



# 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 2016-4

(COMPL-C-15-00536)

Supervisor's Use of State Vehicles and Subordinate State Employees for Personal Purposes

May 23, 2016

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On February 18, 2016, the Hawaii State Ethics Commission ("Commission") issued a Charge against Respondent Francis Kekaulua for alleged violations of the State Ethics Code, Hawaii Revised Statutes ("HRS") chapter 84. Respondent Kekaulua is a Construction and Maintenance Superintendent for the Department of Transportation ("DOT") Highways Division.

The Commission and Respondent Kekaulua agreed to resolve the Charge with Respondent's payment of an administrative penalty of \$3,000 to the State of Hawaii and the publication of this Resolution of Charge. The Commission believed that, based on the allegations detailed below, the terms of the resolution were fair and in the public interest.

### I. Alleged Facts

The Commission issued the Charge after its investigation of Respondent Kekaulua for allegedly using state vehicles, state subordinate personnel and other state resources for his own personal purposes. The Charge was based on the following alleged facts.

#### A. Respondent Kekaulua's State Position and Authority Over DOT Employees

Respondent Kekaulua is the Construction and Maintenance Superintendent for the DOT Highways Division, Maintenance Section, Hawaii District. His official duties and responsibilities include directing, managing and supervising DOT work programs on Hawaii Island for the construction, repair and maintenance of roadways, roadsides, bridges and other structures; the repair and maintenance of DOT vehicles and equipment; and the installation and maintenance of traffic control devices.

Respondent Kekaulua exercises supervisory and/or general authority over the DOT Highways Division, Maintenance Section supervisors and employees on the entire island of

Hawaii, including employees assigned to various DOT baseyards on Hawaii Island. Respondent Kekaulua works out of the DOT baseyard in Hilo ("Hilo baseyard").

B. Use of DOT Vehicle for Personal Travel to Hilo

On Sunday, August 2, 2015, Respondent Kekaulua was in Kona on personal business when his personal pickup truck experienced a blown out tire. He apparently attempted, unsuccessfully, to find a business in Kona to repair the tire that day. Respondent Kekaulua contacted a subordinate DOT Highways Division employee, who was an acting unit supervisor at the DOT baseyard in North Kona ("North Kona baseyard"), and asked the employee for help with Respondent's truck. Respondent Kekaulua drove to the North Kona baseyard and used his state-issued key to obtain access to the locked premises. He was met at the baseyard by the acting supervisor.

Respondent Kekaulua asked the acting supervisor to obtain a key to a DOT dump truck parked at the North Kona baseyard. The acting supervisor, using his state-issued key, unlocked the baseyard office and obtained the key to the DOT dump truck as requested by Respondent.

Respondent Kekaulua left his personal truck parked at the North Kona baseyard and drove the DOT dump truck to return home to Hilo. DOT records showed that the DOT dump truck was driven 86 miles by Respondent for the trip from Kona to Hilo.

C. Use of DOT Lowboy Trailer and Subordinate Employee to Transport Respondent's Truck to Hilo

On Monday, August 3, 2015, Respondent Kekaulua spoke to two subordinate employees who were acting unit supervisors at the Hilo baseyard and directed one of the acting supervisors to instruct another DOT Highways Division employee to: (1) load the DOT dump truck on a lowboy trailer<sup>1</sup> at the Hilo baseyard; (2) drive the lowboy trailer to the North Kona baseyard; (3) drop off the DOT dump truck; (4) load Respondent's truck on the lowboy trailer; and (5) drive the lowboy trailer, along with Respondent's truck, back to the Hilo baseyard.

One of the acting supervisors instructed a DOT driver at the Hilo baseyard to carry out Respondent Kekaulua's work directive. The driver, also a subordinate employee to Respondent, drove the lowboy trailer during state work time to transport the DOT dump truck from the Hilo baseyard to the North Kona baseyard, loaded Respondent's truck on the lowboy trailer, and then drove the lowboy trailer with Respondent's truck back to the Hilo baseyard.

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<sup>1</sup> The lowboy trailer is a large semi-trailer, pulled by a truck tractor, that is used to haul heavy equipment and vehicles for the DOT.

DOT records showed that the DOT driver spent approximately four hours of his official work hours driving the lowboy trailer from the Hilo baseyard to the North Kona baseyard and back, and that the lowboy trailer was driven approximately 200 miles for the round trip.

