



HAWAII STATE ETHICS COMMISSION

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

Resolution of Investigation

2014-2

Lobbying Activities by Organization's Employees

November 19, 2014

The Hawaii State Ethics Commission (“Commission”) received a complaint that a nonprofit organization (the “Organization”) was lobbying at the State legislature,¹ but had not filed lobbying expenditures and contributions reports with the Commission as required by the Lobbyists Law, chapter 97, Hawaii Revised Statutes (“HRS”). During its investigation, the Commission obtained information indicating that the Organization’s Chief Executive Officer (“John Doe”) and another Organization employee (“Jane Doe”) had lobbied on behalf of the Organization during the 2013 to 2014 legislative biennium and that Jane Doe had also lobbied on behalf of the Organization during the 2011 to 2012 legislative biennium. The Commission’s lobbying records revealed that John Doe and Jane Doe were not registered as lobbyists; that neither John Doe nor Jane Doe had filed lobbying expenditures and contributions reports for the years in which they had lobbied; and that the Organization had not filed lobbying expenditures and contributions reports during those same periods.

The Commission, John Doe, Jane Doe, and the Organization agreed to a resolution of this matter, which included the issuance of this public statement and the payment of administrative penalties to the State of Hawaii.

¹ “Lobbying” is defined as:

communicating directly or through an agent, or soliciting others to communicate, with any official in the legislative or executive branch, for the purpose of attempting to influence legislative or administrative action or a ballot issue.

HRS section 97-1(7).

DISCUSSION

The Lobbyists Law requires: (1) lobbyists to register with the Commission within five days of becoming a lobbyist² and to renew their registrations biennially;³ (2) lobbyists to file lobbying expenditures and contributions reports with the Commission;⁴ and (3) organizations that employ or contract for the services of lobbyists to file lobbying expenditures and contributions reports with the Commission.

During the three-year period⁵ prior to the Commission's investigation, it appeared that the Organization engaged in lobbying activities at the legislature. On its website, the Organization had posted numerous written testimonies submitted on behalf of the Organization during the 2012, 2013, and 2014 legislative sessions. These included testimonies submitted by John Doe on behalf of the Organization in 2013 and 2014. The testimonies advocated for or against various legislative bills and clearly attempted to influence legislative action. The Commission's records indicated that, during this period, John Doe was not registered as a lobbyist and that neither John Doe nor the Organization had filed any lobbying expenditures and contributions reports.

John Doe said he did not realize that his legislative activities on behalf of the Organization required him to register as a lobbyist with the Commission. More specifically, John Doe explained that because the Organization was using its own employees rather than an outside lobbyist for its legislative activities, he did not understand that those employees, including himself, were required to register as lobbyists or that they and the Organization were required to file lobbying reports with the Commission.⁶

² HRS section 97-2(a).

³ HRS section 97-2.5. Lobbyists are required to renew their registrations biennially within 10 days of the opening of each odd-numbered year's legislative session.

⁴ There are three lobbying reporting periods per year:

- 1) January 1 through the last day of February (report due March 31);
- 2) March 1 through April 30 (report due May 31); and
- 3) May 1 through December 31 (report due January 31 of the following year).

In addition, if a special session of the legislature is held, a lobbying report must be filed for the period from May 1 through the adjournment of the special session (report due within 30 days after adjournment of the special session). HRS section 97-3.

⁵ The statute of limitations for violations of the Lobbyists Law is three years. HRS section 97-6(a)(6).

⁶ John Doe explained that, several years before he became the Organization's Chief Executive Officer, the Organization had retained the services of an outside lobbyist. The Commission's records indicated that this individual was registered with the Commission as the Organization's lobbyist from 2005 to 2007. After this lobbyist terminated her lobbying services, no other lobbyist registrations were filed by anyone representing the Organization even though it appeared that the Organization's employees were engaged in lobbying activities at the legislature.

The registration and reporting requirements of the Lobbyists Law apply to any individual who meets the definition of a “lobbyist” even where, as here, the lobbyist is an employee of the organization rather than an outside lobbyist.⁷ Registration and reporting are required whenever an organization compensates anyone to communicate directly with legislators for the purpose of attempting to influence legislative action and that person lobbies in excess of five hours in any month or spends more than \$750 lobbying during a reporting period.

