HAWAII ADMINISTRATIVE RULES

TITLE 2

OFFICE OF THE LIEUTENANT GOVERNOR

SUBTITLE 1

ADMINISTRATION

CHAPTER 14.1

ELECTION CAMPAIGN CONTRIBUTIONS AND EXPENDITURES

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Historical note: This chapter is based substantially upon Title 2, Office of the Lieutenant Governor, "Chapter 2-14, Campaign Spending Commission Rules". [Eff 5/24/74; am 10/18/76; am 7/11/78; am 4/15/80; R3/15/82; R 01/03/98; am]

§2-14.1-1 Purpose and scope. Pursuant to section 11-193(9), Hawaii Revised Statutes, the campaign spending commission has adopted these rules to implement chapter 11, part XII, subpart B, Election Campaign Contribution and Expenditures, Hawaii Revised Statutes, in accordance with chapter 91, Hawaii Revised Statutes. The administrative rules are in two parts: the first part, title 2, chapter 14.1 contains general administrative matters and an elaboration of certain areas of the law which require clarification, and the second part, title 2, chapter 14.2 contains the administrative proceedings for all proceedings brought

before the commission for contested matters, declaratory relief of the rules, and petitions for change in the rules.

The purpose and scope of these rules is to encourage citizen participation in the electoral process, prevent the actuality or appearance of corruption, equalize the resources of candidates, and gather data to detect violations of the election campaign contribution and expenditure laws. [Eff 1/3/98; am and comp](Auth: HRS §11-193) (Imp: HRS §11-193)

§2-14.1-2 Definitions. Unless the context specifically indicates otherwise, as used in this chapter:

"Campaign" means any of the legal activities and actions by a candidate, candidate's committee or supporters to obtain a majority of the votes cast in an election.

"Commission" means the campaign spending commission appointed and delegated responsibility pursuant to section 11-193, Hawaii Revised Statutes.

"Excess funds" means funds which are received by a candidate or committee in excess of any statutory limitation.

"Noncandidate committee" means any committee organized without the knowledge or consent of a candidate, and for the purpose of making expenditures or accepting contributions [for the purpose of influencing] to influence the nomination or election of a candidate, or to advocate the support or defeat of any question or issue that has been certified to appear on an election ballot.

"Residual funds" means contributions which are received by a candidate, individual, or committee but are not used for any election or campaign purpose.

"Surplus funds" means contributions held by a candidate or committee after a general or special election and after all unpaid campaign expenditures have been paid[for the election period].
[Eff 1/3/98; am and comp] (Auth: HRS §11-193) (Imp: HRS §§11-191, 11-204, 11-205, 11-206, 11-207, 11-212, 11-213; SSLH 1995, Act 10, §2)

§2-14.1-3 Committee reports. (a) Reports filed pursuant to chapter 11, part XII, subpart B, Hawaii Revised Statutes and certified by the candidate and treasurer shall be presumed to be a true and accurate statement of the committee activity. In the case of a noncandidate committee reports filed pursuant to chapter 11, part XII, subpart B, Hawaii Revised Statutes and certified by the chairperson and treasurer shall be presumed to be a true and accurate statement of the committee activity for the reporting period.

(b) Any candidate or committee who reports false contributions or expenditures, or fails to report contributions or expenditures is in violation of chapter 11, part XII, subpart B, HRS, and may be subject to administrative fines or criminal prosecution under the law and these rules.

(c) Any amendments to a report filed at the direction of the Commission must be filed in its entirety with a written explanation of any change.

(d) The period of aggregation for contributions and expenditures for any two-year or four-year office shall be from the day after the general election and through the day of the next general election, except that the period of aggregation after the November 8, 1994 general election shall begin on January 1, 1995.
[Eff 1/3/98; am and comp] (Auth: HRS §11-193) (Imp: HRS §§11-191, 11-193, 11-204, 11-205, 11-206, 11-207, 11-209, 11-212, 11-213, 11-214)

§2-14.1-4 Registration. Any candidate or candidate committee, currently registered with the commission shall file an amended organizational report within ten days after becoming a candidate as defined in section 11-191, Hawaii Revised Statutes. [Eff 1/3/98; am and comp] (Auth: HRS §91-2, 11-216) (Imp: HRS §§11-191, 11-193, 11-194, 11-196, 11-212, 11-213, 11-214)

§2-14.1-4.1 Electronic filing. (a) Candidates and committees may file reports electronically through the Internet in a format prescribed by the commission.

(b) A candidate must have an organizational report on record to file electronically.

(c) A candidate or committee shall make a request in writing to the commission to obtain a password, including the name and signature of the candidate and treasurer.

