HAWAII STATE ETHICS COMMISSION

ETHICS GUIDE

for

STATE ELECTED OFFICIALS,
STATE EMPLOYEES,
STATE BOARD AND COMMISSION MEMBERS

The State Ethics Code

APPLICABILITY

The State Ethics Code, Chapter 84, Hawaii Revised Statutes ("HRS") applies to you if you are a legislator or employee of the State of Hawaii.

You are an "employee" if you are an appointed or elected officer or employee of the State, including a civil service or an exempt employee, a member of a state board or commission or committee, or an employee under contract to the State.

Exception: The State Ethics Code does not apply to State justices and judges.

GIFTS

You may not solicit or accept a gift if it can be reasonably inferred under the circumstances that the gift is intended to influence the performance of your official duties or reward you for any official action. **HRS §84-11**

You must file a gifts disclosure statement with the State Ethics Commission if (1) you, a spouse, or a dependent child receives from one source any gift or gifts whose aggregate value exceeds $200, and (2) the source of the gift(s) has interests that may be affected by official action that you take, and (3) the gift is not exempted by law from the reporting requirements. **HRS §84-11.5**

CONFIDENTIAL INFORMATION

You may not disclose or use confidential information acquired in the course of your official duties for your personal gain or the benefit of others. **HRS §84-12**

FAIR TREATMENT

You may not use your government position to secure or grant unwarranted privileges, exemptions, advantages, contracts or treatment for yourself or others. **HRS §84-13**

You may not seek other employment or contracts by use of your government position. **HRS §84-13(1)**

You may not solicit or receive other compensation for performance of your government duties except as provided for by law. **HRS §84-13(2)**

You may not use state time, equipment, or facilities for private business purposes, including for-profit and nonprofit corporations. **HRS §84-13(3)**

You may not engage in a substantial financial transaction with a subordinate or person or business you inspect or supervise in your official capacity. **HRS §84-13(4)**

Note: These provisions do not prohibit a legislator from taking action in the exercise of the legislator's legislative functions.

CONFLICTS OF INTEREST

Disqualification

You must disqualify yourself from taking any official action directly affecting a business or undertaking in which you have a substantial financial interest. **HRS §84-14(a)**

Financial Interest: "Financial interest" is an interest held by you, a spouse, or a dependent child, and includes ownership of a business (including stocks in corporations); a creditor interest in an insolvent business; employment; real property; a loan; or directorship or officership in a business or organization.

Exceptions: This provision does not apply to a department head who cannot disqualify himself or herself and who has filed the required public disclosure. This provision has a limited application to members of boards, commissions, and committees who are mandated by statute to represent specific interests or industries. This provision does not apply to legislators.

Acquiring New Financial Interests

You may not acquire a new financial interest in a business or undertaking if you have reason to believe that the business or undertaking may be directly involved in official action to be taken by you in your state position. **HRS §84-14(b)**

Exception: This provision does not apply to legislators.

Assisting or Representing Persons or Businesses

You may not assist or represent a person or business before a state or county agency for a contingent compensation. **HRS §84-14(c)**

You may not assist or represent a person or business for compensation before your own department or agency, or on matters in which you participated or will participate in your state capacity. **HRS §84-14(d)**

You may not assist or represent a person or business for compensation before any state or county agency if you have official authority over the state or county agency unless you have complied with financial disclosure requirements. **HRS §84-14(e)**

STATE CONTRACTS

The State may not enter into a contract with you or a business in which you have a controlling interest if the amount of the contract exceeds $10,000 unless the contract award is made pursuant to competitive sealed bids or proposals, or the State has posted a notice of intent to award the contract and has filed a copy of the notice with the State Ethics Commission 10 days before the contract is awarded. **HRS §84-15(a)**

A state agency may not enter into a contract with any person or business who is assisted or represented by a person who has been an employee of the agency within the preceding two years and who participated in the subject matter of the contract. **HRS §84-15(b)**

Post Employment Restrictions

After your service with the State ends, the provisions of HRS §84-18 will apply to you, as follows:

You may not disclose or use confidential information gained during state employment for your personal gain or the benefit of others. **HRS §84-18(a)**

Former Legislators: You may not, within twelve months of termination of employment, represent a person or business for compensation on matters in which you participated as a legislator or on matters involving official action by the Legislature. **HRS §84-18(b)**

Former Employees: You may not, within twelve months of termination of employment, represent a person or business for compensation on matters in which you participated as an employee or on matters involving official action by the agency or subdivision you actually served while you were an employee. **HRS §84-18(c)**

Despite the restrictions of HRS §84-18, a state agency may contract with you to act on a matter on behalf of the State; in the course of fulfilling such a contract, you may appear before any agency. **HRS §84-18(d)**

The term "represent" used above means to engage in direct communication on behalf of any person or business.

