



HAWAII STATE ETHICS COMMISSION

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

Resolution of Charge **2016-9**

Gordon Chong, Respondent
COMPL-C-16-00168

December 7, 2016

On September 15, 2016, the Hawai'i State Ethics Commission ("Commission") issued a Charge against Gordon Chong ("Respondent Chong") for alleged violations of the State Ethics Code, Hawai'i Revised Statutes ("HRS") Chapter 84. At the time of the alleged actions that formed the basis of the Charge, Respondent Chong was employed by the Department of Agriculture ("DOA") as an engineer with the Agriculture Resource Management Division ("ARMD"). The Charge alleged that Respondent Chong violated the fair treatment laws by assisting a state agricultural tenant on a DOA application for approval to construct a farm dwelling on state leased lands.

The Commission and Respondent Chong agreed to resolve the Charge with Respondent's payment of an administrative penalty of \$1,000 to the State of Hawai'i and the publication of this Resolution of Charge. The Commission believes that, based on the allegations detailed below, the terms of the resolution are fair and in the public interest.

I. Alleged Facts

The Commission issued a Charge based on the following alleged facts:

Respondent Chong was employed by the DOA as an Engineer V. In addition, in his private capacity, Respondent Chong is a licensed mechanical and civil engineer and operates a private engineering consulting business.

As part of his state duties as a DOA engineer, Respondent Chong was responsible for reviewing construction plans and making recommendations regarding requests for approval of a farm dwelling on state agricultural park lands. Under DOA's administrative rules, state agricultural park tenants requesting approval to construct a farm dwelling are required to submit construction plans and other information to the ARMD for review and approval to ensure that the proposed construction complies with all applicable federal, state and county laws, ordinances and rules. Hawai'i Administrative Rules ("HAR") § 4-153-32(e). Following review by ARMD engineering and property management staff, the requests are submitted to the ARMD Division

Administrator for final review, and then to the Board of Agriculture (“BOA”) for final action and approval. HAR § 4-153-32(c).

In March 2015, Respondent Chong reviewed and commented on construction plans for a proposed farm dwelling on a leased agricultural park lot on the island of Hawai'i. Respondent Chong identified various deficiencies and asked the tenant to re-submit drawings that addressed these deficiencies.

After six (6) months of further delay, the tenant informed Respondent Chong that he was unable to find a licensed engineer in Kailua-Kona and asked Respondent Chong for help in finding someone on O'ahu who could prepare the drawings. Respondent Chong initially declined, but later agreed to help the tenant. According to Respondent Chong, his intention was simply to help “connect” the tenant to other engineering professionals who could perform the work.¹ When the tenant asked how much these other engineers would likely charge, Respondent Chong gave the tenant a ballpark estimate of \$2,000, and noted that the total cost was a matter between the tenant and his consultants.

Respondent Chong later contacted several colleagues, one of whom was a licensed electrical engineer, and the other was a private mechanical engineer. The electrical engineer and mechanical engineer agreed to prepare the requested drawings for the tenant.

On October 9, 2015, the tenant called Respondent Chong, indicating that he was on O'ahu for another matter and wanted to stop by the ARMD office to drop off his civil plans. When Respondent Chong went downstairs to the ARMD lobby to get the plans, the tenant unexpectedly handed him a personal check for \$2,000 and asked Respondent Chong to pay the engineers for him. Later that day, Respondent Chong cashed the check at a Bank of Hawai'i branch, with the intention of giving the money to the engineering consultants once the drawings were done.

Meanwhile, the electrical engineer and mechanical engineer notified Respondent Chong that the requested drawings were ready for pick-up, and that their total fees were \$1,200 and \$1,000, respectively.

On October 14, 2015, Respondent Chong called the tenant and asked him to send a second check for \$300 to cover the balance of the cost. During this conversation, Respondent Chong asked the tenant to send the payment to his home address and specifically asked him not to discuss the matter with anyone else. The next day, the tenant wrote Respondent Chong a personal check for \$300 and mailed it to Respondent Chong's home address. Respondent Chong subsequently deposited the

¹ Respondent Chong testified that did not have any direct involvement in the design process and did not receive any compensation for his assistance in the matter.

\$300 check into his personal bank account at the Bank of Hawai'i and used the money to pay the consultants.

Respondent Chong testified that he paid the electrical engineer \$1,200 in cash and the mechanical engineer \$1,000 in cash, and used the remaining \$100 to cover the printing and delivery costs for the plans.

After he received the construction plans, Respondent Chong proceeded with his review of the tenant's application. On October 20, 2015, Respondent Chong notified other ARMD staff that the tenant's plans had been approved and asked the Agricultural Asset Manager to draft the submittal to the BOA for final approval. In doing so, Respondent Chong sought to present the matter for board approval without first presenting the matter to his supervisor.

The matter was then placed on the agenda for the BOA's meeting on November 24, 2015, but was later withdrawn by the ARMD Division Administrator due to various questions surrounding the tenant's application, including whether the application was complete.

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 Hawai'i 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 Chong.

B. HRS § 84-13, Fair Treatment

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

² Hawai'i State Constitution, Art. XIV.

³ HRS Chapter 84, Preamble.

§ 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 Chong was required to comply with all provisions of the State Ethics Code, including the fair treatment law. Respondent Chong appears to have violated HRS § 84-13 by using his official position to grant unwarranted advantages and treatment to a state agricultural park tenant in connection with the tenant's request for approval to construct a farm dwelling on state agricultural leased lands.

More specifically, Respondent Chong violated HRS § 84-13 by personally assisting the tenant in hiring other licensed engineers to prepare construction plans for the tenant, and by transmitting payment to the consultants for their services and other related costs. In addition, Respondent Chong attempted to use his state position to expedite BOA approval of the tenant's application when the matter was still being reviewed by other ARMD staff.

The Commission believed that Respondent Chong likely violated the State Ethics Code's fair treatment laws by serving as an intermediary and improperly assisting the tenant on a pending DOA application. 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 give preferential treatment or advantages to others.

III. Resolution of Charge

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

This Resolution of Charge is being issued pursuant to the Commission's agreement with Respondent Chong to resolve the Charge without any further administrative proceedings. It does not constitute an admission by Respondent Chong 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 Chong'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 Chong's payment of an administrative penalty of \$1,000 to the State of Hawai'i.