(d) The confidential password shall serve as identification and certification of a true and accurate filing by the candidate or committee.

(e) A report filed electronically shall be deemed filed by the time posted on the confirmation report received by the commission. Such confirmation shall be transmitted to the commission automatically using the HERTS II (Hawaii Electronic Reporting and Tracking System.

(f) Any attachments or documents referred to or incorporated into any report, including, but not limited, to copies of loan documents must be filed separately. [Eff and comp] (Auth: HRS §11-193) (Imp: HRS §11-195)

§2-14.1-5 Reporting deadline. Where any reporting deadline falls on a holiday or weekend, the

deadline shall be the last working day prior thereto. [Eff 1/3/98; comp] (Auth: HRS §11-193) (Imp: HRS §§11-193, 11-194, 11-195, 11-196, 11-203, 11-206, 11-212, 11-213)

§2-14.1-6 Recordkeeping. Each candidate, campaign treasurer of a committee, and any other person who is required to report contributions and expenditures shall maintain records for at least five years, unless audited and released by the commission prior thereto, after the filing deadline for each report on the matter required to be reported. Records shall include vouchers, worksheets, and receipts which shall provide in sufficient detail the necessary information and data, from which the reports and statements may be verified, explained, or clarified, and checked for accuracy and completeness. [Eff 1/3/98; am and comp] (Auth: HRS §11-193) (Imp: HRS §§11-193, 11-194, 11-195, 11-196, 11-203, 11-206, 11-212, 11-213)

§2-14.1-7 Contributions; timely reporting. (a) Monetary contributions to a candidate, committee, or party shall be promptly deposited in a financial institution and no later than seven days after the contribution has been received by a candidate or any individual authorized to receive contributions on behalf of the candidate, committee, or party.

(b) Monetary contributions shall be deposited into a depository account and not commingled with any other money that will not be solely used to influence the nomination or election of a candidate or the outcome of any question or issue which may appear on a ballot.

(b) The date a monetary contribution is deposited into a financial institution shall be deemed to be the date the contribution was received for

purposes of disclosing information in a preliminary, final, supplemental, or other report required to be filed with the commission.

(d) A contribution received in any manner provided in this section and returned to the donor within seven days after actual receipt need not be disclosed and reported as a contribution.

(e) Any failure to timely deposit a contribution in the manner provided in this section shall not obviate the requirement to disclose and report the contribution.

(f) Nonmonetary contributions to a candidate, committee, or party shall be disclosed and reported at the reasonable market value of the contribution.

[Eff 1/3/98; comp] (Auth: HRS §11-193) (Imp: HRS §§11-191, 11-194, 11-195, 11-196, 11-199, 11-203, 11-206, 11-212, 11-213)

§2-14.1-8 Contributions; limits for persons. (a) All contributions shall be aggregated and limited to amounts authorized under section 11-204, Hawaii Revised Statutes. The aggregate contribution limits shall apply to any candidate seeking election in a special, primary, and general election.

(b) Where a special election is held the applicable contribution limit shall be from the last general election held for the office to the day of the special election.

(c) The election period shall begin the day after the general election and continue through the day of the next general election.

(d) Contributions by any individual to a committee other than a candidate committee shall be considered to be a contribution to the candidate where the contribution is earmarked for the candidate or the committee is organized to support the candidate.

(e) Contributions to a candidate shall be for the election period in which the candidate is certified to be on the ballot. Any contributions made to eliminate

a candidate's debt may be attributed to the election in which the debt was incurred. The contributions shall nevertheless be reported for the election period in which the contributions are made.

(f) Any coordinated expenses between any entity or person and a candidate or committee shall be deemed to be a contribution to that candidate or committee and a corresponding expenditure by that candidate or committee.

(g) As provided in section 11-204(h), Hawaii Revised Statutes, a contribution from a partner's personal funds will be aggregated with the contribution drawn from the general partnership's assets to determine whether any contribution limit has been exceeded. This aggregate does not include the contributions drawn from the personal funds of additional partners.

(h) The commission shall interpret "controlling interest" in section 11-204(h), Hawaii Revised Statutes, to include any person who has control over the disbursement of corporate assets, particularly disbursements of corporate assets for political purposes. The actual financial ownership of a company's assets may be considered as a basis for any factual determination of a "controlling interest." Persons having a "controlling interest" shall also include the individual or individuals with the authority to make disbursements of corporate assets, particularly for political purposes.