These provisions do not apply to persons employed by the State for less than 181 days. **HRS §84-18(e)**

Financial Disclosures

WHO MUST FILE A DISCLOSURE

Legislators, board and commission members, and certain employees must file financial disclosure statements with the State Ethics Commission. The list of persons who are required to file disclosure statements includes:

- All elected state officials (includes the governor; lieutenant governor, legislators, members of the Board of Education, and the board of trustees of the Office of Hawaiian Affairs)
- All candidates for state elective offices
- The directors and their deputies and division chiefs of every state department (including administrators in the Department of Education and the University of Hawaii)
- The executive directors and deputies of every state agency
- All purchasing agents and fiscal officers
- The permanent employees of the legislature and its service agencies, and the assistants in the Office of the Governor and the Lieutenant Governor, other than persons employed in clerical, secretarial, or similar positions

- The administrative director of the State and the administrative director and deputy director of the courts
- The hearings officers of every state agency and department
- The members of state boards and commissions whose original terms of office exceed one year and whose boards are not solely advisory

HRS §84-17(c)

WHEN TO FILE A DISCLOSURE

Officials, employees, board/commission members: The initial financial disclosure of state officials, employees, and members of boards and commissions must be filed within 30 days of election or appointment to a state position. Another filing must be made each year thereafter between January 1 and May 31. Filers must complete a new disclosure form on all even-numbered years. Filers must submit a "short" form on subsequent odd-numbered years if their financial interests are substantially the same as their prior filing. Within 30 days of a filer's separation from a state position, an exit disclosure statement must be filed if a prior disclosure has not been filed within 180 days preceding the filer's date of separation. **HRS §84-17(b)**

Candidates: The financial disclosures of candidates for state elective office must be filed no later than 20 days before the date of the primary election. (For candidates for the board of trustees of the Office of Hawaiian Affairs, the filing deadline is 20 days before the date of the general election.) **HRS §84-17(b)**

FORMS AND WHERE TO FILE

Financial disclosure forms may be obtained from the State Ethics Commission, and may also be downloaded from the Commission's Web site at www.hawaii.gov/ethics. Disclosures are filed with the office of the State Ethics Commission.

PUBLIC OR CONFIDENTIAL?

Financial disclosures filed by the governor, lieutenant governor, legislators, candidates for state elective office, directors and their deputies, and certain other high-ranking state employees are public records.

These disclosures are available for examination by the public as provided for by HRS §84-17(d). All other disclosures are confidential. The State Ethics Commission is barred from releasing the contents of confidential disclosures. **HRS §84-17(d); (e)**

ADMINISTRATIVE FINES: FAILURE TO FILE A DISCLOSURE OR FILING LATE

Failure to file a financial disclosure is a violation of HRS Chapter 84. For legislators, board and commission members, and employees, failure to file a disclosure by the applicable deadline results in an initial administrative fine of $50. The State Ethics Commission will notify a person by mail of the failure to file. Failure to file a disclosure within ten days after the notification is mailed results in an additional administrative fine of $10 for each day a disclosure remains unfiled. The Commission also may take other action that could result in a public hearing and finding of a violation. The finding of a violation can lead to removal from office. **HRS §84-17(i)**

For candidates for state elective office, failure to file a financial disclosure by the applicable deadline results in an administrative fine of $25. The Commission is also required to release to the public a list of all candidates who fail to file a disclosure. The Commission also may investigate and render public decisions as to whether a candidate has complied with the filing requirements. **HRS §84-17(j)**

Advisory Opinions

Who may request an advisory opinion: State officials, state employees, members of state boards and commissions; and former state officials, former state employees, and former members of state boards and commissions may request an advisory opinion. The request must be in writing, dated, and signed by the individual requesting the opinion, and should include:

- The individual's name
- The individual's employing state agency
- The individual's position in the state agency
- The nature and duties of the individual's state employment
- The individual's business and/or residence address and telephone numbers
- A statement of facts and circumstances upon which the State Ethics Commission can make a determination

Publication of "deleted" advisory opinion: The State Ethics Commission must publish summaries of its advisory opinions. Deletions are made to prevent disclosure of the identity of the persons involved. These "deleted" advisory opinions are available for public review.

