



HAWAII STATE ETHICS COMMISSION

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

Resolution of Charge 2016-2

(COMPL-C-15-00004)

Charter School Governing Board Member's Conflicts of Interests

April 25, 2016

On August 19, 2015, the Hawaii State Ethics Commission ("Commission") issued Charge No. 2015-Cg-9 ("Charge") against John Doe alleging violations of the conflicts of interests section of the State Ethics Code, Hawaii Revised Statutes ("HRS") sections 84-14(a) and -14(d). John Doe is a member of a governing board of a Public Charter School ("School"). The Charge alleged that John Doe violated HRS section 84-14(a) by taking action as a governing board member directly affecting his private employer and his spouse's employment with the School. The Charge also alleged that John Doe violated HRS section 84-14(d) by assisting or representing his private employer before the School.

The Commission and John Doe agreed to a resolution of the Charge which includes the publication of this Resolution of Charge document. As part of that resolution, John Doe also agreed to pay an administrative penalty of \$2,500 to the State of Hawaii.

Alleged Facts

The Charge alleged the following:

John Doe is a member of the governing board of the School. He is also a full time employee of a private nonprofit organization ("Organization"). John Doe is a founding member of the Organization and, before becoming a paid employee, served as a volunteer for several years. The Organization applied for and received the charter that established the School. The Organization supports the School primarily by entering into long term facilities leases with private landlords and annually subleasing the facilities to the School. The Organization also leases vehicles to the School. The governing board annually approves the School budget which includes an amount for lease payments to the Organization. The governing board also annually approves Memoranda of Understanding ("MOUs") between the School and the Organization for

the lease of facilities and vehicles. Pursuant to these MOUs, throughout the year, the Organization submits invoices to the School for payment of lease rent. On occasion, the Organization has also invoiced the School for repairs and sought reimbursement for the purchase of supplies.

As an employee of the Organization, John Doe prepared and signed the MOUs and submitted them to the School. Also on behalf of the Organization, he submitted invoices for lease rent and repairs. He also occasionally submitted requests for reimbursement to the School.

As a member of the School's governing board, John Doe annually voted to approve the School budget and the MOUs. John Doe was authorized to sign checks on behalf of the School. On several occasions, John Doe signed checks to the Organization on behalf of the School.

John Doe's spouse is an employee of the School. The governing board approves or ratifies employment contracts between the School and its employees. It also, on occasion, takes action affecting the terms of employment of the School employees. It appears that John Doe may have approved or ratified his spouse's employment contract and taken other action affecting her terms of employment.

Application of the State Ethics Code

As a member of a governing board of the School, John Doe is a state employee for purposes of the State Ethics Code.¹ As such, he is subject to, and required to comply with, all provisions of the State Ethics Code, including the conflicts of interests law, HRS section 84-14.²

HRS section 84-14(a)

HRS section 84-14(a), part of the conflicts of interests section of the State Ethics Code, prohibits a state employee from taking official action directly affecting the

¹ In relevant part, HRS section 84-3 reads:

§84-3 Definitions. "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 of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices and judges.

Further, HRS section 302D-12(h) states:

§302D-12 Charter school governing boards; powers and duties. (h) All charter school employees and members of governing boards shall be subject to chapter 84.

² See also Commission Advisory Opinion No. 2015-2.

financial interests of the employee, the employee's spouse, and the employee's dependent children.³ More specifically, a state employee may not take official action affecting his private employer. It appeared that John Doe, as a member of the governing board: voted to approve the School's budget; voted to approve the annual MOUs between the School and the Organization, and; signed School checks issued to the Organization. These actions directly affected the Organization, John Doe's private employer. Accordingly, assuming these allegations to be true, John Doe likely violated HRS section 84-14(a).

HRS section 84-14(a) also prohibited John Doe from taking action affecting his spouse's employment interest with the School. As a member of the governing board, it appeared that John Doe voted to approve or ratify employment contracts with the School, including his spouse's employment contract. It also appeared that he took other action, such as determining furlough days for employees, that also affected his spouse's employment interest with the School. Assuming these allegations are true, John Doe likely violated HRS section 84-14(a) by taking official action directly affecting his spouse's financial interests.

HRS section 84-14(d)

The State Ethics Code prohibits a state employee from transacting business with his own state agency on behalf of a private employer. Specifically, HRS section 84-14(d) prohibits a state employee from receiving compensation to assist or represent any person or business on a transaction or proposal before the employee's own state agency.⁴ The purpose of this law is to prevent a state employee from using, or

³ HRS section 84-14(a) states, 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" means the interest held by the employee, the employee's spouse, and dependent children and includes employment interests. "Business" includes a nonprofit organization. HRS section 84-3.

⁴ HRS section 84-14(d) states:

§84-14 Conflicts of interests. (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.

appearing to use, his state position and the relationships developed through his state employment, to financially benefit himself or his private employer.

John Doe is a member of the governing board and has significant authority over the School and its personnel. It appeared that John Doe assisted or represented the Organization before the School. It appeared that John Doe prepared and signed the annual MOUs, submitted them to the School, and represented the Organization in any discussions or negotiations concerning the terms of the MOUs. It also appeared that John Doe submitted invoices and requests for reimbursement to the School on behalf of the Organization. John Doe appeared to be a paid employee of the Organization and so was compensated for these actions. Thus, assuming these allegations are true, John Doe likely violated HRS section 84-14(d) by assisting or representing the Organization, for pay, in transactions with the School.

Resolution of Charge

John Doe did not file an Answer to the Commission's Charge and does not admit to any violation. John Doe's employment by the Organization was known by the School and it appeared that the governing board did not object or raise any concerns. During the investigation, John Doe and others commented that the Organization exists to support the School and that their interests are identical. The Commission noted, however, that the Organization is a nonprofit corporation that maintains a separate existence from the School. It charges the School an administrative fee on the MOUs. Further, it appears that John Doe receives a full time salary from the Organization for duties that include interacting with a School that he oversees as a member of the governing board.

The Commission further notes that the purpose of the State Ethics Code is to preserve the public's confidence in state government. Towards this end, it prohibits actions that create even the appearance of impropriety. State employees must take care to foster the public's confidence in state employees and state government.

Given the totality of circumstances, the Commission believed it was fair and in the public interest to resolve Charge No. 2015-Cg-9 by the issuance of this Resolution of Charge and by John Doe's payment of \$2,500 to the State of Hawaii.