[Eff 1/03/98; am and comp] (Auth: HRS §11-193) (Imp: HRS §§11-191, 11-193, 11-199, 11-200, 11-204, 11-205, 11-206, 11-207, 11-212, 11-213, 11-214)

§2-14.1-9 REPEALED [R]

§2-14.1-10 REPEALED [R]

§2-14.1-11 Contributions by state or county contractors. (a) Any person who has received a contract that was not executed under chapter 42D, Hawaii Revised Statutes, from the State or a county in an amount of $50,000 or more, in any calendar year, and made a contribution in the aggregate of more than $1,000 to a candidate, committee, or political party within a twelve month period before or after the effective date of the contract, shall register with the commission by filing a report that will disclose the contract, the names and addresses of any subcontractor receiving $50,000 or more through the contract, and the contribution. The report shall be filed with the commission within thirty days of the date of the contribution or within thirty days of the effective date of the contract, whichever occurs later.

(b) Any subcontractor who receives $50,000 or more through a contract between a general contractor and the State or county, and who makes a contribution in a manner provided in this section, shall register with the commission by filing a report with the commission semi-annually on January 30 and July 30 of each year. [Eff 1/03/98; am and comp] (Auth: HRS §11-193) (Imp: HRS §11-193, SSLH 1995, Act 10)

§2-14.1-12 Excess; residual; surplus contributions. (a) Any portion of a contribution received by a candidate or candidate committee, committee, or party from any person or entity that exceeds the statutory limits shall be considered excess.

(b) Regardless of whether the excess contribution was an inadvertent or intentional act, a candidate or committee shall notify the commission of the excess contribution within thirty days of the receipt of the contribution.

(c) If the excess contribution was inadvertently made, the excess may be returned to the original donor

or transferred to the Hawaii election campaign fund within thirty days from receipt of the excess contribution.

(d) If the commission determines that the excess contribution was intentionally made, the excess must be transferred to the Hawaii election campaign fund within thirty days from receipt of the commission's determination. Administrative and criminal penalties may be imposed.

(e) Excess contributions not returned to original donors within thirty days of receipt must be transferred to the Hawaii election campaign fund and in any event excess contributions escheat to the Hawaii election campaign fund within thirty days of notification by the commission.

(f) All contributions received by candidates who have withdrawn or ceased to be candidates because of illness, inactivity or other, or committees directly associated with those candidates, individuals who received contributions but did not file for nomination, or committees or parties which discontinue their activities shall be considered residual and the candidate or committee shall return all residual private campaign contributions within four years to the original donors if their identities are known. Whenever the original donor cannot be found the residual private campaign contributions may be disbursed to organizations provided under section 2-14.1-14 or escheat to the Hawaii election campaign fund.

(g) Contributions left over after the special or general election shall be considered surplus funds. Elected officials, elected officials who have left office or have completed their terms, or candidates who failed to be nominated or elected shall have four years following the last applicable election period to use surplus funds from the last applicable campaign to contribute to any community service, educational, youth, recreational, charitable, scientific, or literary organization, or to the Hawaii election

campaign fund unless the official or candidate files for nomination prior to the completion of the four year period. The last applicable election period shall be the period including the primary and general election at which the elected official left office, ended their term of office or failed to be nominated or elected.

(h) Upon the death of any candidate, residual campaign funds shall be returned to the original donor within 60 days or escheat to the Hawaii election campaign fund. [Eff 1/3/98; am and comp] (Auth: HRS §§11-204, 11-214) (Imp: HRS §§11-200, 11-204, 11-206, 11-214)

§2-14.1-13 Loans to candidates or committees. (a) Any loan more than of $1,000 to a candidate or committee, must be reported to the commission by disclosing the loan and attaching a copy of the original loan agreement to the applicable report; provided that any loan shall be treated and reported to the commission as a campaign contribution under the following conditions:

(1) The terms and conditions of the loan are not incorporated into a written promissory note; and

(2) The loan is not fully repaid within one year from the effective date of the loan; provided that loans from immediate family members or the candidates' personal funds shall not be subject to the one year repayment requirement.

(b) Any loan by a financial institution regulated by the State or a federally chartered depository institution shall be made in the ordinary course of business and reported to the commission.

(c) A loan made in the ordinary course of business shall meet the following conditions:

(1) The terms and conditions of the loan are incorporated into a written promissory note;

(2) The loan shall be fully repaid within one year from the effective date of the loan except that home equity or business loans may be repaid within the terms and conditions of that particular loan;

(3) The loan shall be secured by collateral with a market value covering at least eighty per cent of the amount borrowed; except that loans for less than $5,000 require only a signature of the candidate and no collateral; and

(4) The loan includes the payment of interest at a rate that is not less than the prevailing market rate for a similarly secured institutional loan.

