



# OVERVIEW OF THE STATE ETHICS CODE

FOR

# STATE BOARD AND COMMISSION MEMBERS

HAWAII STATE ETHICS COMMISSION

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# HAWAII STATE ETHICS COMMISSION

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## **OVERVIEW OF THE STATE ETHICS CODE FOR STATE BOARD AND COMMISSION MEMBERS**

The State Ethics Code establishes standards of conduct for state legislators, state employees, and the members of state boards and commissions. This is an overview of how the laws in the State Ethics Code apply to state board and commission members. These laws are found in chapter 84 of the Hawaii Revised Statutes (“HRS”). Please remember that the application of these laws can be affected by the facts of a particular set of circumstances. For this reason, you should contact the State Ethics Commission for advice about any specific situation.

### **I. ADMINISTRATION AND ENFORCEMENT OF THE STATE ETHICS CODE**

The State Ethics Commission administers and enforces the State Ethics Code. One of the Commission’s most important functions is to provide advice and guidance to state officials and employees about the State Ethics Code. If you have a question about ethics or would like to receive advice about a particular situation, contact the Commission’s office at (808) 587-0460 or by e-mail at [ethics@hawaiiethics.org](mailto:ethics@hawaiiethics.org).

The Commission also conducts educational programs to teach state officials and employees, including members of state boards and commissions, about the State Ethics Code. The Commission conducts ethics classes and workshops; publishes ethics guidelines and opinions; and maintains a web site with a wealth of information about the State Ethics Code. The Commission’s web address is [www.hawaii.gov/ethics](http://www.hawaii.gov/ethics).

The Commission also receives complaints, conducts investigations, and holds hearings to determine whether a violation of the ethics laws has occurred. The penalties for violating the State Ethics Code include removal from state office; recovery by the State of gifts and profits that were received in violation of the State Ethics Code; cancellation of state contracts and other favorable state action; and administrative fines.

### **II. FINANCIAL DISCLOSURE STATEMENTS**

Most board and commission members are required by law to file an annual disclosure of financial interests with the State Ethics Commission. A financial disclosure statement must be filed within thirty days of one’s appointment to state office, and then again every year by May 31. When a board or commission member leaves state office,

a final financial disclosure statement must be filed within 30 days of the end of the member's term.

The financial disclosure statements of members of the Board of Education and the trustees of the Office of Hawaiian Affairs are by law public records and are available for public review. The financial disclosure statements of all other state boards and commissions are confidential and are not available for public review.

Board and commission members who are required to file financial disclosure statements will be notified by the State Ethics Commission and will receive instructions on how to complete and file the financial disclosure forms. Failure to file a financial disclosure statement is a violation of the State Ethics Code.

If you need assistance in completing your financial disclosure form, or have questions about the filing requirements, do not hesitate to contact the State Ethics Commission's office. Your cooperation in filing your financial disclosure statement on time is greatly appreciated.

### **III. SUMMARY OF THE STANDARDS OF CONDUCT FOR BOARD AND COMMISSION MEMBERS**

The following discussion summarizes the laws in the State Ethics Code that apply to board and commission members.

#### **Gifts (HRS section 84-11) and Reporting of Gifts (HRS section 84-11.5)**

Prohibited gifts (HRS section 84-11). The State Ethics Code prohibits a board or commission member from accepting any gift if it is reasonable to infer that the gift is intended to influence or reward official action. It is important to remember that a "gift" can be anything of value, including the following:

- Money
- Personal services
- Meals
- Loans
- Travel (such as airfare or other travel expenses for a trip)
- Entertainment (such as golf; tickets to a football game; or an invitation to a special event such as a fundraiser, banquet, or gala celebration)
- Hospitality (such as a complimentary stay at a hotel)

In determining whether or not a gift may be accepted under the State Ethics Code, the State Ethics Commission considers: (1) the value of the gift; (2) whether the

recipient takes official state action affecting the donor of the gift; and (3) whether the gift will benefit the State or the recipient in the performance of his or her official duties.

Certain gifts generally may be accepted under the State Ethics Code. Modest gifts of nominal value, which are traditionally given as part of Hawaii's local culture as a gesture of aloha or goodwill, are generally acceptable. Such "gifts of aloha" include, for example, flowers or a box of candy or cookies to be shared with the office. Generally, anything beyond this should be discussed with the State Ethics Commission before acceptance.