D. Use of Subordinate Employee to Repair Respondent's Truck

After Respondent's truck was transported to the Hilo baseyard, Respondent instructed a supervisor to have one of the DOT Highways Division mechanics replace the tire on Respondent's truck. The supervisor instructed a mechanic to replace Respondent's tire, as instructed. Both the supervisor and mechanic were subordinate employees to Respondent. The mechanic replaced the tire on Respondent's truck during the employee's official work hours.

II. The State Ethics Code, HRS Chapter 84

A. Constitutional Mandate and Statutory Purpose

The State Ethics Code arises from the declaration contained in the State Constitution that "[t]he people of Hawaii believe that public officers and employees must exhibit the highest standards of ethical conduct and that these standards come from the personal integrity of each individual in government."<sup>2</sup> To this end, the State Constitution further directs that the legislature enact a code of ethics that applies to all appointed and elected state officers and employees.

In accordance with this constitutional mandate, the legislature enacted the State Ethics Code and charged the Commission with administering and enforcing the law "so that public confidence in public servants will be preserved."<sup>3</sup> It is in this context that the Commission examines every employee's actions, including the actions of Respondent Kekaulua.

B. Application of the State Ethics Code to Respondent Kekaulua

The State Ethics Code prohibits an employee from misusing his official position. Specifically, the "fair treatment" law, HRS section 84-13, states:

**§84-13 Fair treatment.** No legislator or employee shall use or attempt to use the legislator's or employee's official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for oneself or others . . . .

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<sup>2</sup> Hawaii State Constitution, Art. XIV.

<sup>3</sup> HRS Chapter 84, Preamble.

As a state employee, Respondent Kekaulua was required to comply with all provisions of the State Ethics Code, including the fair treatment law. Respondent Kekaulua appeared to have violated HRS section 84-13 by using his official position to obtain unwarranted personal privileges and advantages for himself. The Charge alleged that Respondent Kekaulua violated HRS section 84-13 by:

- (1) Using the DOT dump truck, a state vehicle, for Respondent's personal purposes;
- (2) Using a subordinate state employee (the North Kona baseyard acting supervisor) to obtain the key to the DOT dump truck for Respondent's personal purposes;
- (3) Using the DOT lowboy trailer, a state vehicle, for Respondent's personal purposes;
- (4) Using a subordinate state employee (the DOT driver) to drive the DOT lowboy trailer from the Hilo baseyard to the North Kona baseyard and back for Respondent's personal purposes;
- (5) Directing and/or causing state work time to be used by a subordinate state employee (the DOT driver) for Respondent's personal purposes;
- (6) Using a subordinate state employee (the DOT mechanic) to perform work on Respondent's truck for Respondent's personal purposes;
- (7) Directing and/or causing state work time to be used by a subordinate state employee (the DOT mechanic) for Respondent's personal purposes; and
- (8) Causing other state resources, such as diesel fuel for the DOT lowboy trailer, to be used for Respondent's personal purposes.

The Commission believed that Respondent Kekaulua likely violated the State Ethics Code's fair treatment law as alleged in the Charge by using state vehicles, subordinate state personnel, and other state resources for his own personal purposes. The State Constitution mandates the highest standards of ethical conduct by all state employees. These standards of conduct do not allow state employees to use their official positions to obtain unwarranted personal privileges or advantages. Employees who are entrusted with state property and other state resources for the performance of their official duties must uphold the public's trust by ensuring that state property and state resources are used for official purposes only.

### III. Resolution of Charge

Respondent Kekaulua cooperated with the Commission during its investigation and was willing to accept responsibility for his actions; nevertheless, the Commission believed that Respondent Kekaulua's actions demonstrated what appears to be a clear disregard of the State Ethics Code's standards of conduct for state employees. As a Construction and Maintenance Superintendent for the DOT Highways Division, Respondent Kekaulua is

tasked with directing, managing and supervising the work programs and employees under his authority. Respondent Kekaulua appeared to have misused his official position and authority as a state employee to obtain unwarranted privileges for himself.

This Resolution of Charge is being issued pursuant to the Commission's agreement with Respondent Kekaulua to resolve the Charge without any further administrative proceedings. It does not constitute an admission by Respondent Kekaulua or a determination by the Commission of any wrongdoing; however, if the allegations in the Charge were found to be true, the Commission could conclude that Respondent's actions violated the State Ethics Code.

The Commission believed it was reasonable, fair and in the public interest to resolve the Charge by issuing this Resolution of Charge and by Respondent Kekaulua's payment of an administrative penalty of \$3,000 to the State of Hawaii.