



HAWAII STATE ETHICS COMMISSION

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

Resolution of Investigations **2015-2**

Lobbying Activities by Organization and Its Employees

December 2, 2015

The Hawaii State Ethics Commission (“Commission”) has resolved investigations regarding: (1) a nonprofit organization’s failure to file lobbying expenditures and contributions reports with the Commission as required by Hawaii Revised Statutes (“HRS”) section 97-3; (2) the Chief Executive Officer’s failure to file a registration form with the Commission within five days of becoming a lobbyist for the organization as required by HRS section 97-2; and (3) the Chief Executive Officer’s failure to file lobbying expenditures and contributions reports with the Commission as required by HRS section 97-3. The organization and the Chief Executive Officer agreed, as part of the resolution of the Commission’s investigations, to: (a) pay administrative penalties to the State of Hawaii in the amounts of \$2,000 and \$500, respectively; (b) file the delinquent expenditures and contributions reports with the Commission; and (c) the Commission’s issuance of this redacted public document which describes the apparent violations of the State Lobbyists Law, HRS chapter 97.

The Commission obtained information suggesting that the organization, through its Chief Executive Officer, had engaged in lobbying activities at the State legislature during the 2015 and prior legislative sessions. The Commission reviewed the testimonies that the Chief Executive Officer had filed in support of or opposition to numerous bills and obtained information directly from the Chief Executive Officer about his activities during the 2014 and 2015 legislative sessions. The Chief Executive Officer fully cooperated with the Commission in its review of his activities relating to bills and other legislative initiatives.

Before 2012, the organization had employed an individual who was registered to lobby on its behalf and had filed lobbying expenditures and contributions reports with the Commission. Since 2012 until this investigation, the organization has not had a registered lobbyist and has not filed lobbying expenditures and contributions reports.

The Chief Executive Officer represented that the organization had consciously decided to stop advocating for funding to support specific nonprofit organizations and to focus its efforts on legislative initiatives that related to issues more generally. According to the Chief Executive Officer, he and the organization believed that, given the shift in

the organization's advocacy efforts, the organization was not "lobbying." The Chief Executive Officer said that he and the organization considered his activities with respect to bills to be "education." The Chief Executive Officer acknowledged that, in determining that his activities were "education," he had not sought guidance from or otherwise consulted with the Commission; rather, he had reached the conclusion that his activities were not lobbying based on his observations of other nonprofit organizations that he believed were similarly involved with the legislature.

The Chief Executive Officer said that, during the 2014 legislative session, the organization's activities relating to proposed legislation and, more generally, the legislature were limited. He estimated that his cumulative involvement in legislation-related matters was less than five hours every month. In 2015, the Chief Executive Officer acknowledged that he, on the organization's behalf, had spent significantly more time on bills, both before and during the 2015 legislative session. More specifically, the Chief Executive Officer described pre-session and during-session meetings with other nonprofit organizations at which the group discussed and strategized about legislation. Some of the meetings were attended by a legislator and/or the legislator's staff. The Chief Executive Officer submitted written testimony on numerous bills and said that he also testified orally on many of those bills at the legislative committee hearing. The Chief Executive Officer calculated that he spent over five hours in one or more of the months during the 2015 legislative session drafting testimony, meeting with legislators, and attending legislative committee hearings.

After being made aware that, in 2015, he appears to have been a "lobbyist" as defined under HRS chapter 97, the Chief Executive Officer immediately filed the lobbyist registration form and other reports that he and the organization had not previously filed.

DISCUSSION

Under the State Lobbyists Law, an individual who, for pay, spends more than five hours in any month lobbying is a "lobbyist." More specifically, the statute defines "lobbyist" to be an individual who:

- (a) communicates with any legislator or solicits others to communicate with any legislator;
- (b) for the purpose of attempting to influence legislative action;
- (c) spends more than five hours in any month doing so; and
- (d) is paid or receives compensation for those activities.¹

¹ HRS section 97-1(6). In full, the statute defines "Lobbyist" to mean:

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 section 97-3 or spends more than \$750 lobbying during any reporting period described in section 97-3.

HRS section 97-1(6).