(d) Any loan made outside the ordinary course of business shall be reported to the commission as a campaign contribution and each endorser or guarantor shall be deemed to be a contributor of that portion of the loan that each individual is liable through a written agreement. [Eff 1/3/98; am and comp] (Auth: HRS §11-223) (Imp: HRS §§11-212, 11-223)

§2-14.1-14 Expenditures. (a) Unless otherwise authorized by statute or rule, any expenditure authorized by a candidate, the candidate's authorized representative, or campaign treasurer named by the candidate shall be attributed to the candidate for reporting purposes. A party or committee organized with or without the consent or knowledge of a candidate shall maintain complete records of expenditures made on behalf of a candidate.

(b) Any donation or expenditure by a candidate or candidate committee to or for a community or charitable organization shall be presumed to be a campaign expenditure for reporting purposes unless clear evidence proves otherwise.

(1) Community or charitable organizations shall

not include religious organizations established to promote a religious purpose, organizations or trust funds established by a candidate or the candidate's committee, organizations whose beneficiaries include the candidate, the candidate's immediate family members, members of the candidate's committee and their immediate families, and any organization where one individual constitutes the entire organization.

(2) Educational organizations shall not include organizations that are established temporarily to advocate or promote political or ballot issues.

(c) Each authorization by a candidate to another person or organization to raise funds or to make expenditures on behalf of the candidate shall be signed and dated by the candidate and shall also state:

(1) The name, address, and organization affiliation of each authorized individual;

(2) The name of the candidate;

(3) The office sought and the election period involved; and

(4) Any limitation or restriction imposed.

(d) All expenditures of campaign funds authorized by any candidate, committee, or party shall be deemed to be for the election [next following the period] in which the expenditure is reportable to the commission unless the person filing the required report furnishes detailed information to justify an allocation to another election period.

(e) Any unpaid expenditures must be reported to the commission until payment is made in full or debt is forgiven. If unpaid expenditures are not repaid within one year or debt is forgiven those unpaid expenditures shall be considered unpaid loans as provided in section 2-14.1-13. [Eff 1/3/98; am and comp] (Auth: HRS §§11-207, 11-208, 11-209) (Imp: HRS §§11-207, 11-208, 11-209, 11-212, 11-213)

§2-14.1-15 Expenditures for personal expenses. (a) No candidate, committee, candidate committee, or noncandidate committee shall use any campaign contribution for any personal expense, including without limitation the following:

(1) Household food items and supplies purchased for daily personal consumption by the candidate, a family member of the candidate, or members of a committee, candidate committee, or noncandidate committee;

(2) Gifts or donations for weddings, Christmas, birthdays, funerals, or other personal occasions, except as provided in section 2-14.1-16(a)(5);

(3) Clothing usually and customarily worn for everyday wear; provided that a campaign expense for clothing identifying the candidate or campaign for an office shall not be prohibited;

(4) Tuition and educational fees or expenses not directly related to the performance of duties or responsibilities in a candidate's campaign for elected office;

(5) Mortgage, rent, and utility expenses for a personal residence; provided that if a clearly segregated portion of the personal residence is being used for campaign purposes, contributions may be used to reimburse the owner of the property a fair rental value for the apportioned actual use of the personal residence;

(6) Entertainment or sporting events;

(7) Dues, fees, or other expenses to a country club, health club, recreational or exercise facility and not arising from a fund-raising activity or function held at the facility; provided that contributions may be used to pay for membership dues or

other expenses in a community or civic organization where the candidate is directly involved in the activities of the organization;

(8) Compensation for personal services paid to the candidate or the candidate's immediate family or relatives, unless the payments are for bona fide services necessary to maintain a campaign to influence the nomination or election of the candidate and is comparable to the compensation paid to other persons in the community providing similar services; or

(9) Legal expenses not related to the nomination or election of a candidate. Allowable legal services shall be limited to providing legal representation for matters before the commission and matters before a court of law that relate specifically to commission action or the nomination or election of a candidate.

(b) For purposes of this section, a "personal expense" means any use of campaign contributions for an expense that would exist irrespective of a candidate's campaign to seek the nomination or election to office or being elected to a political office. [Eff 1/3/98; am and comp] (Auth: HRS §11-206) (Imp: HRS §§11-206, 11-207, 11-208, 11-209, 11-212, 11-213)

§2-14.1-16 <u>Authorized campaign expenditures; unauthorized campaign expenditures.</u> (a) A candidate, committee, or candidate committee may use campaign contributions to pay for necessary expenses that are predominantly and directly related to a candidate's campaign to influence the nomination or election of the candidate. Authorized campaign expenditures include,

but are not limited to, the following:

(1) Airfare and hotel accommodations;
(2) Meal or food expenses incurred at a fund-raising event or other campaign activity;
(3) Professional services that are necessary in a candidate’s campaign to seek the nomination or election of the candidate;
(4) Penalties, fines, judgments, or settlements imposed on a candidate or candidate committee by a court or regulatory agency and related to a campaign to seek the nomination or election of the candidate; Personal gifts of not more than an aggregate of $500 for a two year office term, $1,000 for a four year non-statewide office term or $1,500 for a four year statewide office term in any election period for one or more campaign employees or volunteers, or for one or more employees assigned to the office in which the candidate was elected; or
(5) Any mixed benefit expenditure authorized in section 2-14.1-16.

