in state employees will be preserved.<sup>2</sup> Consistent with that mandate, the State Ethics Code provides that the Commission must liberally construe the provisions of the State Ethics Code “to promote high standards of ethical conduct in state government.”<sup>3</sup> It is with this foundation that the Commission reviewed and analyzed John Doe’s acceptance of complimentary golf.

### HRS section 84-11 (Gifts)

The gifts law, HRS section 84-11, prohibits a state employee from accepting or receiving any gift under circumstances in which it can reasonably be inferred that the gift is intended to influence the employee in the performance of his official duties or is intended as a reward for any official action on his part.<sup>4</sup>

In determining whether a gift is prohibited by the State Ethics Code, the Commission generally considers: (1) the value of the gift; (2) the relationship between the employee and the donor of the gift, including whether the donor is subject to official action by the employee; and (3) whether the gift provides any “state benefit” or is primarily personal in nature. Where an employee is involved in procurement or has oversight over a state vendor’s performance of a contract, there is a heightened inference that a gift offered to the employee by the vendor is offered to influence or reward the employee.

In this case, the Commission understands that John Doe was involved in awarding and administering contracts involving the DOT vendors which appear to have paid for his participation in charity golf tournaments and recreational golf. It appears that the complimentary golf was a personal gift, i.e., there was no “state benefit” associated with John Doe’s participation in the golf tournaments, and the cost of the golf was relatively substantial. Based on that understanding, it appears that the gifts law likely prohibited John Doe from accepting gifts of complimentary golf from those

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

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

<sup>4</sup> HRS section 84-11 states:

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.

vendors.<sup>5</sup> Furthermore, the Commission considers the prizes that John Doe received or won because of his participation in the charity golf tournaments to be part of the complimentary golf that he accepted. As noted above, but for his acceptance of the invitations to play in the charity golf tournaments, John Doe would not have had the opportunity to receive the prizes from the tournaments. Therefore, the Commission believes that the gifts law likely also prohibited John Doe's receipt of the prizes.

#### HRS section 84-11.5 (Reporting of Gifts)

The gifts reporting law, HRS section 84-11.5, requires a state employee to report any gift or gifts that he receives, valued singly or in the aggregate in excess of \$200, if: (1) the source of the gift has interests that may be affected by official action taken by the employee; and (2) the gift is not exempted from the reporting requirements.<sup>6</sup>

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<sup>5</sup> It should also be noted that the fair treatment law, HRS section 84-13, prohibits a state employee from using or attempting to use his official position to obtain unwarranted advantages or benefits for himself or others. For example, an employee's acceptance of complimentary golf from a vendor of the employee's state agency may raise concerns regardless of whether the vendor is directly subject to the employee's official action. If the employee is invited solely because of his status as a state employee, the employee's acceptance of complimentary golf in that situation may be an unwarranted benefit and prohibited under HRS section 84-13.

<sup>6</sup> HRS section 84-11.5 states in pertinent 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.
- (c) The gifts disclosure statement shall contain the following information:
  - (1) A description of the gift;
  - (2) A good faith estimate of the value of the gift;
  - (3) The date the gift was received; and
  - (4) The name of the person, business entity, or organization from whom, or on behalf of whom, the gift was received.
- (d) Excluded from the reporting requirements of this section are the following:
  - (1) Gifts received by will or intestate succession;
  - (2) Gifts received by way of distribution of any inter vivos or testamentary trust established by a spouse or ancestor;
  - (3) Gifts from a spouse, fiancé, fiancée, any relative within four degrees of consanguinity or the spouse, fiancé, or fiancée of such a relative. A gift from any such person is a reportable gift if the person is acting as an agent or intermediary for any person not covered by this paragraph;
  - (4) Political campaign contributions that comply with state law;
  - (5) Anything available to or distributed to the public generally without regard to the official status of the recipient;
  - (6) Gifts that, within thirty days after receipt, are returned to the giver or delivered to a public body or to a bona fide educational or charitable organization without the donation being claimed as a charitable contribution for tax purposes; and
  - (7) Exchanges of approximately equal value on holidays, birthday, or special occasions.

As discussed above, the companies which appeared to have paid for John Doe's entry or registration fees to the charity golf tournaments and for his recreational golf at Mauna Lani Resort were subject to his official action as a DOT engineer. It does not appear that any of the exceptions to reporting the gifts applied. Based on the information obtained from the Commission's investigation, it appears that John Doe violated HRS section 84-11.5 by failing to report those complimentary golf invitations he accepted that met the statutory reporting criteria.

#### Negotiated Resolution of Charge and Related Matters

The Commission and John Doe negotiated a resolution of the Charge and other possible violations of the State Ethics Code arising from his acceptance of other complimentary golf identified by the investigation. As part of the negotiated resolution, John Doe paid an administrative penalty of \$7,500 to the State's General Fund.

John Doe stated that he was not aware that the State Ethics Code prohibited him from accepting complimentary golf from DOT vendors. Upon learning that his actions appeared to be in violation of the State Ethics Code, John Doe stated that he has refused similar invitations to play golf.

The Commission acknowledges that John Doe cooperated fully in the Commission's investigation. Among other things, he voluntarily provided information about the complimentary golf and related prizes and gifts that he received.

In considering the totality of facts and circumstances, the Commission believes that the resolution is reasonable, fair, and consistent with preserving the public's confidence in government employees. The Commission believes that no further action against John Doe is warranted with respect to either the Charge or other complimentary golf that was revealed through the Commission's investigation, and hereby determines that these matters are closed.