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# HAWAI‘I STATE ETHICS COMMISSION

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

## **Resolution of Investigation** **2022-3**

**(COMPL-I-22-00113)**

### **Department of Education Teacher’s Violation of the Fair Treatment law and Gifts law**

**November 21, 2022**

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The Hawai‘i State Ethics Commission (“Commission”) has resolved an investigation of Irene Bayudan (“Respondent Bayudan”), a teacher at Moanalua Elementary School (“Moanalua Elementary”) for alleged violations of the State Ethics Code, Hawai‘i Revised Statutes (“HRS”) chapter 84.

#### **I. Facts**

Respondent Bayudan admitted and declared, under penalty of perjury, that the following facts are true and correct:<sup>1</sup>

- a) Respondent Bayudan is a teacher at Moanalua Elementary School (“Moanalua Elementary”), which is a school under the State of Hawai‘i Department of Education (“DOE”).
- b) Respondent Bayudan, at all times relevant herein, was a state “employee” as defined in HRS section 84-3, and was required to comply with the State Ethics Code.
- c) At a Moanalua Elementary staff meeting held on January 6, 2021, the principal cautioned school employees against accepting cashier’s checks given to them for their personal use. The principal informed school employees that such payments were prohibited gifts unless used for school purposes. During that meeting, which Respondent Bayudan attended, a slide was shown explaining that “Based on the Gifts Law, we advise that the checks may only be accepted if they are used for a state

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<sup>1</sup> This Resolution does not make formal findings, but relies on the facts admitted by Respondent Bayudan.

purpose. Stated differently, the checks may not be personally accepted by the teachers, but they may be accepted by the school to be used for school purposes.”

- d) Between December 28, 2020 and July 21, 2021, Respondent Bayudan accepted the following cashier’s checks from an elderly volunteer (“Donor”) at Moanalua Elementary totaling \$16,600.00:
  - i. On or around December 28, 2020, Respondent Bayudan accepted a cashier’s check for \$3,600.00.
  - ii. On or around January 11, 2021, Respondent Bayudan accepted a cashier’s check for \$5,000.00.
  - iii. On or around February 9, 2021, Respondent Bayudan accepted a cashier’s check for \$3,000.00.
  - iv. On or around May 20, 2021, Respondent Bayudan accepted a cashier’s check for \$1,000.00.
  - v. On or around June 7, 2021, Respondent Bayudan accepted a cashier’s check for \$1,000.00.
  - vi. On July 21, 2021, Respondent Bayudan accepted a cashier’s check for \$3,000.00.
  
- e) The Donor often gave the checks to Respondent Bayudan when working with her to complete various volunteer projects for Moanalua Elementary.
  
- f) Respondent Bayudan did not inform the principal of Moanalua Elementary about these checks and did not spend any of the funds she received on school-related purposes; contrary to the principal’s instructions to all school employees, Respondent Bayudan deposited the checks into her personal bank account.
  
- g) Respondent Bayudan was only acquainted with the Donor because of her position as a teacher at Moanalua Elementary and the Donor’s volunteer work at the school.

## 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.”<sup>2</sup> To this end, the Hawai’i

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<sup>2</sup> Hawai’i State Constitution, Art. XIV.

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.”<sup>3</sup> 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 Simmons

Respondent Bayudan is a state employee for purposes of the State Ethics Code,<sup>4</sup> and is bound by the State Ethics Code’s Fair Treatment law, HRS § 84-13(a), and Gifts law, HRS § 84-11.

The Fair Treatment law prohibits employees from using their “official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for oneself or others.” Additionally, it specifically prohibits employees from accepting compensation for the performance of their official duties “except as provided by law.” HRS § 84-13(a)(2). In Informal Advisory Opinion No. 2001-11, the Commission raised concerns about an employee’s acceptance of free air transportation for a hunting trip because “it was apparent from the trial testimony of the flight company’s owner, who also piloted the aircraft, that his relationship with the former state employee resulted from the latter’s state employment.” The Commission stated that although there may have been some personal relationship, the relationship between the donor and employee resulted from the employee’s state employment and any gift received was likely an unwarranted benefit resulting from the employee’s state employment. Likewise, in this case, although Respondent Bayudan maintains that she had some personal relationship outside of her official employment hours with the elderly Donor, her relationship resulted from her state employment and continued to primarily involve the Donor’s voluntary work for Moanalua Elementary. Thus, the \$16,600 accepted by Respondent Bayudan from the Donor was an unwarranted benefit she gained from her state employment.

The Gifts law, HRS § 84-11, prohibits state employees from accepting any gift “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.” See also Haw. Admin. R. § 21-7-2(a). In determining whether or not a gift may be accepted, the

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<sup>3</sup> HRS Chapter 84, Preamble.

<sup>4</sup> HRS § 84-3.

Commission considers several factors including: (1) the relationship between the person or entity offering the gift and the employee being offered the gift, including whether the offeror is subject to official action by the recipient; (2) the value of the gift; and (3) whether the gift is “personal” or provides a “state benefit.” Haw. Admin. R. § 21-7-2(b). Generally, “the higher the value of the gift, the more likely [it] is prohibited” and generally cash gifts “do not serve any state purpose and are more likely to be prohibited.” *Id.* §§ (b)(2)-(3). In this case, a reasonable person could conclude that the \$16,600 received by Respondent Bayudan was meant to reward her for official action on her part. The Donor admitted that he gave Respondent Bayudan this money because he felt that teachers were underpaid and he wanted to help her out. Additionally, the high value of the gift and the fact that it was not for a state purpose weigh in favor of prohibiting it. Although the Donor’s motivation was not malicious, state employees may only accept compensation through their state salaries or as otherwise provided by law – the acceptance of ad hoc compensation of this magnitude in cash violates the State Ethics Code and potentially creates administrative issues for state agencies, such as by making it difficult to ensure that state employees are not accepting cash payments from improper sources or ensuring fairness in compensation for state employees.

The Commission investigated Respondent Bayudan’s actions, and Respondent Bayudan admits that she violated the Fair Treatment law and Gifts law for the reasons stated above.

### III. Resolution of Charge

Respondent Bayudan admits that she violated the Fair Treatment law and the Gifts law. She has not previously been the subject of a Commission charge or investigation.

Given the violation of the State Ethics Code, the Commission believes it is reasonable, fair, and in the public interest to resolve the Charge by (1) issuing this Resolution of Investigation; (2) requiring Respondent Bayudan to pay restitution of \$16,600 to the Donor; (3) requiring Respondent Bayudan to pay an administrative penalty of \$750 to the State of Hawai‘i; and (4) referring this matter to the DOE for disciplinary action as appropriate.