



HAWAII STATE ETHICS COMMISSION

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

Resolution of Investigations **2016-1**

Lobbying Activities by Association's Director Pursuant to Contract with Separate Organization

June 1, 2016

The Hawaii State Ethics Commission ("Commission") has resolved investigations regarding: (1) failure by the Director of an association (the "Association") to register as a lobbyist with the Commission as required by Hawaii Revised Statutes ("HRS") section 97-2; (2) failure by the Director to file lobbying expenditures and contributions reports with the Commission as required by HRS section 97-3; and (3) failure by a nonprofit organization (the "Organization") that contracted and paid for the Director's lobbying services to file lobbying expenditures and contributions reports with the Commission as required by HRS section 97-3. The Director and the Organization agreed, as part of the resolution of the investigations, to: (a) pay administrative penalties to the State in the amount of \$2,000 each; (b) file the delinquent lobbyist registrations and lobbying reports; and (c) the Commission's issuance of this redacted public document which describes the apparent violations of the State Lobbyists Law, HRS chapter 97.¹

I. Investigations

The Commission obtained information that the Association, through its Director, had engaged in lobbying activities at the State legislature during the 2015 and prior legislative sessions. The Commission reviewed the testimonies that the Director submitted in support of or opposition to numerous bills and obtained information from the Director about her activities during the 2013, 2014 and 2015 legislative sessions.

In the course of the investigations, the Commission learned that the Director was not employed by the Association and received no compensation from the Association for her services. The Commission learned that the Organization had contracted with the Director for her services to the Association. The Director was not hired as a "lobbyist" per se, but she acknowledged that among her many other duties, she tracked legislation, met with legislators, developed written testimony, and attended legislative hearings and delivered oral testimony on bills on behalf of the Association. The Organization paid the Director on an hourly basis for her services to the Association, including her lobbying services.

¹ The resolution of the investigations does not constitute an admission by the Director or the Organization, or a determination by the Commission, that the Director or the Organization violated the Lobbyists Law.

II. Application of the State Lobbyists Law, HRS Chapter 97

Under the State Lobbyists Law, an individual is a “lobbyist” if the individual is paid to lobby and spends more than five hours in any month lobbying.² The law defines “lobbying” 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.”³

The Lobbyists Law requires: (1) lobbyists to register with the Commission within five days of becoming a lobbyist and to renew their registrations biennially;⁴ (2) lobbyists to file lobbying expenditures and contributions reports with the Commission;⁵ and (3) organizations that employ or contract for the services of lobbyists to file lobbying expenditures and contributions reports with the Commission.⁶

In the instant case, the Commission found a sufficient and reasonable basis to believe that in 2014 and 2015, the Director was a “lobbyist” based on (1) written testimonies submitted by the Director on behalf of the Association on legislative bills; (2) the Director’s description of her activities with respect to legislation and her communications with legislators about legislation; and (3) confirmation by the Organization that it had contracted with, and compensated, the Director for her services to the Association, which included the Director’s lobbying services.⁷

It appeared, based on the above, that the Director failed to register as a lobbyist in 2014 and 2015 as required by the Lobbyists Law and failed to file the required lobbying expenditures and contributions reports for six reporting periods from 2014 through 2015.⁸

² HRS section 97-1(6).

³ HRS section 97-1(7).

⁴ HRS section 97-2(a) and section 97-2.5.

⁵ HRS section 97-3(a)(1).

⁶ HRS section 97-3(a)(3).

⁷ The Director and the Organization estimated that the Director likely spent over five hours lobbying in February of 2014 and came close to five hours lobbying in February of 2015. Based on its investigations, the Commission believed there was a reasonable basis to conclude that the Director likely met the criteria for having to register as a lobbyist in 2014 and again in 2015.

⁸ Lobbying expenditures and contributions reports must be filed three times a year for the following periods: January 1 through the last day of February (report due March 31); March 1 through April 30 (report due May 31); and May 1 through December 31 (report due January 31 of the following year). An additional report must be filed for lobbying activities during a special session of the legislature covering the period from May 1 through the adjournment of the special session (report due within 30 days of the adjournment of the special session). HRS section 97-3(a), (b).

It also appeared, based on the above, that the Organization had contracted for the Director's services as a lobbyist and failed to file lobbying expenditures and contributions reports for six reporting periods from 2014 through 2015 as required by the Lobbyists Law.⁹

III. Resolution of Investigations

The Director and the Organization, through its officers, fully cooperated with the Commission during the investigations. The Director and the Organization's officers stated that because the Association represented community views on public issues, they did not realize that the Director's activities constituted "lobbying" under the Lobbyists Law. They explained that their failure to comply with the law was not willful.

Based on the totality of circumstances in this case, 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 the investigations on the following terms, which were agreed to by the Director and the Organization: (1) payment of administrative penalties to the State of Hawaii by the Director and the Organization in the amount of \$2,000 each; (2) filing of all delinquent lobbyist registrations and lobbying expenditures and contributions reports with the Commission; and (3) the Commission's issuance of this public statement to provide the public with information about the requirements of the Lobbyists Law.

⁹It did not appear from the Commission's investigations that the Association employed or contracted for the services of a lobbyist or spent any money for the purpose of lobbying. The Association, therefore, was not required to file lobbying expenditures and contributions reports with the Commission.