(b) An expenditure to compensate an individual who approved the expenditure is not an authorized campaign expenditure.

(c) Any expenditure of a contribution used to compensate a candidate for personal services provided by the candidate to influence the nomination or election of the candidate or to satisfy a function of the candidate's elected office is not an authorized campaign expenditure.

(d) Any expenditure of a contribution used to purchase a fee simple interest in real property is not an authorized campaign expenditure to influence the nomination or election of a candidate or to satisfy a function of a candidate's elected office.

(e) No contribution shall be expended for the lease of real property or the purchase, lease, or refurbishment or repair of any appliance or equipment, where the candidate, campaign treasurer, or any

individual with authority to approve the expenditure maintains any legal interest in the real property or the appliance or equipment. Equipment includes vehicles, office equipment, and electronic devices such as television, phones, computers, printers, copiers, calculators and other similar devices.

(f) Ordinary and necessary expenses incurred in connection with the candidate's duties as a holder of an elected state or county office shall include usual and reasonable expenses, and bear a direct relation to the office; and such expenses shall be absolutely necessary for carrying out the duties of the office. Such expenses may include office equipment or supplies, but not travel or related expenses, food or other professional or personal services. [Eff 1/3/98; am and comp] (Auth: HRS §11-206) (Imp: HRS §§11-206, 11-207, 11-208, 11-209, 11-212, 11-213)

§2-14.1-17 Mixed benefit to the candidate. (a) An expenditure of contributions may be used to purchase or lease goods or services that provide a mixed benefit to the candidate; provided that an amount attributed to a personal benefit for the candidate shall be determined and reimbursed by the candidate to the committee, unless the personal benefit is de minimus by the use of the good or service being five per cent or less of the total use of the good or service in any one calendar month and the expenditure for the good or service did not exceed a fair market value of $100 in any one calendar month.

(b) An expenditure of contributions may be used to provide a mixed benefit to the candidate, including without limitation, the following:

(1) Purchase or lease of a vehicle, including any operation and maintenance costs, where the title to the vehicle is in the name of the candidate committee;

(2) Reimbursement for the use of a personal vehicle, not including operation and maintenance expenses, shall be authorized and documented for audit purposes at the most current mileage rate adopted from time to time by the department of accounting and general services, State of Hawaii, at the time the vehicle is used;

(3) Lease of real property to a candidate or candidate committee for a renewable period not to exceed one year.

(c) For purposes of this section, a "mixed benefit to the candidate" means any use of personal goods, vehicles, equipment, or services that may be used both for personal purposes and to influence the nomination or election of a candidate or to satisfy a function of the candidate's elected office.

(d) Any contribution used to provide a mixed benefit to the candidate and attributed to an expenditure related to the nomination or election of the candidate or to satisfy a function of the candidate's elected office shall be disclosed in a preliminary, final, or supplemental report filed with the commission. [Eff 1/3/98; comp] (Auth: HRS §11-206) (Imp: HRS §§11-206, 11-207, 11-212, 11-213)

§2-14.1-17.1 <u>Durable assets; acquisition and disposition.</u> (a) Durable assets are non-consumable supplies or equipment with a minimum purchase value of $250 and a useful life of twelve months or more.

(b) Any acquisition or disposition of a durable asset by a candidate, candidate’s committee or noncandidate committee shall be reported on forms provided by the commission.

(c) The durable asset reports shall include the following current information:

(1) Detailed description and cost of the durable

asset;

(2) Date of acquisition or disposition;

(3) Full name, street address, city, state, and zip code of vendor, vendee, donor or donee.

