



**HAWAII
STATE
ETHICS
COMMISSION**

State of Hawaii • Bishop Square, 1001 Bishop Street, ASB Tower 970 • Honolulu, Hawaii 96813

January 3, 2005

CONFIDENTIAL

Via Facsimile #587-2965

Jeffrey A. Keating, Esq.
Deputy Attorney General
Department of the Attorney General
Employment Law Division
235 South Beretania Street, 15th Floor
Honolulu, Hawaii 96813

Dear Mr. Keating:

This letter responds to your letters to our office dated November 9, 2004, and December 3, 2004. In your letter of November 9, 2004, you ask "whether the HGEA is permitted to post campaign materials on the office bulletin boards, or whether such conduct is in violation of HRS Chapter 84, Standards of Conduct." Your letter of December 3, 2004, is a follow-up request, in which you state: "In a letter dated November 9, 2004 I requested that you provide me with a written response as to whether the HGEA is permitted to post campaign materials on office bulletin boards, or whether such conduct is in violation of HRS Chapter 84, Standards of Conduct."

Article XIV of the Constitution of the State of Hawaii provides that: "The people of Hawaii believe that public officers and employees must exhibit the highest standards of ethical conduct [Emphasis added.] To achieve this end, Article XIV established the State Ethics Commission, and mandated that the Legislature "adopt a code of ethics" for state officials and employees, including members of state boards and commissions.

Article XIV mandated that the Legislature include particular provisions in the "code of ethics" of the State Ethics Commission. Article XIV stated that: "Each code of ethics shall include, but not be limited to, provisions on gifts, confidential information, use of position, contracts with government agencies, post-employment, financial disclosure and lobbyist registration and restriction." [Emphasis added.] Article XIV reads, in its entirety, as follows:

The people of Hawaii believe that public officers and employees must exhibit the highest standards of ethical conduct and that these standards come from the personal integrity of each individual in government. To keep

faith with this belief, the legislature, each political subdivision and the constitutional convention shall adopt a code of ethics which shall apply to appointed and elected officers and employees of the State or the political subdivision, respectively, including members of the boards, commissions and other bodies.

Each code of ethics shall be administered by a separate ethics commission, except the code of ethics adopted by the constitutional convention which shall be administered by the state ethics commission. The members of ethics commissions shall be prohibited from taking an active part in political management or in political campaigns. Ethics commissioners shall be selected in a manner which assures their independence and impartiality.

Each code of ethics shall include, but not be limited to, provisions on gifts, confidential information, use of position, contracts with government agencies, post-employment, financial disclosure and lobbyist registration and restriction. 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.

Pursuant to Article XIV of the Constitution of the State of Hawaii, Chapter 84, Hawaii Revised Statutes (HRS), which sets forth a code of ethical conduct for state officials and employees, was enacted into law. The Preamble to Chapter 84 states, among other things, that the purpose of Chapter 84 is to "prescribe a code of ethics for elected officers and employees of the State as mandated by the people of the State of Hawaii in the Hawaii Constitution, Article XIV [Emphasis added.] The Preamble reads, in its entirety, as follows:

The purpose of this chapter is to (1) prescribe a code of ethics for elected officers and public employees of the State as mandated by the people of the State of Hawaii in the Hawaii Constitution, Article XIV; (2) educate the citizenry with respect to ethics in government; and

(3) establish an ethics commission which will administer the code of ethics adopted by the constitutional convention and by the legislature and render advisory opinions and enforce the provisions of this law so that public confidence in public servants will be preserved.

HRS section 84-1 of the State Ethics Code, entitled "Construction," provides that Chapter 84 shall be "liberally construed" to promote high standards of ethical conduct in state government. HRS section 84-1 reads as follows:

§84-1 Construction. This chapter shall be liberally construed to promote high standards of ethical conduct in state government. [Emphasis added.]

