



HAWAII STATE ETHICS COMMISSION

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

Resolution of Investigation **2017-2**

(COMPL-16-00244)

Office of Hawaiian Affairs Trustee's Alleged Fair Treatment and Conflicts of Interests Violations

August 30, 2017

The Hawaii State Ethics Commission (“Commission”) has resolved an investigation of Peter Apo, Trustee of the Office of Hawaiian Affairs (“OHA”), 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 complaints from two members of the public.

I. Facts

Trustee Apo admitted the following facts.

1. Trustee Apo is an elected Trustee of OHA. He has served in this role since 2010.
2. As an OHA Trustee, Trustee Apo supervises two Trustee Aides. These Trustee Aides are OHA employees and Trustee Apo directs their day-to-day work.
3. In addition to being a Trustee, Trustee Apo owns a private business: he is the sole proprietor and sole owner of The Peter Apo Company, a limited liability company that provides services in business consulting, music, and journalism. Among other things, The Peter Apo Company provides cultural consulting services to other businesses regarding Hawaiian culture and traditions.
4. Between January 1, 2014, and June 1, 2016, on dozens of occasions during official OHA business hours, Trustee Apo e-mailed his Trustee Aides about The Peter Apo Company private business matters. These included dozens of e-mails directing one of his Aides to schedule and attend meetings with The Peter Apo Company clients; invoice The Peter

Apo Company clients; and prepare training materials. Trustee Apo also sent emails to the Aides' OHA accounts requesting they conduct research for paid columns submitted to Civil Beat, an on-line journalism site.

5. On dozens of occasions, Trustee Apo's Trustee Aides performed work for The Peter Apo Company. Some of this work was done on one of the Trustee Aide's personal time, and the Trustee Aide was paid with The Peter Apo Company funds. For other work, including research for Civil Beat articles, the Trustee Aides performed this work during official OHA work hours and were, therefore, paid using OHA funds.
6. Between January 1, 2014, and June 1, 2016, Trustee Apo's regular practice was to forward all e-mails originally addressed to his official OHA e-mail address to a private e-mail account; when Trustee Apo would respond to these e-mails, he would do so from his private e-mail account, rather than from his official OHA e-mail account. E-mails sent from this private account contained contact information for The Peter Apo Company. As such, on innumerable occasions from at least January 1, 2014, to at least June 1, 2016, individuals who e-mailed Trustee Apo at his OHA e-mail address would receive a reply e-mail containing contact information for The Peter Apo Company.
7. Between January 1, 2014, and June 1, 2016, The Peter Apo Company provided consultant services to DTL, a limited liability company that provides culturally based strategic planning, community outreach, and branding. DTL is affiliated with WCIT Architects ("WCIT") and shares office space, personnel, and officers with WCIT. Both DTL and WCIT are part of the Kuhikuhi Pu'uone Collaborative, which has a contract with OHA to develop a conceptual master plan for OHA's Kaka'ako Makai property. In other words, The Peter Apo Company was a contractor to DTL, which (as part of the Kuhikuhi Pu'uone Collaborative) in turn had a contract with OHA.
8. On or about April 30, 2015, the Board of Trustees of OHA met to consider OHA's position on Mauna Kea and the Thirty Meter Telescope ("TMT") Observatory. OHA Trustee Hulu Lindsey moved that the Board of Trustees rescind its support for the TMT Project and oppose the selection of Mauna Kea as the site for the project. Trustee Apo moved to amend this motion to state only that the Board of Trustees rescinds its support of the project but not that it opposed the selection of Mauna Kea as the site. The amended motion passed. In further discussion, Trustee Apo recommended cultural training for the TMT Observatory Organization.

9. A few weeks later, Trustee Apo offered to provide the aforementioned cultural training. On or about July 2, 2015, Trustee Apo – on behalf of The Peter Apo Company, DTL, and WCIT – e-mailed Henry Yang, chair of the TMT Observatory Organization, and solicited private work for The Peter Apo Company by offering consulting services in the area of native Hawaiian cultural training.