[Eff and comp] (Auth: HRS §11-193) (Imp: HRS §§11-191, 11-195, 11-207, 11-212, 11-213)

§2-14.1-18 Fundraising expenditures. Expenses arising from a fundraiser or other political fundraising activities held for the benefit of a candidate shall be considered expenditures for purposes of the voluntary expenditure limit available to candidates established under section 11-209, Hawaii Revised Statutes. [Eff 1/3/98; am and comp] (Auth: HRS §11-203) (Imp: HRS §§11-206, 11-207, 11-208, 11-209, 11-212, 11-213, 11-215)

§2-14.1-19 Application for public funds. (a) Application for public funds shall be filed electronically, unless otherwise exempted by the commission on a format prescribed by the commission. A candidate shall certify that all penalties and any other money owed by the candidate to the Hawaii election campaign fund have been paid. To apply for public funds a candidate shall:

(1) File a statement of intent to seek qualifying campaign contributions with the commission;

(2) Complete an application form requesting public funds;

(3) File an affidavit with the commission which states that the candidate is aware of the campaign expenditure limit for the

candidate's office and is willing to abide by this limit; and

(4) Submit a qualifying campaign contribution schedule which shall list:
(A) The name and address of each person who contributed an aggregate of $100 or less to the candidate since filing the statement of intent to seek qualifying campaign contributions; and
(B) The total amount of each such qualifying campaign contribution and the date of receipt by the candidate or campaign treasurer of the contribution.

(b) After initial certification for eligibility for public funds has been made by the commission, a candidate may receive subsequent funding by:
(1) Completing an application form with the commission requesting additional funds; and
(2) Submitting statements which shall contain the same information as required by the initial qualifying campaign contribution statement as to donors who have contributed to the candidate's campaign fund since the last current statement was filed.

Subsequent applications and funding shall not be made more frequently than every fourteen calendar days after the last filed application. [Eff 1/3/98; am and comp] (Auth: HRS §§11-219, 11-222) (Imp: HRS §§11-217, 11-218, 11-219, 11-220, 11-221, 11-222, 11-223, 11-224, 11-225)

§2-14.1-20 <u>Authorized campaign expenses of public funds.</u> (a) A candidate's authorized use of public funds is limited to filing fees, purchase of television or radio broadcasting "on-air time", newspaper advertising, mail-outs, bumper stickers, signs, banners, sundry items such as pens, pencils, magnets, and stickers, printing, and postage.

(b) A candidate may use public funds to repay a loan if the proceeds of the loan were used to pay for the authorized campaign expenses listed above. Each

candidate shall keep a complete record of campaign expenses paid for with public funds.

(c) Printing costs shall not include the purchase of shirts, hats or other articles of clothing.

(d) Broadcast costs shall not include any costs related to the "production" of a radio spot, video, or television advertising. Only "on-air time" shall be an authorized expenditure.

(e) A candidate shall use public funds to pay for campaign expenses which were directly incurred during the election period in which the candidate received the public funds. Public funds received during a primary or special primary election period may not be used during a general election period. [Eff 1/3/98; am and comp] (Auth: HRS §11-223) (Imp: HRS §§11-222, 11-223, 11-224, 11-225)

§2-14.1-21 <u>Voluntary campaign expenditure limitation affidavit.</u> (a) Affidavits must be submitted no later than the filing of nomination papers and shall be filed with the commission. The commission shall keep copies of all affidavits and forward certified copies to the director of taxation.

(b) Any candidate who exceeds the voluntary campaign expenditure limits as provided under section 11-209, Hawaii Revised Statutes shall inform the commission by telephone and in writing on the day that the expenditure limit set for that election is exceeded.

(c) All contributors for the election period shall be notified by the candidate in writing within thirty days of exceeding the limit that the voluntary campaign expenditure limit has been exceeded and contributions to the candidate are no longer tax

deductible as provided under section 11-226, Hawaii Revised Statutes.

(d) The candidate shall inform the office of elections on the day that expenditure limits are exceeded, and pay the full filing fee.

(e) The candidate shall file with the director of taxation a notice that contributors have been notified and that contributions are not tax deductible. [Eff 1/3/98; am and comp] (Auth: HRS §§11-208, 11-226) (Imp: HRS §§11-208, 11-209, 11-212-11-213,11-225, 11-226, 11-227, 11-228, 11-229)

§2-14.1-22 Termination of campaign spending commission registration. (a) An individual shall remain a candidate under the campaign spending law while running for an elective office, and may continue registration during any term of office to which the candidate was elected. The commission may not terminate candidate's registration until after a candidate or candidate committee reports no remaining surplus or deficit to the commission and the commission has approved a request filed by the candidate to terminate.

