

HAWAII STATE ETHICS COMMISSION

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

Resolution of Charge 2017-6

(COMPL-C-16-00438)

Former Hawaii Tourism Authority Vice President's Alleged Violations of Fair Treatment Law, Gifts Law, and Gifts Reporting Law

October 2, 2017

The Hawaii State Ethics Commission ("Commission") has resolved a Charge issued against David Uchiyama, former Vice President of Brand Management, Hawaii Tourism Authority ("HTA"), for alleged violations of the State Ethics Code, Hawaii Revised Statutes ("HRS") chapter 84.

The alleged violations came to the attention of the Commission by way of an anonymous complaint.

I. Facts

Respondent Uchiyama admitted the following facts:

- a. Respondent Uchiyama, at all times relevant herein, was employed by HTA, a state agency. He joined HTA in 2007 as Vice President of Marketing; his title subsequently changed to Vice President of Brand Management; and he left HTA in August 2015.
- b. Respondent Uchiyama and other HTA personnel were required to travel for state business in the performance of their official duties.
- c. On the following occasions, Respondent Uchiyama accepted "courtesy" upgrades to Business Class and First Class when traveling on state business:
 - i. Respondent Uchiyama accepted an upgrade to Business Class from China Airlines on a round-trip flight from Honolulu to Taipei on November 15, 2014, returning on November 26, 2014. Respondent

Uchiyama directed his subordinate to solicit these upgrades for himself and the subordinate.

- ii. Respondent Uchiyama accepted upgrades to Business Class from China Southern Airlines on a flight from Taipei to Guangzhou, China on November 19, 2014.
- iii. Respondent Uchiyama accepted upgrades to First Class from Air China on flights from Guangzhou to Beijing, China on November 20, 2014 and from Beijing to Shanghai, China on November 24, 2014. Respondent Uchiyama directed his subordinate to solicit these upgrades for himself and his subordinate.
- iv. Each of the above travel upgrades accepted by Respondent Uchiyama had a value in excess of \$200.
- v. Respondent Uchiyama did not report any of the above travel upgrades that he accepted by filing a Gifts Disclosure Statement with the Commission by the statutory deadline of June 30, 2015 (to cover the reporting period of June 1, 2014 through June 1, 2015).

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.”¹ To this end, the Hawaii 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.”² Additionally, the legislature explicitly directed that the State Ethics Code be liberally construed to promote high

¹ Hawaii State Constitution, Art. XIV.

² HRS Chapter 84, Preamble.

standards of ethical conduct in state government. HRS § 84-1. It is in this context that the Commission examines every employee's actions.

B. Application of the State Ethics Code to Respondent Uchiyama

According to HTA's website, HTA is "Hawaii's state tourism agency." HTA is "a body corporate and a public instrumentality of the State" and is placed within the Department of Business, Economic Development, and Tourism for administrative purposes only. HRS § 201B-2(a). HTA's responsibilities include, but are not limited to, "promoting, marketing, and developing the tourism industry in the State." HRS § 201B-7(b)(2). The powers and functions granted to and exercised by HTA are expressly declared to be "public and governmental functions, exercised for a public purpose, and matters of public necessity" pursuant to HRS § 201B-14.

As an employee of HTA, Respondent Uchiyama was a state employee for purposes of the State Ethics Code.³ As a state employee, Respondent Uchiyama was required to comply with the State Ethics Code.

1. Fair Treatment and Gifts

HRS § 84-13 (the "Fair Treatment Law") prohibits a state employee from using his or her state position to obtain unwarranted privileges, advantages, or benefits for the employee or others.

The Gifts Law of the State Ethics Code, HRS § 84-11, prohibits a state employee from soliciting, accepting, or receiving, 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 employee in the performance of the employee's official duties or is intended as a reward for any official action on the employee's part.

It is the State's policy that employees travel by coach class when traveling on state business. The State's travel rules provide that "[t]ravel route(s) shall be the most economical and direct route(s) available to the point(s) of business destination." Hawaii Administrative Rules ("HAR") § 3-10-6. See also HAR § 3-10-8(b) ("Unless otherwise justified and approved by the governor, travel shall be by the most economical means consistent with time available and urgency of the trip.").

In Advisory Opinion No. 95-1, the Commission determined that travel upgrades for state officials traveling on state business are a personal benefit rather than a benefit to the State and that HRS § 84-11 and § 84-13 prohibited the solicitation and acceptance of travel upgrades by state officials.

³ HRS § 84-3.

The State's travel policies are particularly important for HTA personnel, because HTA awards contracts to – and thus takes official action regarding – multiple airlines:

- In 2014, HTA reported a contract with Japan Airlines valued at more than \$1,000,000 over the life of the contract. HTA, 2014 Annual Report to the Hawai'i State Legislature, p. 52.
- In 2014, HTA reported a contract with Hawaiian Airlines valued at more than \$100,000. HTA, 2014 Annual Report to the Hawai'i State Legislature, p. 52.
- In 2015, HTA reported a contract with Hawaiian Airlines valued at more than \$1,000,000 over the life of the contract; two additional contracts with Hawaiian Airlines valued at more than \$100,000 each; and contracts with Alaska Airlines and Virgin America valued at more than \$100,000 each. HTA, 2015 Annual Report to the Hawai'i State Legislature, p. 51.
- In 2016, HTA reported a contract with Virgin America valued at more than \$100,000. HTA, 2016 Annual Report to the Hawai'i State Legislature, p. 51.