Lobbyists are required to file a registration form with the Commission within five days after becoming a lobbyist, which, among other things, identifies the organization that has retained or employed the lobbyist and the general subject area on which the person expects to lobby.² Lobbyists must re-register with the Commission within ten days of the opening of each odd-numbered year's legislative session.³

Lobbyists also must file lobbying expenditures and contributions reports for each of the three lobbying periods during the year,⁴ stating the amount of money that the lobbyist spent for the purpose of lobbying and the amount of money that the lobbyist received for the purpose of lobbying, even if those amounts are zero.⁵ Once a lobbyist

"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).

"Legislative Action" means:

the sponsorship, drafting, introduction, consideration, modification, enactment, or defeat of any bill, resolution, amendment, report, nomination, appointment, or any other matter pending or proposed in the legislature.

HRS section 97-1(5).

² HRS section 97-2.

³ HRS section 97-2.5.

⁴ HRS section 97-3(a). The expenditures made and contributions received for lobbying purposes from January 1 through the end of February are reported to the Commission no later than March 31; expenditures made and contributions received for lobbying purposes from March 31 through April 30 are reported no later than May 31; and expenditures made and contributions received for lobbying purposes from May 31 through December 31 are reported no later than January 31. Another report must be filed within 30 days after the adjournment of any special session of the legislature if the lobbyist was engaged in lobbying activities relating to the legislative action considered during the special session. Id.

⁵ More specifically, the lobbying expenditures and contributions report must contain the following information:

- (1) The name and address of each person with respect to whom expenditures for the purpose of lobbying in the total sum of \$25 or more per day was made by the person filing the statement during the statement period and the amount or value of such expenditure;
- (2) The name and address of each person with respect to whom expenditures for the purpose of lobbying in the aggregate of \$150 or more was made by the person filing the statement during the statement period and the amount or value of such expenditures;

stops lobbying for an organization, the lobbyist is required to file a notice of termination within ten days after ceasing his lobbying activities.⁶ Unless and until a lobbyist provides notice that he is no longer lobbying for an organization, the lobbyist must file lobbying expenditures and contributions reports with the Commission as required by HRS section 97-3(a) for the period during which the lobbyist's registration was effective.

In addition to the reporting requirements applicable to lobbyists, an organization that retains or employs a lobbyist must also file lobbying expenditures and contributions reports.⁷ Those reports are required to include, generally, the same types of information that are reported by lobbyists: the total sum of all expenditures for the purpose of lobbying made by the organization during the reporting period, the total sum of certain categories of expenditures, the name of each person or entity making contributions of \$25 or more to the organization for the purpose of lobbying, and subject

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- (3) The total sum or value of all expenditures for the purpose of lobbying made by the person filing the statement during the statement period in excess of \$750 during the statement period; provided that the sum or value of each expenditure is itemized in the following categories, as applicable:
 - (A) Preparation and distribution of lobbying materials;
 - (B) Media advertising;
 - (C) Compensation paid to lobbyists;
 - (D) Fees paid to consultants or services;
 - (E) Entertainment and events;
 - (F) Receptions, meals, food, and beverages;
 - (G) Gifts;
 - (H) Loans; and
 - (I) Other disbursements;
 - (4) The name and address of each person making contributions to the person filing the statement for the purpose of lobbying in the total sum of \$25 or more during the statement period and the amount or value of such contributions; and
 - (5) The subject area of the legislative and administrative action which was supported or opposed by the person filing the statement during the statement period.

HRS section 97-3(c).

⁶ HRS section 97-2(d).

⁷ HRS section 97-3(a). The following persons shall file a statement of expenditures with the state ethics commission on March 31, May 31, and January 31 of each year and within thirty days after adjournment sine die of any special session of the legislature:

- (1) Each lobbyist;
- (2) Each person who spends \$750 or more of the person's or any other person's money in any six-month period for the purpose of attempting to influence legislative or administrative action or a ballot issue by communicating or urging others to communicate with public officials; provided that any amounts expended for travel costs, including incidental meals and lodging, shall not be included in the tallying of the \$750; and
- (3) Each person who employs or contracts for the services of one or more lobbyists, whether independently or jointly with other persons. If the person is an industry, trade, or professional association, only the association is the employer of the lobbyist.

areas of legislation that the organization supported or opposed during the reporting period.⁸ As part of the organization's lobbying expenditures, the organization reports the amount paid to the lobbyist. If the lobbyist is an employee of the organization, the organization must reasonably estimate the portion of the employee's compensation that was attributed to the time during which the employee engaged in lobbying activities.

