

## INFORMAL ADVISORY OPINION NO. 94-5

A member of a state commission was required to annually file a statement of his financial interests with the State Ethics Commission. In 1992, the commissioner filed a financial disclosure statement that covered the period from the time of his previous filing in 1991 to the date of his 1992 filing. The staff of the Ethics Commission reviewed his disclosure and compared it to information available from the Department of Commerce and Consumer Affairs (DCCA) and other agencies. The comparison revealed that the commissioner had omitted certain items from his financial disclosure statement. At the time of his 1992 filing, the commissioner apparently held five separate financial interests that went unreported:

1. Directorship and officership in Non-profit Corporation A

According to DCCA records, the commissioner was a member of the board of directors and the vice-president of this corporation.

2. Directorship and officership in Non-profit Corporation B

DCCA records indicated that the commissioner served as a director and as the vice-president of this corporation.

3. Directorship and officership in Profit Corporation C

According to documents on file at DCCA, the commissioner was a member of the board of directors and the vice-president of this profit corporation.

4. Directorship and officership in Non-profit Corporation D

The commissioner was a member of the board of directors and the treasurer of this corporation.

5. Trustee of a Private Trust

Records indicated that the commissioner was the trustee of a private trust.

The state ethics code, Hawaii Revised Statutes (HRS) chapter 84 requires the reporting of various financial interests. The financial disclosure requirements of the ethics code are located in HRS section 84-17. This section requires various state officials and employees to annually file a statement of their financial interests with the Ethics Commission. The law requires that this disclosure of financial interests must be filed between January 1 and April 30 of each year, or within thirty days of one's election or appointment to a state position that requires disclosure.

HRS section 84-17 (c) (9) provides that members of every state board or commission whose original terms of office are for periods exceeding one year and whose functions are not solely advisory must file confidential financial disclosures. This commissioner's original term of office was for a period exceeding one year. His commission's functions were not solely advisory. Thus, he was required to file a disclosure of his financial interests with the Ethics Commission.

The ethics code specifies which items must be included on a financial disclosure statement. HRS section 84-17 (f)(3) provides that, among other items, state officials and employees must disclose:

every officership, directorship, trusteeship, or other fiduciary relationship held in a business during the disclosure period, the term of office and the annual compensation.

The term "business" is defined by the ethics code as:

a corporation, a partnership, a sole proprietorship, a trust or foundation, or any other individual or organization carrying on as a business, whether or not operated for profit.

In short, the term "business" includes a wide variety of organizations, including non-profit organizations. Section 84-17, therefore, requires state officials and employees to report directorship and officership interests in non-profit businesses as well as profit businesses. It also requires the reporting of a trusteeship held in any trust.

By failing to report his interests in the four corporations and in the trust, it appeared that the commissioner may have violated section 84-17 of the state ethics code. The staff of the Ethics Commission asked the commissioner for an explanation for the omissions. In reply, the commissioner stated that he did not report his interests in the non-profit corporations because it did not occur to him that a directorship or officership position in a non-profit corporation had to be reported as a financial interest. He served in these positions without compensation. The commissioner also said that he did not report his interest in the profit corporation because shortly after incorporation, there was a dispute between the directors of the corporation as to how the corporation should be run. As a result of this, the corporation never did any business. It was allowed to be involuntarily dissolved for failure to file annual exhibits with DCCA. Finally, the commissioner explained that the trust was settled by a member of his family. The trust consisted of a small parcel of family owned land. The land was not for sale and had never been appraised.

The Ethics Commission considered the commissioner's explanation at its meeting on April 6, 1994. The Commission understood and acknowledged the explanation. The Commission believed, however, that a misunderstanding of the law could not excuse an apparent violation of the financial disclosure law.

The Commission regards the financial disclosure law as one of the keystones of the ethics code. The requirement of disclosure of financial interests is rooted in the Hawaii State Constitution. Article XIV of the Constitution mandates the existence of a state ethics code. The Constitution requires that the ethics code include provisions on financial disclosure. In relevant part, Article XIV states:

The financial disclosure provisions shall require all elected officers, all candidates fro elective office and such appointed officers and employees as provided by law to make public financial disclosures. Other public officials having significant discretionary or fiscal powers as provided by law shall make confidential financial disclosures. All financial disclosure statements shall include, but not be limited to,

sources and amounts of income, business ownership, officer and director positions, ownership of real property, debts, creditor interests in insolvent businesses and the names of persons represented before government agencies.

