

ACT 188

S.B. NO. 2216

A Bill for an Act Relating to the State Ethics Commission.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to clarify and modernize the way the state ethics commission provides advice and conducts investigations pursuant to the state ethics code and lobbyists law.

SECTION 2. Section 84-31, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

- “(a) The ethics commission shall have the following powers and duties:
- (1) It shall prescribe forms for the disclosures required by article XIV of the Hawaii constitution and section 84-17 and the gifts disclosure statements required by section 84-11.5 and shall establish orderly procedures for implementing the requirements of those provisions;
 - (2) It shall provide advice upon the request of any person as to whether the facts and circumstances of a particular situation constitute or will constitute a violation of the code of ethics or other laws or rules administered and enforced by the commission, and discuss ways to avoid an appearance of impropriety. A person receiving advice from the commission may request a written summary of that advice. The commission shall treat all advice requests, responses, and related materials as confidential. Written summaries shall be confidential unless the recipient waives confidentiality;
 - [(2)] (3) It shall render advisory opinions upon the request of any legislator, employee, or delegate to the constitutional convention, or person formerly holding such office or employment as to whether the facts and circumstances of a particular case constitute or will constitute a violation of the code of ethics. If no advisory opinion is rendered within [~~thirty~~ ninety] days after the request is filed with the commission, it shall be deemed that an advisory opinion was rendered and that the facts and circumstances of that particular case do not constitute a violation of the code of ethics. The opinion rendered or deemed rendered, until amended or revoked, shall be binding on the commission in any subsequent charges concerning the legislator, employee, or delegate to the constitutional convention, or person formerly holding such office or employment, who sought the opinion and acted in reliance on it in good faith, unless material facts were omitted or misstated by such persons in the request for an advisory opinion[;]. The commission shall also render public general advisory opinions concerning proper interpretation of the code of ethics and other laws or rules administered and enforced by the commission, if it deems the opinion of sufficient general interest and importance;
 - (4) It may initiate an investigation into alleged, possible, or potential violations of this chapter and other laws or rules administered and enforced by the commission, on a confidential basis, having available all of the powers herein provided, whether the investigation is made based on a charge allegation, other information or indications, or as the commission determines is in the public interest;
 - [(3)] (5) It shall initiate, receive, and consider charges and other information, on a confidential basis, concerning alleged [violation], possible, or potential violations of this chapter[;] and other laws or rules

- administered and enforced by the commission, initiate or make investigation, and hold hearings;
- (4) (6) ~~[(4)]~~ Upon adoption of a resolution defining the scope and nature of the inquiry, supported by a vote of three or more members of the commission, it may subpoena witnesses, administer oaths, and take testimony relating to matters before the commission and require the production for examination of any books or papers relative to any matter under investigation or in question before the commission~~[- Before the commission shall exercise any of the powers authorized in this section with respect to any investigation or hearings it shall by formal resolution, supported by a vote of three or more members of the commission, define the nature and scope of its inquiry];~~
- (5) (7) It may, from time to time adopt, amend, and repeal any rules, not inconsistent with this chapter, that in the judgment of the commission seem appropriate for the carrying out of this chapter and for the efficient administration thereof, including every matter or thing required to be done or which may be done with the approval or consent or by order or under the direction or supervision of or as prescribed by the commission. The rules, when adopted as provided in chapter 91, shall have the force and effect of law;
- (6) (8) It shall have jurisdiction for purposes of investigation and taking appropriate action on ~~[alleged]~~ possible violations of this chapter in all proceedings commenced within six years of ~~[an alleged]~~ a possible violation of this chapter by a legislator or employee or former legislator or employee. A proceeding shall be deemed commenced by the filing of a charge with the commission or by the signing of a charge by three or more members of the commission. Nothing herein shall bar proceedings against a person who by fraud or other device, prevents discovery of a violation of this chapter;
- (7) (9) It shall distribute its publications without cost to the public and shall initiate and maintain programs with the purpose of educating the citizenry and all legislators, employees, and delegates to the constitutional convention~~[- and employees]~~ on matters of ethics in government employment; and
- (8) (10) It shall administer any code of ethics adopted by a state constitutional convention, subject to the procedural requirements of this part and any rules adopted thereunder.

(b) Charges concerning the violation of this chapter shall be in writing, signed by the person making the charge under oath~~[- except];~~ provided that any charge initiated by the commission shall be signed by three or more members of the commission. The commission shall ~~[notify in writing]~~ issue written notice to every person against whom a charge is received and afford the person an opportunity to explain the conduct alleged to be in violation of the chapter. The commission may investigate, after compliance with this section, ~~[such]~~ the charges and render an informal advisory opinion to the alleged violator. The commission shall investigate all charges on a confidential basis, having available all the powers herein provided, and proceedings at this stage shall not be public. If the informal advisory opinion indicates a probable violation, the person charged shall request a formal opinion or within a reasonable time comply with the informal advisory opinion. If the person charged fails to comply with ~~[such]~~ the informal advisory opinion or if a majority of the members of the commission determine that there is probable cause for belief that a violation of this chapter might have occurred, a copy of the charge and a further statement of

the alleged violation shall be personally served upon the alleged violator. Service shall be made by personal service upon the alleged violator wherever found or by registered or certified mail with a request for a return receipt and marked deliver to addressee only. If after due diligence service cannot be effected successfully in accordance with the above, service may be made by publication if so ordered by the circuit court of the circuit wherein the alleged violator last resided. The state ethics commission shall submit to the circuit court for its consideration in issuing its order to allow service by publication an affidavit setting forth facts based upon the personal knowledge of the affiant concerning the methods, means, and attempts made to locate and effect service by personal service or by registered or certified mail in accordance with the above. Service by publication when ordered by the court shall be made by publication once a week for four successive weeks of a notice in a newspaper of general circulation in the circuit of the alleged violator's last known state address. The alleged violator shall have twenty days after service thereof to respond in writing to the charge and statement."

