

INFORMAL ADVISORY OPINION NO. 94-11

A member of a state board was required by the State Ethics Code to file a disclosure of financial interests ("financial disclosure") with the Hawaii State Ethics Commission ("Commission") between January 1 and April 30 of each year. In February of 1994, the Commission mailed a form for this purpose to the board member and to all other individuals who were required by law to file such disclosures. On April 12, 1994, the Commission also mailed a reminder notice to the board member about the filing deadline.

Because April 30 fell on a Saturday, the deadline for submitting financial disclosures to the Commission was Monday, May 2, 1994. The Commission did not receive a financial disclosure from the board member on or before the deadline date.

Consequently, the Commission sent a letter to the board member again requesting that she file her financial disclosure as soon as possible. The letter notified her that failure to file a disclosure by the deadline date was a violation of the State Ethics Code. The letter further stated that if the Commission did not receive a financial disclosure from the board member, or did not hear from her as to any problems with filing the disclosure statement, the Commission would have no recourse but to consider filing a charge against her.

The Commission did not receive a financial disclosure from the board member. Nor did the Commission hear from her as to any problems she might have in filing her disclosure statement. Therefore, on June 8, 1994, the Commission issued a charge against the board member for failure to file a financial disclosure.

The State Ethics Commission filed this charge against the board member pursuant to Hawaii Revised Statutes ("HRS") section 84-31. HRS section 84-31(a)(3) grants the Commission authority to initiate, receive, and consider charges concerning alleged violations of the ethics code. It also authorizes the Commission to investigate and hold hearings.

HRS section 84-31(b) requires that any person against whom a charge has been filed be notified in writing of the charge and be given an opportunity to explain the conduct alleged to be in violation of the law. The board member was notified of the charge by letter. Enclosed with the letter was a copy of the charge filed against her. The letter explained that the board member had an opportunity to respond to the charge. The letter also asked, again, that the board member submit her financial disclosure as soon as possible.

After the Commission issued its charge, the board member filed a completed financial disclosure. The board member did not provide any other response to the charge.

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 financial disclosures. The board member's original term of office was for a period exceeding one year. Her functions as a board member were not solely advisory. Thus, the board member was required to file a disclosure of her financial interests with the Commission.

The Commission stated that it regarded 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 establishment 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 for 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 Commission explained that 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 Commission. The Commission noted that the review of these statements allowed it to take action on possible conflicts of interest before problems arose.

The Commission was aware that some state officials viewed the financial disclosure requirement as an unwelcome chore. The Commission pointed out, however, that individuals who accept appointment to state government service also accept the legal responsibilities that accompany government service. These responsibilities include complying with the State Ethics Code.

The board member was required to file a confidential financial disclosure statement with the Commission each year because of her state position. This information enabled the Commission to assess the potential for conflicts of interests between her state position and her private financial interests. The Commission stated that without complete, timely information, it was hindered in its administration of the ethics code.

The Commission decided that because the board member filed her financial disclosure statement, further charge proceedings were not warranted. Instead, the Commission decided to issue the board member this Informal Advisory Opinion to emphasize the requirements of the financial disclosure law and to ensure her future timely compliance. The Commission informed the board member that it would consider more serious proceedings under chapter 84, HRS, should any future disclosure of financial interests not be filed in a timely manner.

DATED: August 31, 1994, Honolulu, Hawaii.

STATE ETHICS COMMISSION
K. Koki Akamine, Chairperson
Cassandra J.L. Abdul, Commissioner
Don J. Daley, Commissioner
Carl T. Sakata, Commissioner

Note: Vice Chairperson Sharon "Shay" Bintliff participated in the Commission's decision but was unable to be present at the signing of this opinion.