



HAWAII STATE ETHICS COMMISSION

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

Resolution of Charge 2014-2

(Charge No. 13-Cg-15)

Hiring and Supervision of Spouse

February 19, 2014

On November 20, 2013, the State Ethics Commission issued Charge No. 13-Cg-15 (“Charge”) against Jane Doe,¹ a teacher employed by the Department of Education (“DOE”). The Charge alleged that Jane Doe violated Hawaii Revised Statutes (“HRS”) section 84-14(a), the conflicts of interests law, by recommending and/or proposing that her spouse be hired by a supplemental learning program that she administered, and by supervising her spouse once he was hired. The Charge also alleged that Jane Doe violated the conflicts of interests law by reviewing, approving, and/or submitting her spouse’s time sheets and by approving, and/or submitting time sheets that did not accurately reflect the hours that her spouse worked during certain time periods. Jane Doe filed an answer to the Charge in which she provided further information but did not dispute the allegations in the Charge. Jane Doe has agreed to a resolution of the Charge, which includes the publication of this Resolution of Charge. As part of that resolution, Jane Doe also has paid an administrative fine of \$2,000 to the State of Hawaii.

Alleged Facts

Based on its investigation, including information from Jane Doe, the Commission understood the facts to be as follows:

Jane Doe is a teacher at a DOE school. The school offers a supplemental learning program (“program”) which is administered by Jane Doe. Jane Doe’s spouse initially assisted Jane Doe with the program as a volunteer. Jane Doe mentioned her spouse’s assistance to the school’s principal and recommended and/or proposed that her spouse be hired under the program. The principal hired Jane Doe’s spouse as a part-time teacher under the program; he was employed in that capacity for approximately 22 months. As the administrator of the program, Jane Doe directed and supervised her spouse during his employment with the program.

¹ “Jane Doe” is a pseudonym.

For program-related work, Jane Doe's spouse was paid at an hourly rate and was required to submit time sheets reflecting the actual hours that he worked. Jane Doe reviewed, approved, and/or submitted the time sheets to the DOE for processing and payment. As a part-time teacher, Jane Doe's spouse could only be paid for up to 17 hours of work per week during periods when school was in session. During breaks when school was not in session, he could be paid for up to 35 hours of work per week. On occasion, Jane Doe's spouse worked in excess of 17 hours per week while school was in session. Jane Doe allowed her spouse to report additional hours that he worked in excess of the 17 hours on time sheets that he submitted for periods in which he could be compensated for up to 35 hours. Jane Doe approved and/or submitted to the DOE the inaccurate time sheets. As a result, Jane Doe's spouse was paid for work during periods in which he did not perform that work.

The Conflicts of Interests Law

The State Ethics Code prohibits a state employee from taking any official action directly affecting her own financial interests or the financial interests of her spouse. The statute provides in relevant part:

§84-14 Conflicts of interests. (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. . . .

"Financial interest" includes, among other things, an employment interest held by the employee, the employee's spouse, or the employee's dependent children.² The term "official action" is defined as any discretionary action by the employee.³ "Official action"

² The term "financial interest" is defined in HRS section 84-3:

"Financial interest" means an interest held by an individual, the individual's spouse, or dependent children which is:

- (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.
- (6) A directorship or officership in a business.

³ HRS section 84-3 defines "official action" as:

a decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority.

is not limited to a final decision but, rather, includes other types of discretionary action such as recommendations and approvals.

In this situation, Jane Doe appears to have taken official action that directly affected a substantial financial interest, in violation of the State Ethics Code's conflicts of interests provision. Specifically, Jane Doe recommended and/or proposed to the school's principal that her spouse be hired; after he was hired for the program that she administered, she directed and supervised her spouse; she reviewed, approved and/or submitted her spouse's time sheets to the DOE; she repeatedly allowed her spouse to report time that he worked in one pay period to a different pay period; and she approved, and/or submitted inaccurate time sheets.

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Based on its investigation, the Commission believed that it was likely Jane Doe may have violated the conflicts of interests law. Given that Jane Doe's spouse had volunteered for the program for some time; that there was no indication that he was not qualified for the position; that both Jane Doe and her principal stated that this position was difficult to fill; that Jane Doe's principal was aware of this situation; and that, despite the inaccurate time sheets, there was no indication that Jane Doe's spouse was paid for work that he never performed, the Commission believed that it was fair and in the public interest to resolve Charge No. 13-Cg-15 by the issuance of this Resolution of Charge and by Jane Doe's payment of \$2,000 to the State of Hawaii.