



HAWAII STATE ETHICS COMMISSION

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

Resolution of Charge **2013-3**

(Charge No. 13-Cg-9)

Gift from State Vendor

November 20, 2013

On August 21, 2013, the State Ethics Commission issued Charge No. 13-Cg-9 (“Charge”) against John Doe, a maintenance supervisor employed by the Department of Education (“DOE”). The Charge alleged that John Doe violated Hawaii Revised Statutes (“HRS”) section 84-11, the Gifts Law, by accepting a damaged riding lawnmower from a DOE vendor and HRS section 84-11.5, the Gifts Disclosure Law, for failing to file a gifts disclosure statement reporting the gift. John Doe filed an answer to the Charge on September 19, 2013. Although John Doe denies knowing that his acceptance of the lawnmower may have violated the State Ethics Code, he generally does not contest the factual allegations in the Charge, which are repeated herein, and has agreed to a resolution of the Charge. As part of that resolution, John Doe has paid an administrative fine of \$500 to the State of Hawaii.

Alleged Facts

Based on information obtained in the course of its investigation, including John Doe’s response to the Charge, the Commission understood the facts to be as follows. John Doe is a maintenance supervisor with the DOE. Although he is not involved in selecting vendors, he does have a role in determining whether equipment is needed and in providing general specifications as to the type of equipment required. As part of the procurement process, he regularly meets with sales agents to discuss their companies’ equipment.

In 2008, John Doe accepted a damaged riding lawnmower from a sales agent for a company that, in the past, has sold maintenance equipment to the DOE and continues to be a DOE vendor. According to the sales agent, the lawnmower had been damaged in shipping and had been sitting in storage at the company for some years. The company directed the sales agent to either dispose of it or give it away. The lawnmower was delivered to John Doe at his DOE workplace on a neighbor island. The

lawnmower was given to John Doe for his personal use and was not intended as a gift or donation to the DOE.

The cost of a new and undamaged lawnmower of this type was between \$10,000 and \$13,000. However, the lawnmower that John Doe received was damaged. Specifically, according to John Doe, the frame was bent, the radiator was damaged, certain parts were missing and there was no cutting deck. John Doe asserted that he spent his own time and money to repair the lawnmower.

The Gifts Law

The State Ethics Code prohibits a state employee from accepting any gift if it is reasonable to infer that the gift is intended to influence or reward the employee.¹ In determining whether or not a gift is acceptable, the Commission generally considers the circumstances of the gift, including: (1) the value of the gift; (2) the relationship between the donor and the recipient; and (3) whether the gift appears intended to personally benefit the recipient or whether, instead, it appears to benefit the State. In light of the underlying purpose of the State Ethics Code, i.e., to preserve public confidence in state employees, there are heightened concerns about gifts from state vendors when the employee is involved in purchasing or procurement.²

In this case, the fair market value of the lawnmower in an undamaged condition was between \$10,000 and \$13,000. Although the lawnmower was damaged and it is difficult to place an exact value on the damaged lawnmower, based on its investigation, the Commission believed that it had substantial value: the company and/or John Doe paid to ship the lawnmower to the island on which John Doe resided; the sales agent believed that, at a minimum, John Doe would be able to salvage parts from the lawnmower; John Doe was able to repair the lawnmower. Accordingly, notwithstanding its damaged condition, the Commission considers the lawnmower to have been a "gift" of relatively substantial value for purposes of the State Ethics Code.

It also appeared that the company was involved in actions taken by John Doe as a state employee. John Doe had some role in the procurement process. He was involved in determining whether maintenance equipment was needed and provided general specifications of the needed equipment. Although his role in purchasing

¹ HRS section 84-11, the gifts law, reads:

§84-11 Gifts. 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.

² See HRS chapter 84, Preamble.

equipment was not extensive, it was significant enough for him to regularly meet with sales agents vying for the DOE's business, including the agent who gave him the lawnmower.

Finally, the lawnmower was a purely personal gift to John Doe and was not a gift or donation to the DOE.

Based on this information and considering all of the relevant factors, the Commission believed that it was reasonable to infer that the lawnmower was given to John Doe because of John Doe's state position and to influence or reward John Doe. Thus, the Commission believed that John Doe should not have accepted the lawnmower and appeared to have violated the Gifts Law by doing so.

The Gifts Disclosure Law

The Gifts Disclosure Law requires the public disclosure of gifts valued in excess of \$200 received from a single source.³ The Commission believed that, even in its damaged condition, it was likely that the lawnmower had a value in excess of \$200. Given this, John Doe should have filed a gifts disclosure statement with the Commission by June 30, 2009. He did not do so. Thus, it appeared that John Doe's failure to timely report the lawnmower likely violated the Gifts Disclosure Law.

Resolution of Charge No. 13-Cg-9

Based on its investigation and as explained above, the Commission believed that John Doe likely violated the Gifts Law and the Gifts Disclosure Law. Considering the totality of the circumstances, the Commission believed that it was fair and in the public interest to resolve Charge No. 13-Cg-9 by the issuance of this Resolution of Charge and John Doe's payment of \$500 to the State of Hawaii.

³ In relevant part, HRS section 84-11.5, the gifts disclosure law, reads:

§84-11.5 Reporting of gifts. (a) Every legislator and employee shall file a gifts disclosure statement with the state ethics commission on June 30 of each year if all of 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 the reporting requirements under this subsection.