(b) The final report or end of the year supplemental report must be accompanied by bank statements to confirm the current status of all relevant account balances. [Eff 1/3/98; am and comp] (Auth: HRS §§11-223, 11-224) (Imp: HRS §§11-220, 11-222, 11-223, 11-224, ll-225)

§2-14.1-23 House bulletins. In no event shall costs of preparing, printing, and circulating house bulletins as defined in section 11-191, Hawaii Revised Statutes, give rise to a reporting requirement on the part of any person sponsoring the communication or those persons receiving the benefits of the

publication. "House bulletin" shall be construed narrowly to exclude paid political advertisements and

special edition publications for general distribution to the public. The exemption shall be construed to favor intra-organization communications of whatever nature. [Eff 1/3/98; am and comp] (Auth: HRS §11-211) (Imp: HRS §§11-211, 11-215)

§2-14.1-24 Legislative newsletters, reports, surveys, and polls. (a) Payment of costs incurred in the preparation, publication, and distribution of reports, surveys, or polls which influence the nomination for election, or election, to office of any candidate shall be deemed an expenditure required to be reported under sections 11-212 and 11-213, Hawaii Revised Statutes, unless specifically excepted by this section:

(1) Use of campaign funds to pay for costs of the reports, surveys, or polls are always reportable expenditures;

(2) Use of personal funds or funds other than contributed funds for costs of such reports, surveys, or polls are deemed reportable expenditures if expended by a person found to be a candidate as defined in section 11-191[(3)], Hawaii Revised Statutes.

(b) The payment of costs for the following reports, surveys, or polls are specifically excepted as reportable expenditures:

(1) Reports, surveys, or polls of independent organizations not affiliated with any candidate and who have not received or expended any money on behalf of any candidate, and whose report, survey, or poll is either available to all candidates as well as the general public or is confidential and not distributed or

publicized at any time prior to an election in which the report, survey, or poll would have an influence;

(2) Reports, surveys, or polls required by law to be made by any governmental agency and for which funds have been appropriated by law;

(3) Reports, surveys, or polls of incumbent officeholders, not candidates, who pay for costs of publication and distribution from funds which have been specifically appropriated by law; and

(4) Reports, surveys, or polls of any news reporting agencies or communications media who have neither received nor contributed any moneys on behalf of any candidate.

(c) The exceptions stated in subsection (b) may be disallowed and found to be reportable expenditures where the report, survey, or poll directly identifies a person who is a candidate, advocates or supports the candidate's nomination for election, election, or defeat, or is published within ninety days prior to any election day. [Eff 1/3/98; am and comp] (Auth: HRS §11-211) (Imp: HRS §§11-206, 11-211, 11-212, 11-213, 11-215)

<u>§2-14.1-24.1 Electioneering communications.</u> (a) Any paid advertising that a reasonable person could interpret as having no other purpose other than to directly associate a candidate with a specific effort to influence a candidate’s nomination, for election or election, or defeat in a nomination for election or election, shall be reported to the commission as required to be reported under section 11-207.6, Hawaii Revised Statutes.

(b) Such reporting shall be in addition to the reporting of expenditures required to be reported under

sections 11-212 and 11-213, Hawaii Revised Statutes by candidates and committees, unless such expenditures are reported elsewhere. [Eff and comp] (Auth: HRS §11-11-193) (Imp: HRS §§11-207.6, 11-212, ll-213)

§2-14.1-25 Code endorsement by candidates. Any candidate for elective office may voluntarily elect to conduct the candidate's campaign in accordance with the code of fair campaign practices, copy of which is attached at the end of the chapter as Exhibit A, entitled "Code of Fair Campaign Practices", dated June, 1997. [Eff 1/3/98; am and comp] (Auth: HRS §11-210) (Imp: HRS §§11-210, 11-211)

§2-14.1-26 Complaints of violations; administrative fines; referral. (a) Any complaint of a violation of the Hawaii election campaign contributions and expenditures laws provided in sections 11-191, et seq.,Hawaii Revised Statutes, shall be filed with the commission. The complaint shall be in writing and shall be signed under oath by the complainant. The oath shall verify that the statements provided in the complaint were made with sufficient personal knowledge or information to form an understanding and belief that the statements are true. Complaints initiated by the commission or its staff shall be in writing and signed by the executive director.

(b) The complaint shall provide specific and detailed statements that are based upon a complainant's personal understanding and belief. The complaint shall also cite the law or rule that has been violated and the statements relied upon to support the claim that a specific law or rule has been violated.

(c) Upon filing of the complaint, the commission shall give notice of receipt of the complaint together with a copy of the complaint to the person cited and

shall afford the person an opportunity to explain or otherwise respond to the complaint at a meeting promptly noticed by the commission and conducted under chapter 92, Hawaii Revised Statutes.

(d) The commission shall consider the complaint in a meeting conducted pursuant to chapter 92, Hawaii Revised Statutes, and determine whether the complaint should be summarily dismissed or further investigated by its staff. The commission may also make a preliminary determination that there is probable cause to believe that a violation of the Hawaii election campaign contributions and expenditures laws under sections 11-191, et seq., Hawaii Revised Statutes, has been committed.