The financial disclosure law allows the public the opportunity to evaluate matters which might bring about conflicts of interests between public employment and private financial interests. In the interests of privacy, certain non-elected officials and employees file confidential financial disclosure statements that are seen only by the Ethics Commission. The review of these statements allows the Commission to take action on possible conflicts of interests before problems arise.

As a member of a state commission, the commissioner was required to file an accurate, confidential financial disclosure statement with the Ethics Commission. This information would have enabled the Commission to assess the potential for conflicts of interests between the commissioner's state position and his private financial interests. Without complete information, the Commission is greatly hindered in its administration of the ethics code.

The Commission recognized that the financial disclosure statements that the commissioner filed in 1993 and 1994 were accurate and complete. The Commission believed that this commissioner was now in full compliance with the financial disclosure law. For this reason, the Commission decided to issue the commissioner an Informal Advisory Opinion rather than continue with formal charge proceedings. The opinion was intended to clarify the requirements of the financial disclosure law to ensure the commissioner's future compliance.

The Ethics Commission stated that it appreciated the commissioner's candor and cooperation throughout its review of this matter. The Commission understood that it can be unsettling to have a charge filed against you. The Commission believed, however, that violations of the financial disclosure law were serious enough to warrant this action.

Date: Honolulu, Hawaii, June 8, 1994.

STATE ETHICS COMMISSION  
K. Koki Akamine, Vice Chairperson  
Cynthia T. Alm, Commissioner  
Sharon "Shay" Bintliff, Commissioner  
Don J. Daley, Commissioner

#### OPINION CONCURRING IN PART AND DISSENTING IN PART

I concur in the Commission's interpretation of section 84-17, Hawaii Revised Statutes. I must respectfully dissent, however, from the decision to issue a charge in this case. I believe that this matter did not warrant the use of the Commission's enforcement power to issue a charge.

The majority correctly stresses that the financial disclosure provisions are an important facet of the ethics code. Financial disclosure statements allow the Ethics Commission the opportunity to evaluate a state official's financial interests and guard against the possibility of conflicts between these interests and the official's state position. If this information is not available, the Commission is not in a position to prevent possible conflicts of interests.

It is true that the commissioner did not accurately disclose his financial interests. It is equally true, however, that his omissions were not based on any deliberate attempt to circumvent the law. The interests that the commissioner did not disclose did not conflict with his state position. I do not believe that the commissioner omitted these items because he was attempting to conceal possible conflicts of interests. There were no conflicts to conceal. No sinister scheme was at work here. I believe that the commissioner did not disclose these items because of the reason that he gave us: he did not understand the disclosure requirements.

The commissioner was informed of the requirements of the disclosure law during the Commission's review of this matter. Once he understood the law, he complied with it. His next filing was accurate and complete. I believe that this is further evidence that the commissioner's omissions were not intentional and were based on an honest misunderstanding of the law.

The issuance of a charge in this case disturbs me. The Commission has established a laudable goal, full compliance with the financial disclosure provisions. However, in its efforts to achieve this goal, I fear the Commission is headed towards a policy of zero tolerance for mistakes. I believe this is unwise. It is possible that this policy may result in better compliance with the financial disclosure law. I worry that its greater result, however, will be a situation in which state officials are reluctant to seek our advice for fear of calling our attention to an error on their form and thus courting a charge. I would prefer to assist officials in complying with the law rather than penalize them for legitimate errors.

I do agree with the majority that the financial disclosure provisions are an important part of the ethics code. Attempts to circumvent these provisions should be dealt with firmly. Were there any evidence of a deliberate attempt to conceal financial interests, I would not hesitate to issue a charge. In this situation, however, I do not believe that the commissioner did anything to warrant the issuance of a charge. His omissions were harmless, inadvertent, and understandable. I would not have taken the extreme step of charging him with a violation of the ethics code.

Rev. David K. Kaupu, Chairperson