

JAN 21 2010

A BILL FOR AN ACT

RELATING TO ETHICS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the ethics code, as
2 codified in chapter 84, Hawaii Revised Statutes, performs an
3 important function as the guide to assist legislators and state
4 employees to maintain high standards of conduct, protect them
5 from unwarranted criticism, and help to foster public confidence
6 in government. However, the ethics code is useless unless it is
7 understood by the persons it is intended to guide. Accordingly,
8 the legislature believes that the ethics code should be amended
9 to provide legislators, employees, and the ethics commission
10 with additional guidance to enable all parties to more easily
11 and consistently judge whether an ethics violation may occur or
12 has occurred under a given set of facts and to be fully informed
13 of current, uncodified standards and procedures used and
14 practiced by the ethics commission.

15 First, the ethics code does not specify the standards for
16 determining whether a gift is a violation of section 84-11,
17 Hawaii Revised Statutes. Instead, standards have been developed



1 over time and set out in advisory opinions and informal advisory
2 opinions by the ethics commission ruling on specific instances
3 of potential violation by various legislators and state
4 employees. While the legislative history of the ethics code has
5 made it clear that these advisory opinions are intended to
6 furnish guides, be a source of reference for all persons
7 concerned, and contribute to a proper understanding of the
8 ethics code, the standards set forth in these opinions have
9 never been officially adopted or codified, either by
10 administrative rule or in the ethics code itself. Accordingly,
11 by codifying the standards that have been developed and set
12 forth by the ethics commission in its advisory opinions, the
13 ethics code can be made more readily interpretable by
14 legislators and state employees when attempting to determine if
15 a course of conduct may be a violation.

16 Second, it is clear from the legislative history of the
17 ethics code that the intent of the legislature in directing the
18 ethics commission to issue and publish advisory and informal
19 advisory opinions was to establish a body of case law that can
20 be relied upon by the ethics commission and state officials in
21 interpreting the ethics code, see Conf. Comm. Rep. No. 15, 1967.
22 However, there is nothing explicit in the ethics code that



1 requires the ethics commission to follow the analysis of
2 previous opinions, even though the ethics commission,
3 legislators, and state employees usually do rely on past
4 opinions as a matter of practice. Accordingly, this reliance,
5 both by the ethics commission and by legislators and employees,
6 should be codified so that all parties may reasonably rely on
7 prior opinions addressing conduct in analogous situations.

8 Third, the ethics code lacks a procedure by which a person
9 found by an informal advisory opinion to be in probable
10 violation of the ethics code may request reconsideration of the
11 informal advisory opinion. Although not authorized by statute,
12 in practice, the ethics commission may allow a probable violator
13 to request reconsideration of an informal advisory opinion;
14 however, there is no provision in either the ethics code or the
15 ethics commission's administrative rules that informs such a
16 person of the availability of this avenue of recourse.
17 Accordingly, the procedures for reconsideration should be
18 codified in order to inform all parties of its availability and
19 standards of review.

20 The purpose of this Act is to clarify standards and
21 procedures under the ethics code to reflect current standards



1 and practices, in order to fully inform all parties of such
2 standards and practices.

3 SECTION 2. Section 84-11, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§84-11 Gifts. No legislator or employee shall solicit,
6 accept, or receive, directly or indirectly, any gift, whether in
7 the form of money, service, loan, travel, entertainment,
8 hospitality, thing, or promise, or in any other form, under
9 circumstances in which it can reasonably be inferred that the
10 gift is intended to influence the legislator or employee in the
11 performance of the legislator's or employee's official duties or
12 is intended as a reward for any official action on the
13 legislator's or employee's part. In determining whether this
14 section prohibits any particular gift, the following factors
15 shall be considered:

- 16 (1) The official action the recipient has taken or may be
17 taking that directly affects the donor of the gift;
18 (2) The extent to which the gift benefits the State and
19 the extent to which the gift personally benefits the
20 recipient;
21 (3) The business relationship, if any, between the donor
22 and the recipient of the gift;



- 1 (4) The relationship of the gift to the official functions
- 2 of the recipient;
- 3 (5) The benefits to the donor; and
- 4 (6) All other circumstances under which the gift is
- 5 given."