In the instant investigations, the Commission believed that there was a sufficient and reasonable basis to believe that, in 2015, the Chief Executive Officer was a "lobbyist" under the State Ethics Code based on the following: (1) the written testimonies supporting and opposing bills reflected that the Chief Executive Officer had communicated with legislators for the purpose of attempting to influence legislative action; (2) the Chief Executive Officer's description of his involvement with the legislature during the 2015 legislative session indicates that he appears to have been engaged in lobbying activities for more than five hours during one or more months of the session; and (3) the Chief Executive Officer's confirmation that he was a paid employee of the organization and, therefore, received compensation for his lobbying activities during the 2015 session.

Based on the above described belief that the Chief Executive Officer was a lobbyist, he failed to file a registration form with the Commission and the required lobbying expenditures and contributions reports for the first two lobbying periods of 2015. As the Commission previously explained in a case involving similar issues:

The registration and reporting requirements of the Lobbyists Law apply to any individual who meets the definition of a "lobbyist" even where, as here, an organization uses its own employees to lobby rather than hiring the services of an outside lobbyist. 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 the person lobbies in excess of five hours in any one month or spends more than \$750 lobbying during a reporting period.

Resolution of Investigation 2014-2 (Nov. 19, 2014) at 3 (emphasis in original).

Based on the Commission's belief that the Chief Executive Officer was a lobbyist as defined under the State Lobbyists Law, the organization likewise failed to file lobbying expenditures and contributions reports in 2015 because the Chief Executive Officer was employed by the organization.

As noted above, the Chief Executive Officer denied lobbying in excess of five hours during any month of the 2014 legislative session. Although he appeared to have been a "lobbyist," as defined in HRS section 97-1(6), during the 2015 legislative

⁸ See fn.5, *infra*.

session, he represented that, until the investigations, he was unaware that his activities relating to bills and other legislative action constituted “lobbying” under the State Lobbyists Law and, for that reason, did not know to register with the Commission. The Chief Executive Officer said that, based on the organization’s decision not to advocate for funding to support specific nonprofit organizations, he considered his involvement with the legislature to be in the nature of “education.”

The State Lobbyists Law exempts certain individuals from the application of the statute, including the registration and reporting requirements. One of the exemptions applies to individuals who, at the request of the legislature, a state agency, or lobbyist, offers testimony or otherwise communicates about a bill to provide information, i.e., for the purpose of education. Specifically, the exemption, in relevant part, applies to:

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.⁹

The exemption, however, is not so broad as to include individuals who have specialized skills and knowledge about the particular subject matter of a bill but whose testimony or other communication is attempting to influence the legislature to approve, modify, or defer the bill. In addressing another lobbyist’s misunderstanding as to the scope of this exception, the Commission has previously explained that:

The Commission construes this provision as providing an exemption for those who provide expert information to the legislature, at the request of the legislature, but who do not attempt to advocate for a position or otherwise influence legislative action. Those who provide information to the legislature, or attempt to educate the legislature, while also advocating for a position are not exempt from the requirements of the Lobbyists Law.

Resolution of Investigation 2015-1 (Feb. 2, 2015) at 2-3 (emphasis added).

Here, although the testimonies submitted by the Chief Executive Officer occasionally included statistical and other types of information arguably intended to “educate” members of the legislative committee, the testimonies unambiguously advanced the organization’s position on bills, expressing its support for or opposition to the proposed legislation. In the Commission’s view, it appeared that the primary

⁹ HRS section 97-2(e)(6).

purpose of the testimony was to advocate for or against the proposed legislation. Additionally, the Chief Executive Officer did not indicate that he offered the testimony at the request of the legislature, an agency, or another lobbyist. Rather, it appeared that the Chief Executive Officer determined the bills on which he submitted testimony. After considering the relevant information available to the Commission at the stage of the investigation, the Commission did not believe that the Chief Executive Officer was within the exemption.

Based on the totality of the circumstances, including the Chief Executive Officer's cooperation and his immediate efforts to correct the apparent violation by registering as a lobbyist and filing his and the organization's delinquent lobbying expenditures and contributions reports, the Commission did not believe that further investigation or administrative action was in the public interest. The Commission believed it was fair and reasonable to resolve its investigations by requiring the organization and the Chief Executive Officer to: (a) pay administrative penalties to the State of Hawaii in the amounts of \$2,000 and \$500, respectively; (b) file the delinquent expenditures and contributions reports with the Commission; and (c) issue this public document to educate others about the application of the State Lobbyists Law.