Gifts Guidelines. For additional information about the gifts law, see the State Ethics Commission's publication entitled, "Guidelines for Gifts Under the State Ethics Code." The guidelines are posted on the Commission's web site at [www.hawaii.gov/ethics](http://www.hawaii.gov/ethics).

Gifts Reporting Requirement (HRS section 84-11.5). The State Ethics Code also requires board and commission members to file a gifts disclosure statement to report the receipt of certain gifts if the following conditions are met: (1) the board or commission member, or the member's spouse or dependent child, has received a gift or gifts valued singly or in the aggregate in excess of \$200 from one source; (2) the source of the gift(s) has interests that may be affected by the board or commission member's official action; and (3) the gift(s) are not exempted by law from the gifts reporting requirements.<sup>1</sup>

If these conditions for disclosure are met, a board or commission member must report the receipt of a gift to the State Ethics Commission by filing a gifts disclosure statement. Gifts disclosure statements must be filed on June 30 of each year, and they cover the period from June 1 of the preceding calendar year to June 1 of the year of the report. Gifts disclosure statements are public records. Gifts disclosure forms and instructions are available on the Commission's web site at [www.hawaii.gov/ethics](http://www.hawaii.gov/ethics).

It is important to remember that reporting a gift on a gifts disclosure statement does not mean that the gift can be accepted. Board and commission members must first consider whether a gift may be accepted under the State Ethics Code and should contact the State Ethics Commission for advice.

### **Confidential Information (HRS section 84-12)**

The State Ethics Code prohibits a board or commission member from disclosing confidential information acquired during the course of one's official duties. The State Ethics Code also prohibits the use of confidential information for personal gain or for anyone's benefit.

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<sup>1</sup>Certain gifts, such as gifts from close relatives or gifts that are returned or donated to charity (without being claimed as a charitable contribution for tax purposes) do not have to be reported on a gifts disclosure statement. See HRS section 84-11.5(d).

## **“Fair Treatment” or the Misuse of Official Position (HRS section 84-13)**

The State Ethics Code includes a “fair treatment” law that prohibits a board or commission member from using his or her official position to secure unwarranted privileges or advantages for oneself or others. This law prohibits favoritism or preferential treatment, or any other misuse of official position for personal gain or benefit.

The “fair treatment” law includes provisions that specifically prohibit the following:

- Seeking employment or contracts for oneself by the use of one’s state office or position.
- Accepting or soliciting any compensation for performing one’s official duties except as provided by law.
- Using state time, equipment, or facilities for private business purposes.<sup>2</sup> This prohibition applies to the use of state time, equipment, or facilities for private sales and other private business activities; private fundraising (including fundraising for private charities); and campaign activities.
- Soliciting, selling, or engaging in substantial financial transactions with a subordinate or a person or business that is inspected or supervised by a board or commission member in his or her official capacity.

## **Conflicts of Interests (HRS section 84-14)**

The State Ethics Code includes conflicts-of-interests laws that apply to board and commission members. The application of these laws can be complicated. If you have any questions about how these laws apply to you specifically, you should contact the State Ethics Commission for advice.

Disqualification from Official Action (HRS section 84-14(a)). The State Ethics Code prohibits a board or commission member from taking official action that directly affects:

- (1) A business or undertaking in which the board or commission member has a substantial financial interest, or
- (2) A private undertaking in which the board or commission member is engaged as legal counsel, advisor, consultant, or representative.

“Official action” means a decision, recommendation, approval, disapproval, or other action which involves discretionary authority. It includes making

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<sup>2</sup> Under the State Ethics Code, a “business” includes both for-profit and not-for-profit businesses.

recommendations and decisions. This law prohibits you from taking official action that directly affects a business or undertaking in which you have a substantial financial interest. Under the ethics code, a “financial interest” is an interest that is held by **you**, your **spouse**, or a **dependent child** of yours which is:

- (1) An ownership interest in a business (including ownership of stock in a business).
- (2) A directorship or officership in a business.
- (3) An employment or prospective employment with a business.
- (4) A creditor interest in an insolvent business.
- (5) A loan or other debtor interest in a business.
- (6) An ownership interest in real or personal property.