(e) In a meeting conducted pursuant to chapter 92, Hawaii Revised Statutes, the commission may render a proposed decision or issue a preliminary order affecting any person for violating the Hawaii election campaign contributions and expenditures laws under sections 11-191, et seq., Hawaii Revised Statutes, and assess an administrative fine against the person. No final decision or order in which an administrative fine has been assessed against a person shall be issued without providing the person written notice and an opportunity to be heard at a hearing conducted under chapter 91, Hawaii Revised Statutes; provided that the person may waive these rights by written stipulation or consent.

(f) In lieu of an administrative determination that a violation of the Hawaii election campaign contributions and expenditures laws under sections 11-191, et seq., Hawaii Revised Statutes, has been committed, the commission may refer the complaint to the attorney general or county prosecutor at any time it believes that the person cited may have intentionally, knowingly, or recklessly committed a violation. If complaints are not in compliance with

the requirements of this section, the commission staff shall notify the complainant and any persons or entities identified therein as respondents that no

action shall be taken on the basis of that complaint. A copy of the complaint shall be enclosed with the notification to each respondent. [Eff 1/3/98; am and comp] (Auth: HRS §§91-2, 11-193) (Imp: HRS §§91-2, 11-216, 11-225, 11-228, 11-229)]

§2-14.1-27 Determination of complaint; summary dismissal. The Commission may summarily dismiss a complaint upon making any of the following determinations, without regard to chapter 91, Hawaii Revised Statutes:

(1) The complaint fails to comply with the requirements of section 2-14.1-24;
(2) The complaint fails to provide statements that were based upon sufficient knowledge or information to form a belief that the statements are true;
(3) The complaint fails to provide sufficient statements to support a claim that a law or rule may have been violated; or
(4) The complaint clearly lacks merit.

[Eff 1/3/98; comp] (Auth: HRS §§91-2, 11-193) (Imp: HRS §§91-2, 11-216, 11-225, 11-228, 11-229)

§2-14.1-28 Determination of complaint; investigation. (a) The commission may cause a complaint to be further investigated by its staff upon making any of the following determinations, without regard to chapter 91, Hawaii Revised Statutes:

(1) The complaint may involve other candidates, parties, committees, or persons not stated in the complaint;

(2) The complaint provides statements that may support a claim that other violations of law or rule may have been violated; or

(3) An investigation by the commission staff will assist in a prompt and efficient determination of any violation of law or rule.

(b) If the commission causes an investigation to be conducted by its staff, a report of the staff's findings shall be provided to the commission. Upon consideration of the staff's findings, the commission may, without regard to chapter 91, Hawaii Revised Statutes, summarily dismiss the complaint, request further investigation, make a preliminary determination, or refer the complaint to an appropriate prosecuting authority for prosecution under section 11-229, Hawaii Revised Statutes.

(c) The investigation may include, but is not limited to field investigations, audits, and other methods of information-gathering.

(d) The commission may also cause another complaint to be initiated by its staff.

[Eff 1/3/98; comp] (Auth: HRS §§91-2, 11-193) (Imp: HRS §§91-2, 11-216, 11-225, 11-228, 11-229)

§2-14.1-29 Determination of complaint; preliminary determination of probable cause. (a) Upon consideration of a complaint, without regard to chapter 91, Hawaii Revised Statutes, the commission may make a preliminary determination that there is probable cause to believe that a violation of the Hawaii election campaign contributions and expenditures laws under section 11-197, et seq., Hawaii Revised Statutes, has occurred.

(b) The preliminary determination shall be supported by a preliminary statement of findings of

fact and conclusions of law that the commission adopted after consideration of the merits of the complaint in a meeting conducted under chapter 92, Hawaii Revised Statutes.

(c) The commission's preliminary determination and preliminary statement of findings of fact and conclusions of law shall be served upon the person cited by certified mail. The person shall be afforded an opportunity to contest the commission's preliminary determination of probable cause by making a request for a contested hearing under chapter 91, Hawaii Revised Statutes, within twenty days of receipt of the preliminary determination. A request for a contested hearing shall be made by timely filing with the commission a notice of the person's intent to contest the commission's preliminary determination of probable cause.

(d) Failure to timely request a contested hearing in the manner provided in this section shall result in the commission's preliminary determination being deemed a final determination of violation.

(e) Upon receipt of a timely filed notice of intent to contest the commission's preliminary determination, the commission shall cause its preliminary determination and preliminary statement of findings of fact and conclusions of law to be filed as a petition for hearings relief pursuant to section 2-14.2-24. [Eff 1/3/98; comp] (Auth: HRS §§91-2, 11-193) (Imp: HRS §§91-2, 11-216, 11-225, 11-228, 11-229)