



HAWAII STATE ETHICS COMMISSION

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

Resolution of Charge 2016-8

(Charge No. 2015-Cg-4)

Adult Correction Officer's Acceptance of \$3,000 from Inmate Under his Supervision

December 7, 2016

On April 15, 2015, the Hawaii State Ethics Commission ("Commission") issued a Charge against Respondent Bernie Abella ("Respondent Abella") for alleged violations of the State Ethics Code, Hawaii Revised Statutes ("HRS") chapter 84. Respondent Abella was employed by the Department of Public Safety ("DPS") as an Adult Corrections Officer ("ACO") at the Hawaii Community Correctional Center ("HCCC") from approximately April 2007 through January 31, 2010.

The Commission and Respondent Abella agreed to resolve the Charge with Respondent Abella's payment of an administrative penalty of \$1,500 to the State of Hawaii; restitution of \$3,000 to a former inmate ("Inmate") of HCCC; 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 Abella for allegedly soliciting and/or accepting \$3,000 from Inmate and for failing to report this amount on a Gifts Disclosure Statement required to be filed with the Commission. The Charge and the Further Statement of Alleged Violation¹ (collectively "Charge") were based on the following alleged facts.

A. Respondent Abella's State Position and Authority Over Inmate

Respondent Abella was an ACO at HCCC. His official duties and responsibilities included performing security and custodial duties relating to the maintenance and custody of inmates in HCCC. Respondent Abella exercised supervisory and/or general authority and control over inmates at HCCC, including Inmate.

¹ The Commission issued a Further Statement of Alleged Violation against Respondent Abella on March 17, 2016.

B. Misuse of Position to Obtain Power of Attorney from Inmate

In or around November 2009, Respondent Abella and two other ACOs, ACO A and ACO B, planned to obtain money from Inmate. Respondent Abella planned to cause Inmate to execute a Power of Attorney appointing ACO A as Inmate's attorney for the purpose of making a one-time withdrawal of \$10,000 from Inmate's bank account with the intent that the money be divided and distributed between the three ACOs.

C. Soliciting and/or Accepting, and/or Receiving Money from Inmate

On November 18, 2009, Inmate executed a Power of Attorney, effective from November 20, 2009 to December 20, 2009, and witnessed by ACO B, giving ACO A Inmate's power of attorney for the purpose of making a \$10,000 withdrawal from Inmate's bank account. On December 14, 2009, Respondent Abella, ACO A and ACO B drove from Hilo to the bank branch in Kailua-Kona where, using the Power of Attorney, ACO A withdrew \$10,000 from Inmate's account. ACO A was issued a cashier's check in his name for this amount. On December 22, 2009, ACO A deposited the \$10,000 in his own bank account. Subsequently, on or around January 7, 2010, ACO A gave Respondent Abella and ACO B cashier's checks, drawn on ACO A's bank account, in the amount of \$3,000 each. On or about January 11, 2010, Respondent Abella cashed, or caused to have cashed, this check.

D. Failure to File Gifts Disclosure Report

Respondent Abella did not file a gifts disclosure statement with the Commission disclosing the \$3,000 that he received.

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."² 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."³ It is in this context that the Commission examines every employee's actions, including the actions of Respondent Abella.

² Hawaii State Constitution, Art. XIV.

³ HRS Chapter 84, Preamble.

B. Application of the State Ethics Code to Respondent Abella

i. Fair Treatment Law

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

As a state employee, Respondent Abella was required to comply with all provisions of the State Ethics Code, including the fair treatment law. Respondent Abella 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 Abella violated HRS section 84-13 by:

- (1) Planning, discussing, and/or arranging with ACOs A and B to obtain the Power of Attorney from Inmate for Respondent Abella’s personal benefit; and
- (2) Soliciting, accepting, and/or receiving a monetary gift from Inmate for Respondent Abella’s personal benefit.

ii. Gifts Law

The State Ethics Code prohibits an employee from soliciting, accepting, or receiving a gift if it is reasonable to infer the gift is given to influence or reward the employee in the performance of his or her state duties. HRS section 84-11, the gifts law, states:

§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.

Respondent Abella appeared to have violated HRS section 84-11 by soliciting, accepting, and/or receiving a gift of \$3,000 from Inmate.

iii. Gifts Disclosure Law

The State Ethics Code also requires all employees who, during a one year period, receive a gift or gifts valued singularly or in the aggregate in excess of \$200 to file a gifts

disclosure report with the Commission disclosing the gift or gifts. Gift disclosure reports are due by June 30 of each year. In relevant part, HRS section 84-11.5 states:

§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 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 reporting requirements under this subsection.
- (b) The report shall cover the period from June 1 of the preceding calendar year through June 1 of the year of the report.

Respondent Abella appeared to have violated the gifts disclosure law by failing to file a gifts disclosure report with the Commission.

The Commission believed that Respondent Abella likely violated the State Ethics Code as alleged in the Charge by using his state position to obtain money from an inmate under his supervision and control and by failing to report the money on a gifts disclosure statement. 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, nor may they accept improper gifts.

Respondent Abella's alleged conduct is particularly disturbing given the power and authority Respondent Abella had over Inmate in this situation: Adult Correction Officers maintain control over virtually every aspect of a prisoner's life, and prisoners depend upon ACOs for the basic necessities of life. The idea that an ACO would abuse this authority to take a prisoner's personal funds is incomprehensible and indefensible.

Adult Correction Officers have particularly difficult (and at times dangerous) jobs that can cause both physical and emotional stress and harm, but are nevertheless expected to demonstrate the highest ethical standards in their work. Most do: the overwhelming majority of state employees, including ACOs, perform their duties with the utmost integrity. In this case, Respondent Abella's alleged conduct not only harmed Inmate, but damaged the public's trust in the many other ACOs who work hard every day to earn and keep that trust. When a state employee – particularly one entrusted with the care and custody of another –

abuses his position and jeopardizes the public's faith in government, he will be held accountable for his actions.

III. Resolution of Charge

This Resolution of Charge is being issued pursuant to the Commission's agreement with Respondent Abella to resolve the Charge without any further administrative proceedings. It does not constitute an admission by Respondent Abella 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, by Respondent Abella's payment of an administrative penalty of \$1,500 to the State of Hawaii, and by restitution of \$3,000 to Inmate.