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 It is in this context that the Commission examines every employee’s actions.

B. Application of the State Ethics Code to Trustee Apo

As a trustee of OHA, Trustee Apo is a state employee for purposes of the State Ethics Code.³

1. Fair Treatment

HRS § 84-13 (the “Fair Treatment Law”) prohibits a state employee from using his or her state position to gain an unwarranted advantage or benefit. More specifically, the Fair Treatment Law prohibits a state employee from using state resources for private business purposes. A state employee cannot use state time, state email, state offices, or other state resources for private business work. HRS § 84-13(3). To do so would unfairly benefit the state employee and the private business. The Fair Treatment law also prohibits a state employee from engaging in a substantial financial transaction with a subordinate. HRS § 84-13(4). Supervisors and subordinates do not have equal bargaining power and such transactions are inherently unfair.

¹ Hawaii State Constitution, Art. XIV.

² HRS Chapter 84, Preamble.

³ HRS § 84-3.

The Commission investigated Trustee Apo's actions from 2014 through 2016 and discovered that, on innumerable occasions, Trustee Apo used state time, state email, a state facility, and/or state personnel to perform work for The Peter Apo Company. The Commission believed that Trustee Apo's use of state resources to support his private business likely began prior to 2014. By repeatedly using state resources in order to benefit his private business, it is likely that Trustee Apo violated the Fair Treatment Law.

Trustee Apo also frequently used his Trustee Aides to perform private business work on behalf of The Peter Apo Company. One of the Trustee Aides was privately paid by The Peter Apo Company. The Commission believed that, by engaging in these numerous substantial financial transactions with his Trustee Aide, Trustee Apo likely violated the Fair Treatment Law.

2. Conflicts of Interests

HRS § 84-14 (the "Conflicts of Interests Law") contains a provision that bars a state employee from taking any discretionary action directly affecting the employee's financial interests, including action affecting the employee's private business or employer. HRS § 84-14(a). This law applies not only to a final vote or a final decision or action on a matter. It prohibits taking any discretionary action, including making suggestions or recommendations, on matters affecting the state employee's private financial interests.

Trustee Apo is a paid consultant for DTL. As part of the Kuhikuhi Pu'uone Collaborative, DTL and its partners, including its affiliate WCIT, regularly appeared before the OHA Board of Trustees to provide information on the services it was providing under contract to OHA. Trustee Apo took part in Board discussions and provided suggestions and recommendations to the group.⁴ By doing so, he took discretionary action affecting his private employer and likely violated the Conflicts of Interests Law.

Further, Trustee Apo played a significant part in the vote concerning the TMT. Subsequent to the vote, and acting as an OHA Trustee, he recommended that the TMT Observatory Organization receive cultural training. On behalf of The Peter Apo Company, DTL, and WCIT, Trustee Apo then approached the chair of the TMT Observatory Organization and recommended that he provide such training. The Commission believed that these actions likely violated both the Fair Treatment Law and the Conflicts of Interests Law.

⁴ The Commission could find no indication in the minutes of these meetings that Trustee Apo ever disclosed his relationship with DTL.

III. Resolution of Investigation

The Commission believes that, based on the facts admitted above,⁵ Trustee Apo likely violated the Fair Treatment Law (HRS § 84-13) and the Conflicts of Interests Law (HRS § 84-14). The Commission further believes that, if it extended its investigation to a period prior to 2014, it would likely find evidence of similar violations of the State Ethics Code.

Given the numerous and repeated 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 Investigation and (2) requiring Trustee Apo to pay an administrative penalty of \$25,000 to the State of Hawaii.

Trustee Apo fully cooperated with the Commission in its investigation and has not previously been the subject of a Commission charge or investigation. Trustee Apo agreed, as part of the resolution of this matter, to pay an administrative penalty to the State of Hawaii in the amount of \$25,000 and to the Commission's publication of this Resolution of Investigation. The Commission has not issued a charge against Trustee Apo in connection with this matter and the resolution of the investigation does not constitute an admission by Trustee Apo, or a determination by the Commission, that Trustee Apo 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.

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