There are circumstances in which a state employee may fly in a higher class of service. For example, a state employee who earns frequent flyer miles by using a personal credit card for personal purchases may use these miles to obtain an upgrade to a higher class of service. Likewise, a state employee may use personal funds to purchase an upgrade. Absent extraordinary circumstances, however, the State achieves no benefit in having its employees travel in First Class or Business Class; that is, there is virtually never a state purpose in soliciting or accepting a gift of an upgrade in service. Instead, the improvement in service is a personal benefit to the employee receiving that upgrade.

The Commission investigated Respondent Uchiyama's actions from 2011 through 2016 and discovered that, on several occasions, Respondent Uchiyama accepted "courtesy" upgrades from airlines. On several of those occasions, Respondent Uchiyama instructed his subordinate at HTA to solicit the airlines for these upgrades.⁴

The Commission believes that, by soliciting and accepting "courtesy" upgrades from airlines while traveling on state business, Respondent Uchiyama likely violated the Fair Treatment Law and Gifts Law. Particularly relevant in this case, the solicitation and

⁴ The Commission did not receive any evidence to suggest that the airlines involved in this matter intended or expected that these upgrades would influence Respondent's official actions; further, although the Ethics Code regulates the behavior of state employees, it does not regulate the behavior of private entities such as the airlines discussed herein. Although the Commission concludes that Respondent likely violated the Ethics Code, the Commission has no evidence or reason to suggest that the airlines mentioned herein acted unlawfully or improperly.

acceptance of “gifts” from state contractors or potential contractors raise serious concerns under the Ethics Code, undermining the trust placed in government officials by the people of Hawaii.

2. Gifts Reporting

The Gifts Reporting Law of the State Ethics Code, HRS § 84-11.5, requires every state employee to file a gifts disclosure statement on June 30 of each year if the following conditions are met: (1) The 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 has interests that may be affected by the employee’s official action; and (3) the gift is not exempted by HRS § 84-11.5(d) from the reporting requirements. HRS § 84-11.5. The law provides that “[t]he report shall cover the period from June 1 of the preceding calendar year through June 1 of the year of the report.” HRS § 84-11.5(b). The law further provides that the report shall contain: (1) a description of the gift; (2) a good faith estimate of the value of the gift; (3) the date the gift was received; and (4) the name of the person, business entity, or organization from whom, or on behalf of whom, the gift was received. HRS § 84-11.5(c).

Respondent Uchiyama did not file a gifts report for any of the above-referenced upgrades as required by HRS § 84-11.5 by the statutory deadline of June 30, 2015. As such, the Commission believes that Respondent likely violated the Gifts Reporting Law.

III. Resolution of Charge

The Commission issued a Charge against Respondent Uchiyama on August 17, 2017.

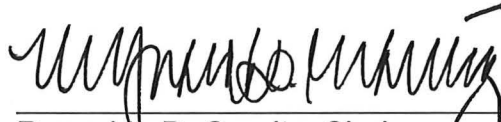
The Commission believes that, based on the facts admitted above,⁵ Respondent Uchiyama likely violated the Gifts Law (HRS § 84-11), the Gifts Reporting Law (HRS § 84-11.5), and the Fair Treatment Law (HRS § 84-13).

Given the numerous likely violations of the State Ethics Code, the Commission believes it is reasonable, fair, and in the public interest to resolve this investigation by (1) issuing this Resolution of Charge and (2) requiring Respondent Uchiyama to pay an administrative penalty of \$2,500 to the State of Hawaii. Respondent Uchiyama has also filed his delinquent 2015 gifts disclosure statement to report the travel upgrades that he received.

⁵ This Resolution does not make formal findings, but relies on the facts admitted by Respondent Uchiyama.

Respondent Uchiyama fully cooperated with the Commission in its investigation and has not previously been the subject of a Commission charge or investigation. The resolution of the Charge does not constitute an admission by Respondent Uchiyama, or a determination by the Commission, that Respondent Uchiyama violated the State Ethics Code. As previously stated, the Commission believes it is fair, reasonable, and in the public interest to resolve this matter without further administrative action.


Dated OCT 02 2017


Reynaldo D. Gaulty, Chair
Hawaii State Ethics Commission

Dated OCT 02 2017


David O'Neal, Vice Chair
Hawaii State Ethics Commission

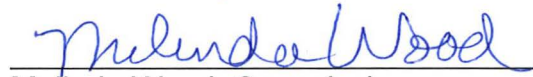
Dated OCT 02 2017


Susan N. DeGuzman, Commissioner
Hawaii State Ethics Commission

Dated OCT 02 2017


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