



THE HIGH ROAD

"Preserving public confidence in public servants."

No. 2006-3

Hawaii State Ethics Commission

October 2006

THE HAWAII STATE ETHICS COMMISSION: WHO WE ARE AND WHAT WE DO

If you are new to state service, please let us introduce ourselves. If you are an old-timer, here is a little refresher on who we are and what we do.



The Hawaii State Ethics Commission is a state agency. The Commission administers and enforces two sets of state laws: the State Ethics Code and the Lobbyists Law.

The Commission consists of five members, who serve for four-year terms. Members are selected through an application process. Individuals apply to the Judicial Council of the Hawaii Supreme Court. The Judicial Council nominates two individuals for each position and sends its list of nominees to the Governor. The Governor then selects a Commission member (or members) from that list.

The Commission is assisted by a staff of attorneys and other support staff.

The State Ethics Code, HRS Chapter 84

The term "ethics" has many meanings. However, for our purposes, being an "ethical" state employee means following a code of conduct that is state law. This law is called the State Ethics Code, and is found in Chapter 84 of the Hawaii Revised Statutes (HRS). This law governs actions taken by state employees. The purpose of this law is to preserve high standards of integrity and ethical conduct in government, and to preserve public confidence in government. The State Ethics Code is a "minimum" code of ethical conduct for state employees.

The State Ethics Code applies to all state employees, with the exception of state judges. (State judges are subject to their own code of ethics.) The State Ethics Code also applies to all elected and appointed state officials, such as state legislators and state board and commission members.



The State Ethics Code covers several areas, including conflicts of interest; gifts and the reporting of gifts; fair treatment; confidential information; the awarding of state contracts; and post-employment restrictions.

The State Ethics Code also requires that certain state officials and employees file financial disclosure statements with our office. In addition, candidates for state elective offices must file financial disclosure statements with our office.

The Hawaii State Ethics Commission has several functions, which the Commission carries out with the assistance of its staff:

- **Education.** The Commission conducts educational programs to inform state employees about the State Ethics Code. Our agency conducts workshops for state employees and other groups. We also issue this newsletter, *The High Road*, on a regular basis, to all state agencies. In addition, our agency has a Web site, www.hawaii.gov/ethics, where you can find information about the State Ethics Code, copies of our publications, the Commission's advisory opinions, and public documents that are filed with our office.



- **Advice.** The Commission provides confidential advice to state employees about compliance with the State Ethics Code. Employees can write to our office or simply call our office to request advice.

- **Enforcement.** The Commission investigates, on a confidential basis, complaints about possible violations of the State Ethics Code. The Commission has the authority to hold public, contested case hearings to determine whether the State Ethics Code has been violated. The Commission can initiate investigations and complaints itself.

If the Commission finds that a violation of the State Ethics Code has occurred, it becomes a matter of public record and there are a number of penalties that can be imposed.

- There may be disciplinary action by the employee's state agency, including reprimand, suspension, or termination.
- The State can recover any illegal gifts, or recover any money that was paid to a state employee in violation of the State Ethics Code.
- If a state contract is awarded in violation of the State Ethics Code, the contract can be cancelled.



- The Commission has the authority to impose a fine of up to \$500 for each violation of any provision of the State Ethics Code.

The Lobbyists Law, HRS Chapter 97

In addition to administering and enforcing the State Ethics Code (HRS Chapter 84), the Hawaii State Ethics Commission administers and enforces the Lobbyists Law, found in HRS Chapter 97. Chapter 97 contains provisions governing:

- Lobbying on matters before the State Legislature; and
- Lobbying with respect to rules under consideration by state administrative agencies.

The Lobbyists Law requires that people who meet certain criteria must register as lobbyists with the Commission. Lobbyists, their clients, and those who spend \$750 lobbying during a reporting period must report their lobbying expenditures, as well as contributions received for the purpose of lobbying, with the Commission.

The Commission has the authority to investigate, on a confidential basis, the activities of any person to determine whether the person is in compliance with the Lobbyists Law. The Commission may hold a public, contested case hearing to determine whether there has been a violation of the Lobbyists Law. Upon the finding of a violation, the Commission may assess an administrative fine of up to \$500 for each violation of the Lobbyists Law.

Information about the Lobbyists Law and lobbying reports that are filed with our office are posted on our Web site.

If you need advice, wish to make a complaint about a possible violation of the law, wish to arrange an educational workshop for your office, or have any other questions, please feel free to contact us, at (808) 587-0460. We would be happy to assist you in any way we can!

FAQs ABOUT GIFTS AND GIFTS REPORTING

Q: *Is it permissible for a state employee to accept any gift as long as the gift does not exceed a certain dollar amount?*

A: No. The criteria for determining whether a state employee can accept a particular gift is not based on a specific dollar amount.



The Gifts Law, HRS section 84-11, prohibits a state employee from accepting a gift if one can "reasonably infer" that the gift is intended to influence or reward discretionary action on the part of the employee. In applying the Gifts Law, the State Ethics Commission considers several factors, including the value of the gift; the nature of the discretionary action the state employee has taken or may take; the circumstances under which the gift is given; and whether the gift would benefit the State or would instead personally benefit the state employee.

The determination of whether a gift can be accepted is based on the particular facts of the situation. Gifts questions can be complex and are handled by our office on a case-by-case basis.

If you have questions or need advice, please do not hesitate to contact us.

Q: *Is a state employee allowed to accept any gift as long as the employee reports the gift to the State Ethics Commission on a gifts disclosure statement?*



A: No. Simply reporting a particular gift to the State Ethics Commission does not automatically validate that acceptance of the gift was permissible under the State Ethics Code.

The issue of whether a state employee can accept a gift is determined by applying the Gifts Law, HRS section 84-11, as previously discussed. If the Gifts Law does not prohibit the employee from accepting the gift, the next issue is whether the gift must be reported to the State Ethics Commission.

The Gifts Disclosure Law, HRS section 84-11.5, requires a gift to be reported if three conditions are met: (1) a state employee (or the employee's spouse or dependent child) receives directly or indirectly from one source any gift or gifts in any form valued singly or in the aggregate in excess of \$200; (2) the source of the gift or gifts has interests that may be affected by discretionary action on the part of the employee; and (3) the gift is not excluded from the reporting requirements of the Gifts Disclosure Law. Examples of gifts that are exempt from disclosure include gifts received through a will or trust distribution, gifts from certain relatives, and political campaign contributions that comply with state law. For a complete list of gifts that are exempt from disclosure, see HRS section 84-11.5 of the State Ethics Code, which is posted on our Web site.

Gifts disclosure statements filed with the State Ethics Commission are public documents and may be viewed on our Web site or at our office.

If you have any questions as to whether your acceptance of a particular gift is permitted, please call us. At that time, we can also determine whether there is any gift reporting issue to address.

***The High Road* is a publication of the Hawaii State Ethics Commission.**

Commissioners: Robert R. Bean, Chair
Carl Morton, M.D., Vice Chair
Maria J. Sullivan
Jerrold A. Fuller
Boyd T. McCleary

Executive Director: Daniel J. Mollway, Esq.

Address: P.O. Box 616
Honolulu, HI 96809

Telephone: (808) 587-0460

Fax: (808) 587-0470

E-mail: ethics@hawaiiethics.org

Internet URL: <http://www.hawaii.gov/ethics>