

Resolution of Investigation
2019-3

(COMPL-I-18-00205-02)

**Department of Education, Facilities Maintenance Branch, Administrator,
Alleged Violations of Fair Treatment Law and/or Gifts Law**

November 21, 2019

The Hawai'i State Ethics Commission ("Commission") has resolved an investigation of Francis Cheung, Administrator, Facilities Maintenance Branch ("FMB"), Department of Education ("DOE"), for alleged violations of the State Ethics Code, Hawai'i Revised Statutes ("HRS") chapter 84.

I. Facts

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

- a) Respondent Cheung, at all times relevant herein, was employed by the Department of Education ("DOE"), a state agency, as the Administrator of the Facilities Maintenance Branch ("FMB"). He began working for FMB as an Engineer around 1997, before FMB was transferred from the Department of Accounting and General Services to the DOE. He has served as the FMB Administrator since approximately 2005.
- b) FMB provides repair and maintenance services for all public schools on the island of O'ahu and has approximately 200 employees, including carpenters, masons, electricians, and other laborers.
- c) Respondent Cheung, at all times relevant herein, was a state employee as defined in HRS § 84-3. As a state employee, Respondent Cheung was required to comply with the State Ethics Code.
- d) Respondent Cheung directly supervises five employees; several of those subordinate employees in turn supervise other employees, such that Respondent Cheung has supervisory authority over approximately 200 DOE employees who work for FMB.

- e) Around 2016, Respondent Cheung paid a subordinate FMB employee approximately \$600 to help Respondent Cheung move from his home in Kapolei to a new residence in Honolulu.
- f) Respondent Cheung also asked other subordinate FMB employees to perform services for Respondent Cheung for personal projects. Around 2016, Respondent Cheung requested a subordinate cabinet-maker to construct a small cabinet (roughly 14" x 14" by 10") for Respondent Cheung's wife. Respondent Cheung reimbursed the cabinet-maker approximately \$50 for materials; Respondent Cheung contends that he did not pay the cabinet-maker for labor but did treat the employee to lunch. Respondent Cheung contends that he directed the cabinet-maker not to do this work on state time or using state equipment. Also, several years ago, Respondent Cheung asked another subordinate cabinet-maker to use state equipment to cut a piece of wood for a family member's personal project.

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 Hawai'i 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 Additionally, the Legislature explicitly directed that the State Ethics Code be liberally construed to promote high standards of ethical conduct in state government. HRS § 84-1. It is in this context that the Commission examines every employee's actions.

B. Application of the State Ethics Code to Respondent Cheung

As a DOE employee, Respondent Cheung is a state employee for purposes of the State Ethics Code.³ As a state employee, Respondent Cheung is required to comply with the State Ethics Code.

¹ Hawai'i State Constitution, Art. XIV.

² HRS Chapter 84, Preamble.

³ HRS § 84-3.

HRS § 84-13(a) (the Fair Treatment Law) prohibits a state employee from using her or his state position to obtain unwarranted privileges, advantages, or benefits for the employee or others: HRS § 84-13(a)(4) prohibits state employees from “[s]oliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate or a person or business whom the . . . employee inspects or supervises in the . . . employee’s official capacity.” HRS § 84-11 (the Gifts Law) provides in relevant part that employees may not solicit or accept any gift, including a gift of service, “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.”

The Commission investigated Respondent Cheung’s actions and believes that Respondent Cheung likely violated the Fair Treatment Law and/or Gifts Law by engaging in a substantial financial transaction with a subordinate employee, by accepting free labor from a subordinate employee, and/or by requesting a subordinate employee to use state equipment for a family member’s personal project.

Additionally, the Commission recognizes that Respondent Cheung is responsible for imposing necessary disciplinary action upon subordinate employees, which would include those employees from whom he accepted free labor and/or requested use of state equipment for his personal purposes. In fact, the Commission is aware that Respondent Cheung has taken disciplinary action, in a separate and unrelated matter, against one of the subordinate employees who had performed personal work for Respondent Cheung. A supervisor’s ability to impose fair, impartial, and reasonable discipline upon a subordinate employee can be compromised when that subordinate employee has done personal favors for the supervisor. There is no evidence in this case to suggest that Respondent Cheung’s disciplinary decision was so compromised, but the Ethics Code’s provisions exist to prevent even an appearance of impropriety in situations such as these.

III. Resolution of Investigation

The Commission believes that, based on the facts admitted above,⁴ Respondent Cheung likely violated the Fair Treatment Law (HRS §§ 84-13(a) and/or 84-13(a)(4)) and/or the Gifts Law (HRS § 84-11).

Respondent Cheung has not previously been the subject of a Commission charge or investigation.

Given the likely violations of the State Ethics Code, the Commission believes it is reasonable, fair, and in the public interest to resolve the investigation by (1) issuing this Resolution of Investigation, and (2) requiring Respondent Cheung to pay an administrative penalty of \$750.00 to the State of Hawai‘i.

⁴ This Resolution does not make formal findings, but relies on the facts admitted by Respondent Cheung.