



HAWAI‘I STATE ETHICS COMMISSION

State of Hawai‘i · Bishop Square, 1001 Bishop Street, ASB Tower 970 · Honolulu, Hawai‘i 96813

Resolution of Investigation **2020-6**

(COMPL-20-00186)

State Office Manager’s Violation of the Fair Treatment law

October 15, 2020

The Hawai‘i State Ethics Commission (“Commission”) has resolved the investigation of Diamond Garcia (“Respondent Garcia”), an Office Manager for the State of Hawai‘i House of Representatives, for an alleged violation of the State Ethics Code, Hawai‘i Revised Statutes (“HRS”) chapter 84.

The Commission received a complaint that Respondent Garcia improperly filmed a Facebook campaign video on state property. The Commission investigated this matter, and subsequently entered into a settlement agreement to resolve this investigation without further administrative proceedings.

I. Facts

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

- a) Respondent Garcia is employed as an Office Manager for the State of Hawai‘i House of Representatives, and is required to comply with the State Ethics Code, Hawai‘i Revised Statutes chapter 84.
- b) Respondent Garcia is also a candidate for State House District 43.
- c) On September 21, 2020, Respondent Garcia filmed and posted a video to Facebook, in which he was outdoors on an upper level of the State Capitol urging watchers to vote for him.

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

- d) Respondent Garcia was on vacation leave at the time and had been at the State Capitol to retrieve items from his state office.
- e) The outdoor areas of the upper floors of the State Capitol are ordinarily open to the public; as such, ordinarily, filming a campaign video in this area would not have been a violation of the Ethics Code. However, on September 21, 2020, this area of the Capitol was closed to the public – and only open to building employees – due to restrictions put in place to deal with the COVID-19 pandemic.
- f) Respondent Garcia only had access to the upper floors of the State Capitol because he was a state employee. As such, filming a campaign video there was an improper use of Respondent Garcia’s state office.
- g) Respondent Garcia recognizes that this was improper. He removed the video from all social media immediately after being contacted by Commission staff.

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.”² 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.”³ 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 Garcia

Respondent Garcia is a state employee,⁴ and is bound by the State Ethics Code’s Fair Treatment law, HRS § 84-13(a). Pursuant to HRS § 84-13(a), “No legislator

² Hawai‘i State Constitution, Art. XIV.

³ HRS Chapter 84, Preamble.

⁴ HRS § 84-3.

or employee shall use or attempt to use the legislator's or employee's official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for oneself or others[.]” Pursuant to HRS § 84-13(a)(3), state employees are prohibited from “[u]sing state time, equipment or other facilities for private business purposes[.]” As the Commission has previously explained, “there is general acceptance of the proposition that campaigning is a private, rather than official, activity. The Commission has thus held that use of state resources for campaigning is generally ‘unwarranted’ and therefore a violation of section 84-13.” Advisory Op. No. 89-1, 1989 WL 1842464, at *2. State employees are prohibited from using state time, state personnel, state e-mail, or other state resources to promote their campaigns.

With respect to use of the state capitol for campaign purposes, the Commission has previously stated that:

HRS section 84-13 bars the preferential use of state facilities. Therefore, use of the Capitol Rotunda for campaign purposes is not automatically barred by the State Ethics Code. However, the Commission has long maintained that HRS section 84-13 does prohibit legislators from using state offices or other state facilities for campaign purposes if the offices or facilities exist for the performance of official duties, and are not available for public use.

Informal Advisory Opinion Nos. 2004-4 through 2004-15 at 2, available at <https://files.hawaii.gov/ethics/advice/IAO2004-04-15.pdf>

The Commission investigated Respondent Garcia's actions, and Respondent Garcia admits that he violated the Fair Treatment law: he used his state position to access state facilities, which were otherwise closed to the public, for a private campaign purpose. After being contacted by Commission staff, however, Respondent Garcia recognized the error and took immediate steps to remove the campaign video from social media.

III. Resolution of Investigation

Respondent Garcia admits that he violated the Fair Treatment law (HRS § 84-13(a)). Respondent Garcia cooperated with the Commission's investigation, has not previously been the subject of a Commission charge, and indicated that he would comply with the State Ethics Code going forward.

Given the violation 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 Respondent Garcia to pay an administrative penalty of \$100 to the State of Hawai'i.