6 SECTION 3. Section 84-31, Hawaii Revised Statutes, is
7 amended as follows:

8 1. By amending subsection (b) to read:

9 "(b) Charges concerning the violation of this chapter
10 shall be in writing, signed by the person making the charge
11 under oath, except that any charge initiated by the commission
12 shall be signed by three or more members of the commission. The
13 commission shall notify in writing every person against whom a
14 charge is received and afford the person an opportunity to
15 explain the conduct alleged to be in violation of the chapter.
16 The commission may investigate, after compliance with this
17 section, such charges and render an informal advisory opinion to
18 the alleged violator. The commission shall investigate all
19 charges on a confidential basis, having available all the powers
20 herein provided, and proceedings at this stage shall not be
21 public. If the informal advisory opinion indicates a probable
22 violation, the person charged [~~shall~~] may request



1 reconsideration of the informal advisory opinion within thirty
2 days of receiving the informal advisory opinion, request a
3 formal opinion, or within a reasonable time comply with the
4 informal advisory opinion. If the person charged requests
5 reconsideration of the informal advisory opinion, then the
6 commission shall conduct a confidential informal hearing, the
7 proceedings of which shall not be public, for the purpose of
8 obtaining further information from the person charged and
9 hearing arguments from the person charged identifying a point of
10 fact or law which was overlooked or which the commission failed
11 to consider in rendering its informal advisory opinion. The
12 commission may accept new information from the complainant
13 during the hearing. Upon rendering a decision on the request
14 for reconsideration, the commission shall notify the person
15 charged of the decision. Thereafter, the person charged shall
16 either request a formal opinion or within a reasonable time
17 comply with the decision, if the informal advisory opinion, as
18 reconsidered, still indicates a probable violation. If the
19 person charged fails to comply with [such] the informal advisory
20 opinion, either in the original if the person charged has not
21 requested reconsideration or as reconsidered if the decision on
22 reconsideration affirmed a probable violation, or if a majority



1 of the members of the commission determine that there is
2 probable cause for belief that a violation of this chapter might
3 have occurred, a copy of the charge and a further statement of
4 the alleged violation shall be personally served upon the
5 alleged violator. Service shall be made by personal service
6 upon the alleged violator wherever found or by registered or
7 certified mail with request for a return receipt and marked
8 deliver to addressee only. If after due diligence service
9 cannot be effected successfully in accordance with the above,
10 service may be made by publication if so ordered by the circuit
11 court of the circuit wherein the alleged violator last resided.
12 The state ethics commission shall submit to the circuit court
13 for its consideration in issuing its order to allow service by
14 publication an affidavit setting forth facts based upon the
15 personal knowledge of the affiant concerning the methods, means,
16 and attempts made to locate and effect service by personal
17 service or by registered or certified mail in accordance with
18 the above. Service by publication when ordered by the court
19 shall be made by publication once a week for four successive
20 weeks of a notice in a newspaper of general circulation in the
21 circuit of the alleged violator's last known state address. The



1 alleged violator shall have twenty days after service thereof to
2 respond in writing to the charge and statement."

3 2. By amending subsection (d) to read:

4 "(d) A decision of the commission pertaining to the
5 conduct of any legislator, delegate to the constitutional
6 convention, or employee or person formerly holding such office
7 or employment shall be in writing and signed by three or more of
8 the members of the commission. A decision of the commission
9 rendered after a hearing held pursuant to subsection (c),
10 together with findings and the record of the proceeding, shall
11 be a public record."

12 3. By amending subsection (f) to read:

13 "(f) The commission shall cause to be published yearly
14 summaries of decisions, advisory opinions, and informal advisory
15 opinions[-]; provided that the commission, in its discretion,
16 may amend or depublish a published decision, advisory opinion,
17 or informal advisory opinion. The commission shall make
18 sufficient deletions in the summaries to prevent disclosing the
19 identity of persons involved in the decisions or opinions where
20 the identity of such persons is not otherwise a matter of public
21 record under this chapter. The commission shall rely on and
22 follow the analysis of its published decisions, advisory



1 opinions, and informal advisory opinions, in evaluating conduct
2 under this chapter, to the extent that the factual situation and
3 conduct in the decision or opinion is reasonably analogous to
4 the factual situation and conduct at issue. Any legislator,
5 employee, or delegate to the constitutional convention, or
6 person formerly holding the office or employment who acts in
7 reasonable reliance on a prior decision, advisory opinion, or
8 informal advisory opinion, whether published or unpublished,
9 shall not be in violation of any provision of this chapter, to
10 the extent that the factual situation and conduct in the
11 decision or opinion is reasonably analogous to the factual
12 situation and conduct at issue."

13 SECTION 4. This Act does not affect rights and duties that
14 matured, penalties that were incurred, and proceedings that were
15 begun, before its effective date.

16 SECTION 5. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 6. This Act shall take effect upon its approval.

19

INTRODUCED BY:

[Handwritten signatures: "The Governor", "Will Egan", "Michelle D. Steiner", and a large flourish]



Report Title:

Ethics Code; Gifts; Opinions; Reconsideration

Description:

Codifies the standards for evaluation of whether a gift is a violation of the ethics code; the reasonable reliance on past published opinions by the ethics commission and legislators and employees; and a reconsideration process in which a violator may seek reconsideration from an ethics commission decision.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