Effect of an advisory opinion: An advisory opinion is binding unless material facts were omitted or misstated.

Enforcement

INITIATING A CHARGE

Charges: A charge by a person concerning an apparent violation of the State Ethics Code is a written statement, signed under oath. Individuals normally use a notary public to authenticate oaths. Charges initiated by the State Ethics Commission need not be under oath, but must be signed by three or more commissioners.

Who may initiate a charge: Members of the public; elected officials; employees; members of boards and commissions; and the Hawaii State Ethics Commission itself may initiate a charge of alleged violations of the State Ethics Code.

How to initiate a charge: A charge may be brought by a person by filing a statement, signed under oath, with the State Ethics Commission setting forth the name and state position of the alleged violator, and describing the facts constituting the alleged violation.

Statute of limitations: Charges of alleged violations may be brought within six years of an alleged violation.

HRS §84-31(a)(6)

PROCEDURE FOR CHARGES

- Notice to alleged violator
- Investigation
- Informal advisory opinion and/or probable cause determination
- Public formal hearing and decision
- Referral to Legislature, Governor, Chief Justice, or Attorney General for further action

HRS §84-31(b); (c); HRS §84-32

PUBLIC HEARINGS AND DECISIONS

The State Ethics Commission investigates all charges on a confidential basis. If the State Ethics Commission finds probable cause to believe a violation of the law has been committed and that a hearing should be held, information concerning the charge shall be made public as provided by law. The hearing shall be open to the public and the State Ethics Commission's decision, together with the record of the proceedings, shall be public records.

HRS §84-31(c); (d)

REFERRAL TO AUTHORITY FOR DISCIPLINARY ACTION

Following a public formal hearing and decision, the State Ethics Commission will refer its formal complaint to the appropriate authority for disciplinary action, as follows:

For Violations by Legislators and Employees Removable by Impeachment: The State Ethics Commission refers its formal complaint to the appropriate body of the Legislature for disciplinary action. The complaint and any disciplinary action taken are matters of public record.

For Violations by Judicial Branch Employees: The State Ethics Commission refers its formal complaint to the Chief Justice of the Hawaii Supreme Court for disciplinary action. The complaint and any disciplinary action taken are matters of public record.

For Violations by Other Employees: The State Ethics Commission refers its formal complaint to the Governor for disciplinary action. The complaint and any other disciplinary action taken are matters of public record.

For Violations by Former Employees and Former Legislators: The State Ethics Commission refers its formal complaint to the Attorney General who may exercise any legal or equitable remedies available to the State. The complaint is a matter of public record.

For Violations by Delegates to the Constitutional Convention: The State Ethics Commission refers its formal complaint to the appropriate body of the Constitutional Convention. The complaint and any disciplinary action taken are matters of public record.

HRS §84-32; HRS §84-38

PENALTIES FOR VIOLATIONS OF THE STATE ETHICS CODE

Public contracts, if any, are voidable. **HRS §84-16**

Favorable state action is voidable; the State may pursue all available legal and equitable remedies.
HRS §84-19(a); HRS §84-32(c)

The State may recover any fee, compensation, gift, or profit. **HRS §84-19(b)**

The Civil Service Commission or other authority may reprimand, put on probation, demote, suspend, or discharge the employee. **HRS §84-33**

The Legislature may punish its members pursuant to Article III, section 12 of the Hawaii State Constitution. **HRS §84-37**

The State Ethics Commission may impose an administrative fine not to exceed $500 for each violation of any provision of the State Ethics Code. **HRS §84-39**

See also previous section on penalties for failure to file financial disclosure statements or for filing late.

Commission Publications

This pamphlet presents only a summary of the State Ethics Code, HRS Chapter 84. Copies of the complete text of the State Ethics Code, the State Ethics Commission's administrative rules, and the Commission's decisions, advisory opinions, and other publications about the ethics laws are available upon request and are also posted on the Commission's Web site, at www.hawaii.gov/ethics.

Hawaii State Ethics Commission

ESTABLISHED: January 1, 1968

COMPOSITION: Five Commission members

COMMISSIONER TERM: Four years. No person may be approved to more than two consecutive terms.

METHOD OF SELECTION OF COMMISSIONERS: The Judicial Council of the Hawaii State Supreme Court nominates two individuals for each position. The Governor selects one of the two nominees. Senate confirmation is not required.

QUALIFICATIONS: Must be a U.S. citizen and Hawaii resident.