In accordance with this section of the State Ethics Code, the Legislature charged the Hawaii State Ethics Commission with the duty to "liberally construe" the State Ethics Code and to thus interpret the State Ethics Code as broadly as possible within the confines of the law. The term "liberal construction" is defined in the Sixth Edition of Black's Law Dictionary as follows:

Liberal (or equitable) construction, on the other hand, expands the meaning of the statute to meet cases which are clearly within the spirit or reason of the law, or within the evil which it was designed to remedy, provided such an interpretation is not inconsistent with the language used. It resolves all reasonable doubts in favor of the applicability of the statute to the particular case. It means, not that the words should be forced out of their natural meaning, but simply that they should receive a fair and reasonable interpretation with respect to the objects and purposes of the instrument. [Emphasis added.]

In accordance with HRS section 84-2, the State Ethics Code is applicable to all state officials and employees, as well as to state board and commission members, with the exception of state justices and judges.

In keeping with the mandate of Article XIV of the Constitution of the State of Hawaii, the State Ethics Code contains a provision dealing with the misuse or attempted misuse by a legislator or employee of his or her "official position." This provision is entitled "Fair treatment," and reads, in pertinent part, as follows:

§ 84-13 Fair treatment. No legislator or employee shall use or attempt to use the legislator's or employee's official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for oneself or others; including but not limited to the following:

- (1) Seeking other employment or contract for services for oneself by the use or attempted use of the legislator's or employee's office or position.
- (2) Accepting, receiving, or soliciting compensation or other consideration for the performance of the legislator's or employee's official duties or responsibilities except as provided by law.
- (3) Using state time, equipment or other facilities for private business purposes.
- (4) Soliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate or a person or business whom the legislator or employee inspects or supervises in the legislator's or employee's official capacity.

The Fair treatment section of the State Ethics Code, HRS section 84-13, prohibits state officials and employees from using their positions to give any individual, entity, or business any unwarranted advantage or preferential treatment. HRS section 84-13 bars the use of state time, equipment, or other state facilities or state resources for private business purposes. The State Ethics Commission has long maintained that the first paragraph of HRS section 84-13 and sub-section 84-13(3) also bar political campaigning that involves the use by state officials or employees of state time, equipment, facilities, personnel, or other state resources. The use of such resources constitutes the preferential use of state resources, since it is not possible to treat all political candidates or political campaigns fairly. See flyer attached, entitled "Campaign Restrictions for State Officials and State Employees," revised May, 2004.

Given the above, state officials and employees are barred by HRS section 84-13 of the State Ethics Code from placing political campaign materials on state office bulletin boards. This prohibition would extend to barring the posting of material containing within such material campaign material. By campaigning or campaign material, we mean material or conduct that advocates for one candidate over another, or material or conduct that otherwise advocates for the election of a candidate.

Please note that the State Ethics Code provisions apply to the conduct of state officials and employees, who must abide by the laws set forth in Chapter 84, HRS.

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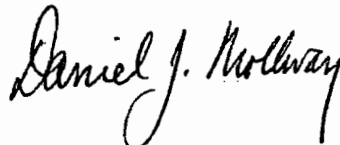
State officials or employees who violate the provisions of Chapter 84, HRS, are subject to enforcement action and sanctions. These sanctions include termination of state employment (see HRS section 84-33) and the right of the Attorney General to pursue all legal and equitable remedies available to the State in order to address a violation of the State Ethics Code (see HRS section 84-19).

Please also note that this letter is based on a straightforward interpretation of the State Ethics Code, and would certainly be mandated further by a "liberal construction" of the State Ethics Code, in accordance with HRS section 84-1.

Finally, in a letter from our office to you dated December 8, 2004, I indicated that this matter was complex and would need to be taken to the State Ethics Commission for an opinion, which I indicated might take several months to issue. However, after considering this matter from the time of its inception in October, and in depth after December 8, it is my belief that the above opinion falls clearly within prior Commission rulings regarding campaigning and the use of state resources, and thus I believe this letter can be issued at this time.

If you have any questions concerning the above, please do not hesitate to contact me at 587-0460.

Very truly yours,



Daniel J. Mollway
Executive Director
and General Counsel

DJM/af

Enclosure: Flyer entitled "Campaign Restrictions
for State Officials and State Employees"