

Resolution of Investigation
2020-2

(COMPL-I-18-00392)

**Department of Transportation Highways Division Employee's
Violation of the Fair Treatment Law**

April 16, 2020

The Hawai'i State Ethics Commission ("Commission") has resolved the Investigation of Jayson Baptista ("Respondent Baptista"), Highway Construction Inspector for the State Department of Transportation ("DOT") Highways Division, for alleged violations of the State Ethics Code, Hawai'i Revised Statutes ("HRS") chapter 84.

I. Facts

Respondent Baptista admitted and declared, under penalty of perjury, that the following facts are true and correct:¹

- a) Respondent Baptista is employed by the DOT Highways Division as a Highway Construction Inspector in Hilo, Hawai'i, and is required to comply with the State Ethics Code, HRS chapter 84.
- b) In 2015, the Department of Land and Natural Resources dredged a large quantity of sand, and the DOT hauled it to a stockpile near its Hilo base yard.
- c) On or around September 2015, Respondent Baptista asked a DOT superintendent whether a private individual could take sand from the stockpile for a personal project, and the DOT superintendent told him that removal of the sand was not permitted.

¹ This Resolution does not make formal findings, but relies on the facts admitted by Respondent Baptista.

- d) On or around September 19, 2015, Respondent Baptista allowed the private individual to take sand from the stockpile, and two dump trucks of sand were taken for use on a private outdoor horse-riding arena.²
- e) While the sand was being taken, another DOT supervisor who happened to be traveling near the stockpile asked Respondent Baptista whether anyone had authorized removal of the sand. Respondent Baptista replied that the superintendent had allowed the private individual to remove sand from the stockpile, even though Respondent Baptista had been previously told that this was prohibited.

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.”³ 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.”⁴ 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 Baptista

Respondent Baptista is a state employee for purposes of the State Ethics Code,⁵ and is bound by the State Ethics Code’s Fair Treatment law, HRS § 84-13.

HRS § 84-13(a) prohibits a state employee from using the employee’s state position to obtain unwarranted privileges, advantages, or benefits for the employee or

² The Commission’s investigation revealed that the value of the dredged sand itself was nominal: although DOT uses dredged sand in its operations, the actual market value of the dredged material is rather low.

³ Hawai‘i State Constitution, Art. XIV.

⁴ HRS Chapter 84, Preamble.

⁵ HRS § 84-3.

others. The Commission investigated Respondent Baptista's actions, and Respondent Baptista admits that he violated the Fair Treatment Law by using his state position allow a private individual to take DOT sand for personal use, and later lying to a DOT supervisor about whether he was permitted to do so.

III. Resolution of Investigation

Respondent Baptista admits that he violated the Fair Treatment law (HRS § 84-13(a)). Respondent Baptista has not previously been the subject of a Commission charge or investigation and cooperated with the Commission in its investigation.

Given the 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, (2) requiring Respondent Baptista to pay an administrative penalty of \$1,000 to the State of Hawai'i, and (3) referring this matter to the Department of Transportation for further action as appropriate.