In this case, John Doe said he had not understood the law. He acknowledged that he lobbied the legislature on the Organization’s behalf in 2013 and 2014 as part of his duties as the Organization’s Chief Executive Officer; that, in accordance with his current understanding of the Lobbyists Law, he was required to register with the Commission as a lobbyist; and that he failed to do so. He also volunteered information that another employee of the Organization, Jane Doe, had also lobbied the legislature on behalf of the Organization in 2012 and 2013, and that Jane Doe also should have registered as a lobbyist.

The Commission’s investigation indicated that Jane Doe also appeared to have lobbied the legislature on behalf of the Organization. She explained that the Organization’s then-Chief Executive Officer (John Doe’s predecessor) had informed her that the Organization’s employees were not required to register as lobbyists or file lobbying reports because their activities at the legislature were considered “educational.” This information appeared to be based on a misunderstanding of HRS section 97-2(e)(6), which provides an exemption from the Lobbyists Law for any person who possesses “special skills and knowledge” that may be helpful to the legislature and “who makes an occasional appearance at the request of the legislature.”⁸

⁷ A “lobbyist” is defined as:

any individual who for pay or other consideration engages in lobbying in excess of five hours in any month of any reporting period described in [HRS] section 97-3 or spends more than \$750 lobbying during any reporting period described in [HRS] section 97-3.

HRS section 97-1(6).

⁸ § 97-2 **Registration of lobbyists, requirements.** (e) This chapter shall not apply to:

(6) Any person who possesses special skills and knowledge relevant to certain areas of legislation, whose skills and knowledge may be helpful to the legislative and executive branches of state government, and who makes an occasional appearance at the request of the legislature or an administrative agency, or the lobbyist even though receiving reimbursement or other payment from the legislature or administrative agency or the lobbyist for the appearance.

The Commission construes this provision narrowly. Specifically, the Commission interprets the exemption to apply to those who provide expert information to the legislature, at the legislature's request; however, it does not exempt those who are "educating" or providing information to the legislature while advocating for a position or otherwise seeking to influence legislative action.

The testimony submitted on behalf of the Organization by John Doe and Jane Doe took advocacy positions and clearly attempted to influence legislative action. The Commission believed that HRS section 97-2(e)(6) did not exempt the actions of John Doe, Jane Doe, and the Organization from the requirements of the Lobbyists Law.

During the period covered by the Commission's investigation, John Doe failed to register as a lobbyist in the 2013 to 2014 legislative biennium; he also failed to file expenditures and contributions reports for four lobbying periods from 2013 to 2014. Jane Doe failed to register as a lobbyist in the 2011 to 2012 legislative biennium (for her lobbying activities in 2012) and the 2013 to 2014 legislative biennium (for her lobbying activities in 2013); she also failed to file expenditures and contributions reports for seven lobbying periods from 2012 to 2014. The Organization failed to file seven expenditures and contributions reports for lobbying activities in 2012, 2013, and 2014.

RESOLUTION OF INVESTIGATION AND ADMINISTRATIVE PENALTIES

John Doe and Jane Doe fully cooperated with the Commission during the investigation, and both subsequently filed lobbyist registrations and lobbying reports for the periods identified above. The Organization also subsequently filed expenditures and contributions reports for the seven periods in 2012, 2013, and 2014.

Based on its investigation, the Commission believed it was likely that John Doe, Jane Doe, and the Organization violated the Lobbyists Law by failing to file the required registrations and reports as described above. John Doe stated that his failure, Jane Doe's failure, and the Organization's failure to comply with the Lobbyists Law was not willful and was the result of a misunderstanding of the law. Although the Commission understood this position, it emphasized that this case underscored the importance and necessity of seeking clarification or advice from the Commission's staff regarding the Lobbyists Law or the State Ethics Code. The Commission further believed that, as a result of this investigation, John Doe, Jane Doe, and the Organization now understand the Lobbyists Law's requirements and will be diligent in complying with those requirements in the future.

Based on the totality of the circumstances, the Commission believed it was fair and in the public interest to resolve its investigation of this matter by the issuance of this public document and payment of administrative fines to the State's general fund in the following amounts: \$2,000 by the Organization; \$1,000 by John Doe; and \$2,000 by Jane Doe. The Commission is issuing this public statement regarding the resolution of this investigation to provide the public with information about the requirements of the Lobbyists Law.