RESTRICTIONS: Commissioners may not hold any other public office nor take an active part in political management or political campaigns.

COMMISSIONERS' RESPONSIBILITIES:

- Administer and enforce the State Ethics Code, HRS Chapter 84, including the Disclosures of Financial Interests Law and the Gifts Disclosure Law
- Advise state officials and employees about the ethics laws
- Investigate possible violations of the ethics laws and hold hearings
- Educate state officials, employees and the citizenry about governmental ethics
- Administer and enforce the Lobbyists Law, HRS Chapter 97

STAFF: The Commission has a full-time staff, appointed by the Commission.

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Revised January 2009

HAWAII STATE ETHICS COMMISSION

ETHICS CHECKLIST

This flyer lists restrictions contained in the State Ethics Code, Chapter 84, Hawaii Revised Statutes ("HRS"), for state officials, employees, and board and commission members. (Justices and judges are excluded, as they are subject to their own ethics board.) Those subject to the State Ethics Code should review this list, and contact the State Ethics Commission ("Commission") for advice when needed. Though the list is intended to be comprehensive, those subject to the State Ethics Code should not hesitate to contact the Commission whenever ethics issues arise. Further, our office should be contacted if there are any questions regarding the scope of the following restrictions. Contact us at: telephone number (808) 587-0460, fax number (808) 587-0470, or e-mail address ethics@hawaiiethics.org. Our website address is www.hawaii.gov/ethics. Mailing address: P.O. Box 616, Honolulu, Hawaii 96809.

- **Gifts:** Do not accept or solicit gifts unless you are sure of the application of the gifts section of the State Ethics Code, HRS § 84-11.

- **Gifts Disclosure**: If you receive more than $200 of legally acceptable gifts from a single source between June 1 of one year and June 1 of the following year, check with our office as to whether you need to file a gifts disclosure form.

- **Confidential Information**: Do not disclose, or use confidential information for your, or anyone's, personal benefit.

- **Favoritism; Fair Treatment**: Do not use, or attempt to use, your official position to give yourself or anyone any preferential treatment or any unwarranted advantage.

- **Supplemental Compensation**: Do not accept extra pay or anything of value in conjunction with the performance of your official duties, unless provided for by law.

- **State Resources**: Do not use state time, equipment (computers, e-mail, etc.), facilities, personnel, the state seal, office supplies or other state resources for private business purposes or political campaigning. The term "business" includes non-profit organizations.

- **Financial Transactions With Subordinates**: Do not engage in substantial financial transactions with subordinates, or persons or businesses you inspect or supervise. Check with our office as to the meaning of "substantial," as the application of the term may be different depending on the circumstances.

- **Conflicts of Interests**: Do not take official action if the action affects your financial interests, or a business or undertaking in which you have a financial interest, unless you are sure of the application of the State Ethics Code. The financial interests of a spouse or dependent child are treated the same as your financial interests. Also, do not take action affecting an undertaking in which you, in your private capacity, represent a person or business. (Note: This section does not apply to legislators.)

- **Acquiring New Employment or Financial Interests**: Do not accept new employment, or new financial interests without checking with our office, if the business or undertaking you will work for, or have a financial interest in, may be subject to official action by you. (Note: This section does not apply to legislators.)

- **Contingent Compensation**: Do not assist or represent a person or business before a state or county agency for contingent compensation. (Note: Courts are not considered state agencies.)

- **Representing or Assisting Persons or Businesses**: Do not assist or represent (1) a person or business for compensation before your own department or agency, or (2) on matters you have been officially involved in, or (3) on matters you will be officially involved in.

- **State Contracts**: (1) If you contract with the State, or have a significant interest in a company that contracts with the State, make sure the contract is awarded in accordance with HRS § 84-15(a). (2) Check with our office before privately assisting or representing a person or business trying to obtain a state contract, if you have been involved officially with the contract or its subject matter.

- **Financial Interests Disclosure Statement**: File this statement at the appropriate times if required by the position you hold in state government.

- **Post Employment**: After leaving your state agency or department, (1) do not disclose confidential information or use such information for your, or anyone's, personal benefit; (2) for one year do not personally represent any person or business for compensation on matters before your former agency or department unless you are sure of the application of the State Ethics Code; and (3) for one year, do not personally represent a person or business for compensation regarding matters you have participated in officially. Note: Parts (2) and (3) apply to those who served the State for more than 180 days. Call our office regarding the definition of the term "personal representation."