



HAWAII STATE ETHICS COMMISSION

State of Hawai'i · Bishop Square, 1001 Bishop Street, ASB Tower 970 · Honolulu, Hawai'i 96813

Resolution of Charge 2024-3

(COMPL-C-22-00113)

Department of Education Teacher's Violation of the Fair Treatment law and Gifts law

August 26, 2024

The Hawai'i State Ethics Commission ("Commission") hereby resolves a Charge against Vera Alvarez ("Respondent Alvarez"), a teacher at Moanalua Elementary School ("Moanalua Elementary"), for alleged violation of the State Ethics Code, Hawai'i Revised Statutes ("HRS") chapter 84.

I. Facts

Respondent Alvarez admitted and declared, under penalty of perjury, that the following facts are true and correct:¹

- a) Respondent Alvarez is a teacher at Moanalua Elementary School ("Moanalua Elementary"), which is a school under the State of Hawai'i Department of Education ("DOE").
- b) Respondent Alvarez, at all times relevant herein, was a state "employee" as defined in HRS section 84-3, and was required to comply with the State Ethics Code.
- c) At a Moanalua Elementary staff meeting held on January 6, 2021, the principal cautioned school employees against accepting cashier's checks given to them for their personal use. The principal informed school employees that such payments were prohibited gifts unless used for school purposes. During that meeting, which Respondent Alvarez attended, a slide was shown explaining that "Based on the Gifts Law, we advise that the checks may only be accepted if they are used for a state purpose. Stated differently, the checks may not be personally accepted by

¹ This Resolution does not make formal findings but instead relies on the facts admitted by Respondent Alvarez.

the teachers, but they may be accepted by the school to be used for school purposes.” Respondent Alvarez does not recall seeing that slide but does not dispute that it was shown.

- d) Shortly after that meeting, between February 2, 2021, and January 27, 2022, Respondent Alvarez accepted multiple cashier’s checks from an elderly volunteer (“Donor”) at Moanalua Elementary totaling \$48,000.
- e) The Donor often gave the checks to Respondent Alvarez when working with her to complete various volunteer projects for Moanalua Elementary.
- f) Respondent Alvarez did not inform the principal of Moanalua Elementary about these checks and did not spend any of the funds she received on school-related purposes; contrary to the principal’s instructions to all school employees, Respondent Alvarez deposited checks worth \$34,000 into her personal bank account and used the funds to pay for personal expenditures. She is in possession of three checks that she did not deposit, worth \$14,000.
- g) Respondent Alvarez was only acquainted with the Donor because of her position as a teacher at Moanalua Elementary and the Donor’s volunteer work at the school.

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 Hawai’i Constitution further directs that the Legislature enact a code of ethics that applies to all appointed and elected state officers and employees.

Following this constitutional mandate, the Legislature enacted the State Ethics Code. It charged the Commission with administering and enforcing the law “so that public confidence in public servants will be preserved.”³ Additionally, the Legislature explicitly directed that the State Ethics Code be liberally construed to promote high standards of ethical conduct in state government.⁴ It is in this context that the Commission examines every employee’s actions.

² Hawai’i State Constitution, Art. XIV.

³ HRS Chapter 84, Preamble.

⁴ HRS § 84-1.

B. Application of the State Ethics Code to Respondent Alvarez

Respondent Alvarez is a state employee for purposes of the State Ethics Code,⁵ and is bound by the State Ethics Code's Fair Treatment law, HRS § 84-13(a), and Gifts law, HRS § 84-11.

The Fair Treatment law prohibits employees from using their "official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for oneself or others." Additionally, it specifically prohibits employees from receiving compensation for the performance of their official duties "except as provided by law."⁶

In Informal Advisory Opinion No. 2001-11, the Commission determined that an employee violated the Fair Treatment law by accepting free air transportation for a hunting trip because "it was apparent from the trial testimony of the flight company's owner, who also piloted the aircraft, that his relationship with the former state employee resulted from the latter's state employment." Although there may have been some personal relationship, the relationship between the donor and employee resulted from the employee's state employment, and any gift received was an unwarranted benefit resulting from the employee's state employment.

In this case, although Respondent Alvarez had some personal relationship outside of her official employment hours with the elderly Donor, her relationship resulted from her state employment and primarily involved the Donor's voluntary work for Moanalua Elementary. Thus, the \$48,000 received by Respondent Alvarez from the Donor was an unwarranted benefit she gained from her state employment.

The Gifts law, HRS § 84-11, prohibits state employees from accepting any gift "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."⁷ In determining whether or not a gift may be accepted, the Commission considers several factors, including (1) the relationship between the person or entity offering the gift and the employee being offered the gift, including whether the offeror is subject to official action by the recipient; (2) the value of the gift; and (3) whether the gift is "personal" or provides a "state benefit."⁸ Furthermore, under the gift rules, "the higher the value of the

⁵ HRS § 84-3.

⁶ HRS § 84-13(a)(2).

⁷ HRS § 84-11. See *also* Haw. Admin. R. § 21-7-2(a).

⁸ Haw. Admin. R. § 21-7-2(b).

gift, the more likely [it] is prohibited” and cash gifts generally “do not serve any state purpose and are more likely to be prohibited.”⁹

In this case, a reasonable person could conclude that the \$48,000 received by Respondent Alvarez was meant to reward her for official action on her part. The Donor admitted that he gave Respondent Alvarez this money partly because he felt that teachers were underpaid, and he wanted to help her. Additionally, the high value of the gift and the fact that it was not work-related weigh in favor of prohibiting it. Although the Donor’s motivation was not malicious, state employees may only accept compensation through their state salaries or as otherwise provided by law – the acceptance of *ad hoc* compensation of this magnitude in cash violates the State Ethics Code and potentially creates administrative issues for state agencies, such as by making it difficult to ensure that state employees are not accepting cash payments from improper sources or ensuring fairness in compensation for state employees.

The Commission investigated Respondent Alvarez’s actions, and Respondent Alvarez admits that she violated the Fair Treatment law and Gifts law for the reasons stated above.

III. Resolution of Charge

Respondent Alvarez admits that she violated the Fair Treatment and Gifts laws. She has not previously been the subject of a Commission charge or investigation.

Given the violation of the State Ethics Code, the Commission believes it is reasonable, fair, and in the public interest to resolve the Charge by (1) issuing this Resolution of Charge; (2) requiring Respondent Alvarez to pay restitution of \$34,000 to the Donor; (3) requiring Respondent Alvarez to return the three undeposited cashier’s checks totaling \$14,000 to the Donor; (4) requiring Respondent Alvarez to pay an administrative penalty of \$5,000 to the State of Hawai’i; and (5) referring this matter to the DOE for disciplinary action as appropriate.

⁹ Haw. Admin. R. §§ 21-7-2(b)(2)-(3).