SECTION 3. Section 97-6, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) The state ethics commission shall administer and implement this chapter, and shall have the following powers and duties:

- (1) Initiate, receive, and consider charges and other information, on a confidential basis, concerning alleged, possible, or potential violations of this chapter[;] and other laws or rules administered and enforced by the commission, and investigate or cause to be investigated; on a confidential basis, the activities of any person to determine whether the person is in compliance with this chapter;
- (2) Prescribe forms for the documentation, statements, and reports required by sections 97-2 and 97-3 and establish orderly procedures for implementing the requirements of those provisions;
- (3) Provide advice upon the request of any person as to whether the facts and circumstances of a particular situation constitute or will constitute a violation of this chapter or other laws or rules administered and enforced by the commission and discuss ways to avoid an appearance of impropriety. A person receiving advice from the commission may request a written summary of that advice. The commission shall treat all advice requests, responses, and related materials as confidential. Written summaries shall be confidential unless the recipient waives confidentiality;
- ~~(3)~~ (4) Render advisory opinions upon the request of any person subject to this chapter. If no advisory opinion is rendered within ~~[thirty]~~ ninety days after the request is filed with the commission, it shall be deemed that an advisory opinion was rendered and that the facts and circumstances of that particular case do not constitute a violation of this chapter. The opinion rendered or deemed rendered, until amended or revoked, shall be binding on the commission in any subsequent charges concerning the person subject to this chapter who sought the opinion and acted in reliance on it in good faith, unless material facts were omitted or misstated by the person in the request for an advisory opinion[;]. The commission shall also render public general advisory opinions concerning proper interpretations of the laws of this chapter and other laws or rules administered and enforced by the commission, if it deems the opinion of sufficient general interest and importance;

- (4) (5) Issue subpoenas, administer oaths, ~~and~~ require the production for examination of any records or papers relative to any matter under investigation or in question before the commission, and exercise those powers conferred upon the commission by section 92-16;
- (5) (6) Adopt, amend, and repeal rules, not inconsistent with this chapter, ~~as~~ that in the judgment of the commission seem appropriate for the carrying out of this chapter and for the efficient administration of this chapter, including every matter or thing required to be done or ~~which~~ that may be done with the approval or consent or by order or under the direction or supervision of, or as prescribed by, the commission. The rules, when adopted as provided in chapter 91, shall have the force and effect of law; ~~and~~
- (6) (7) Have jurisdiction for purposes of investigation and taking appropriate action on ~~alleged~~ possible violations of this chapter in all proceedings commenced within ~~three~~ six years of ~~an alleged~~ a possible violation of this chapter. A proceeding shall be deemed commenced by the filing of a charge with the commission or by the signing of a charge by three or more members of the commission. Nothing shall bar proceedings against a person who by fraud or other device prevents discovery of a violation of this chapter~~[-];~~ and
- (8) Distribute educational and advisory publications and initiate, administer, and maintain training programs for the purpose of training lobbyists on compliance with state lobbying laws and applicable parts of the code of ethics.

(b) Charges concerning the violation of this chapter shall be in writing, signed by the person making the charge under oath~~[-except];~~ provided that any charge initiated by the commission shall be signed by three or more members of the commission. The commission shall ~~notify in writing~~ issue written notice to every person against whom a charge is received and afford the person an opportunity to explain the conduct alleged to be in violation of the chapter. The commission may investigate, after compliance with this section, ~~such~~ the charges and render an informal advisory opinion to the alleged violator. The commission shall investigate all charges on a confidential basis, having available all the powers herein provided, and proceedings at this stage shall not be public. If the informal advisory opinion indicates a probable violation, the person charged shall request a formal opinion or within a reasonable time comply with the informal advisory opinion. If the person charged fails to comply with ~~such~~ the informal advisory opinion or if a majority of the members of the commission determine that there is probable cause for belief that a violation of this chapter might have occurred, a copy of the charge and a further statement of the alleged violation shall be personally served upon the alleged violator. Service shall be made by personal service upon the alleged violator wherever found or by registered or certified mail with request for a return receipt and marked deliver to addressee only. If after due diligence service cannot be effected successfully in accordance with the above, service may be made by publication if so ordered by the circuit court of the circuit wherein the alleged violator last resided. The commission shall submit to the circuit court for its consideration in issuing its order to allow service by publication an affidavit setting forth facts based upon the personal knowledge of the affiant concerning the methods, means, and attempts made to locate and effect service by personal service or by registered or certified mail in accordance with the above. Service by publication when ordered by the court shall be made by publication once a week for four successive weeks of a notice in a newspaper of general circulation in the circuit of the alleged violator's

last known state address. The alleged violator shall have twenty days after service thereof to respond in writing to the charge and statement.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.
(Approved July 3, 2024.)