



HAWAII STATE ETHICS COMMISSION

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

Resolution of Charge **2015-3**

(Charge No. 2015-Cg-2)

Conflicts of Interests Due to Board Member's Representation of Private Employer

October 29, 2015

On March 18, 2015, the Hawaii State Ethics Commission ("Commission") issued Charge No. 2015-Cg-2 ("Charge") against John Doe for violations of a provision in the conflicts of interests section of the State Ethics Code, Hawaii Revised Statutes ("HRS") section 84-14(d). At the time of the actions that formed the basis of the Charge, John Doe was a member of a Hawaii Health Systems Corporation ("HHSC") regional board of directors ("Regional Board").¹ The Charge alleged that John Doe violated HRS section 84-14(d) by assisting and/or representing his private employer before the HHSC Regional System.

The Commission and John Doe agreed to a resolution of the Charge, which includes the publication of this Resolution of Charge.² As part of that resolution, John Doe also agreed to pay \$1,000 to the State of Hawaii.

Alleged Facts

Based on its investigation, the Commission understood the facts to be as follows:

In his private capacity, John Doe is an employee and officer of a nonprofit organization ("Organization"). His employment with the Organization began before his appointment to the Regional Board and continued after his appointment to the Regional Board. The Commission's investigation indicated that John Doe received a salary or other compensation for his services to the Organization.

During his term as a Regional Board member, John Doe appeared to represent his private employer in transactions involving the HHSC Regional System.

¹The HHSC, a public health system established under HRS chapter 323F, is divided into five regional systems. Each of the five regional systems is governed by a regional system board of directors.

² The resolution of this Charge does not constitute an admission by John Doe, or a determination by the Commission, that John Doe violated the State Ethics Code.

As an employee and officer of the Organization, John Doe participated in discussions and meetings with HHSC Regional System personnel to discuss a proposed agreement between the Organization and the HHSC Regional System. John Doe's actions on behalf of the Organization included submitting a draft agreement to the Regional System for its consideration. The Organization and the HHSC Regional System did not reach an agreement with respect to this matter.

As an employee and officer of the Organization, John Doe executed two other agreements between the Organization and the HHSC Regional System.

Application of the State Ethics Code

As a member of the Regional Board, John Doe was an "employee" for purposes of the State Ethics Code.³ As such, he was subject to, and was required to comply with, all provisions of the State Ethics Code, including the conflicts of interests law, HRS section 84-14.

HRS Section 84-14(d)

The State Ethics Code prohibits a state employee from transacting business on behalf of a private employer with the employee's state agency. Specifically, under HRS section 84-14(d), an employee cannot assist or represent any person or business on a transaction or proposal before the employee's state agency, if he is paid or otherwise compensated to do so.⁴ This prohibition is intended to prevent an employee from using, or appearing to use, contacts and relationships that the employee has developed with other agency employees in order to benefit himself or a private entity.

³ HRS section 84-3 states:

"Employee" means any nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and employees under contract to the State or the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices and judges.

(Emphasis added.)

⁴ HRS section 84-14(d) states:

(d) 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.

HRS section 84-14(d) prohibited John Doe from assisting or representing his private employer for pay on transactions before his state agency, the HHSC.⁵ In his private capacity, John Doe appeared to have assisted and/or represented the Organization in meetings and discussions with HHSC Regional System personnel relating to the proposed agreement between the Organization and the HHSC Regional System. John Doe also appeared to have assisted and/or represented the Organization by executing, on behalf of the Organization, other agreements with the HHSC Regional System. John Doe also appeared to have received a salary from the Organization. Thus, John Doe appeared to have assisted and/or represented the Organization for pay in transactions before the HHSC Regional System, which was prohibited by HRS section 84-14(d).

Resolution of Charge

John Doe cooperated with the Commission throughout its investigation in this case. In his Answer to the Charge, John Doe stated that the Organization was required by law to collaborate with the HHSC Regional System and that he accepted an appointment to the Regional Board in order to contribute to this collaboration. He also stated that he believed he was acting in accordance with the shared goals of the Organization and the HHSC Regional System, and was not aware that his actions implicated the State Ethics Code. John Doe has since left the Regional Board.

The Commission believes that a state employee's misunderstanding or ignorance of the State Ethics Code does not excuse a violation of the law. However, considering the totality of circumstances in this case, the Commission believed it was fair and in the public interest to resolve Charge No. 2015-Cg-2 by the issuance of this Resolution of Charge and by John Doe's payment of \$1,000 to the State of Hawaii.

⁵ As an HHSC Regional Board member, John Doe's state agency was the HHSC, which included the Regional Board and the Regional System.