For example, if you or your spouse is employed by Company A, then you have a “financial interest” in Company A for purposes of the State Ethics Code. This means that the conflicts-of-interests law prohibits you, as a board or commission member, from taking any official action affecting Company A. If a matter affecting Company A comes before your board or commission, you must disqualify yourself and abstain from participating in official action with regard to that matter. This generally means that you must abstain, not just from voting on the matter, but also from participating in board or commission discussions and deliberations about the matter. If you have questions about a particular situation, you should contact the State Ethics Commission for advice.<sup>3</sup>

Acquisition of New Financial Interests (HRS section 84-14(b)). The State Ethics Code prohibits a board or commission member from acquiring a new financial interest in any business or undertaking if the member has reason to believe that the business or undertaking may be directly involved in official action to be taken by the member. For example, if your board reviews funding requests from an organization, then you are prohibited from acquiring a financial interest (such as employment or even a volunteer position as a director or officer) in that organization. The purpose of this law is to prevent state officials from acquiring new financial interests that will place them in conflict with their state positions.

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<sup>3</sup> Some board and commission members are appointed to their boards or commissions because of special qualifications or interests that they represent. For example, some board members are appointed to represent particular professions or industries on their boards. These members provide required expertise to their boards. For these members, there is a special conflicts-of-interests provision in the State Ethics Code. These members are not required to disqualify themselves from board or commission action that will affect their industries or professions as a whole, even though their own financial interests may also be affected by such action. These members are only required to disqualify themselves from action that directly and specifically affects businesses in which they have financial interests. For example, an expert member of a professional licensing board may take action that will affect his or her profession as a whole, but cannot take action that will specifically affect only his or her own license or business.

Assistance or Representation of Others (HRS section 84-14(d)). The State Ethics Code prohibits a board or commission member from assisting or representing any person or business for pay on the following matters:

- Transactions in which a member has participated or will participate as a board or commission member, and
- Transactions before the member's board or commission.<sup>4</sup>

### **State Contracts (HRS section 84-15)**

The State Ethics Code prohibits a state agency from entering into a contract that exceeds \$10,000 with a board or commission member, or a business in which a board or commission member has a controlling interest, unless:

- The contract is awarded by competitive sealed bid or proposal, or
- The agency posts public notice of its intent to award the contract and files a copy of the notice with the State Ethics Commission at least ten days before the contract is awarded.

### **Restrictions After Leaving State Service (HRS section 84-18)**

The State Ethics Code includes "post-employment" laws that impose restrictions on state board or commission members after they leave state service. These laws prohibit a former board or commission member from the following:

- (1) Disclosing or using confidential information, acquired in the course of one's official duties, for personal gain or for anyone's benefit.
- (2) Representing any person or business for pay on matters in which one participated while serving on a board or commission, or on matters that involve official action by one's former board or commission.<sup>5</sup> (This restriction applies for 12 months after a board or commission member has left his or her state position.)
- (3) Assisting or representing any person or business in obtaining contracts from one's former board or commission. (This restriction may apply for up

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<sup>4</sup> In some instances this restriction may also apply to transactions before a state department or agency to which a member's board or commission is attached.

<sup>5</sup> In some instances this restriction may also apply to matters that involve official action by a state department or agency to which one's former board or commission is attached.

to two years after a board or commission member has left his or her state position.)

The post-employment laws do not prohibit the State from contracting with a former board or commission member to act on a matter on behalf of the State.

For more information about how the post-employment laws specifically apply to you after you leave state service, please contact the State Ethics Commission.

#### **IV. ADDITIONAL INFORMATION ABOUT THE STATE ETHICS CODE**

Additional information about the State Ethics Code is available on the State Ethics Commission's web site at [www.hawaii.gov/ethics](http://www.hawaii.gov/ethics) or by contacting the Commission's office at (808) 587-0460 or [ethics@hawaiiethics.org](mailto:ethics@hawaiiethics.org). Please remember that the Commission is always available to assist you in understanding the State Ethics Code and how it applies to you as a member of a state board or commission.

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