

INFORMAL ADVISORY OPINION NO. 94-26

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 he file his financial disclosure as soon as possible. The letter notified him 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 him as to any problems with filing the disclosure statement, the Commission would have no recourse but to consider filing a charge against him.

The Commission did not receive a financial disclosure from the board member. Nor did the Commission hear from him as to any problems he might have in filing his 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 him. 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 his financial disclosure as soon as possible.

After the Commission issued its charge, the board member filed a completed financial disclosure. The board member also informed the Commission's staff that his term of office ended on June 30, 1994.

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. His functions as a board member were not solely advisory. Thus, the board member was required to file a disclosure of his 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 his state position. This information enabled the Commission to assess the potential for conflicts of interests between his state position and his 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 his 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. The Commission informed the board member that should he be appointed to another state position requiring the filing of a financial disclosure, 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: December 21, 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 was not present during the discussion and consideration of this opinion.