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## HOUSE OF REPRESENTATIVES

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STATE OF HAWAII  
STATE ETHICS COMMISSION

April 27, 2015

Mr. Edward L. Broglio  
Chair  
Hawaii State Ethics Commission  
State of Hawaii  
P. O. Box 616  
Honolulu, HI 96809

Dear Chair Broglio:

The recent spate of controversial directives or recommendations issued under the Hawaii State Ethics Commission's letterhead appear to continue a dismaying pattern over the last several years of the Commission staff trying to rewrite the Ethics Code to conform to their own notions of what constitutes ethical conduct.

I speak specifically to the recent attempts to prohibit common and regular practices that, since the adoption of Chapter 84, Hawaii Revised Statutes (HRS), have never been seen to raise any ethical concerns, including selection of charitable fundraising here at the Legislature or other state venues, bargaining unit candidates communicating with their fellow union members through the use of the employees' workplace mailboxes, teachers being compensated for chaperoning students on educational trips to distant destinations, and receipt of gifts, meals, and charitable fundraiser tickets that total, in one year, \$200 or less from a single source, etc.

If such common and longstanding practices are troubling to the Commission or its staff, the proper approach is to come to the Legislature with proposed legislation to address those concerns. Instead, I continue to see unilateral imposition of restrictions, often based neither on historical practices nor prior Commission opinions, but justified on the basis that the Ethics Code is to be liberally construed.

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This method of amendment by "liberal construction" to justify departures from past practices and opinions, sometimes even contrary to clear statutory provisions, does not promote either ethics or the rule of law.

For example, an August 2011 document entitled Guidelines for Gifts Under the State Ethics Code uses that justification to impose a slew of departures from past practices and opinions, including, among other things, prohibiting the receipt of gifts of more than "nominal" value and only permitting receipt of tickets to "food and drink" events if they are under \$25. Just before this most recent legislative session began, a memorandum, dated December 23, 2014, on the Commission's letterhead was sent to legislators asserting that the value of a gift basket appears to staff to be "relatively substantial" (an ambiguous term) and that consequently "...acceptance of this gift basket is prohibited by the State Ethics Code."

These are inexplicable conclusions, given that Chapter 84, HRS, does not even require disclosure of gifts from a single source that total \$200 or less in a year, much less prohibit their receipt based on value alone.

Was there any discussion before these directives were issued as to why the Ethics Code does not require disclosure of a gift valued at \$200 or less, if every gift valued at more than \$25 was a violation of the Ethics Code? It seems clear to anyone familiar with the structure of the Ethics Code that the requirement to disclose gifts totalling over \$200 means that gifts valued below that amount are deemed insufficient to warrant inference that the gift is intended to influence or reward official action.

In fact, as my staff pointed out to me, Opinion No. 338 of the Commission directly addresses the question of whether the Ethics Code placed a dollar or fair value limit for gifts. The Opinion notes that it answered the question in the negative, stating that "The code does not specify a limit of the value of a gift that may be accepted."

In that same Guidelines for Gifts Under the State Ethics Code issued in August of 2011, the author states that "...the value of the event [is] the face value of the ticket, not the net cost of the ticket or the subjective value of the food and drink consumed by an individual at the event."

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This is completely contrary to Opinion No. 95-3 (at page 5) which states that when the tickets are in the form of a donation to the charitable organization: "...then the value of the gift was the fair market value of the benefit received. For example, if an employee received a ticket styled as a '\$25 donation' and then attended the event and ate a plate of spaghetti, the value of the gift was the fair market value of the plate of spaghetti."

Why is Opinion No. 95-3 not even mentioned in these communications?

The recent attempt by Commission staff to suggest restrictions on charitable fundraising choices here at the Legislature and throughout state government ignores the fact that the Commission has consistently held, over the last 35 years, that it:

"...believes that HRS section 83-13 is not violated when a legislator uses his or her position for a legitimate state purpose, such as to assist charities that benefit one's constituency or the State as a whole."

Informal Advisory Opinion No. 99-4 (1999)

In 1976, the Commission noted, in Opinion No. 245, that there was no ethical violation when state employees on state time had extensive participation in a program soliciting for a charity. The holding was clear that the solicitation program was "...not a private business purpose..." The organization had broad-based community support and its solicitation program involved many segments of the community.

Here at the Legislature, the programs and events we have supported, and intend to continue to support, include the Institute for Human Services, the Blood Bank of Hawaii, the Food Bank, Children and Youth Day, Ag Day, Aloha United Way and other broad-based charitable and educational endeavors.

Our local charities provide services that would otherwise need to be provided by the taxpayers. They help feed, clothe, house, educate, and provide health care and social services to both the children and adults of our community. Why would anyone defy the clear and consistent holding of the Ethics Commission over the past 35 years in order to hurt the fundraising efforts of these entities?

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As noted in the Opinions cited above, these types of organizations deserve the charitable support of our Legislators and if, by our presence, we can assist them in their fundraising, this is a clear and present benefit to the state, as they help educate our children, and preserve the social safety net, without the expenditure of the taxpayer's money.

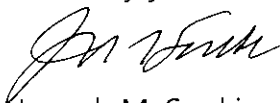
Now, just in the past several weeks, the Commission has seen its "mailbox" rule halted by a temporary restraining order and its educational travel rules cause outrage among those teachers willing to assist our young people in seeing the rest of the world, and who do not want to submit to more and more bureaucratic red tape.

Using the concept of "liberal construction" to justify these recent departures from the Ethics Code and from past practices and Opinions is a disreputable practice, particularly when the introduction of proposed legislation by request is always available to the Commission every year for every regular legislative session.

In sum, I believe the Commission should examine its own past opinions from the 1970s through 2010 and disavow any directives subsequent to that time that alter past accepted practices.

Further, I encourage the Commission to propose a legislative package which addresses all of the specific practices or limits that it or its staff has sought to impose over the last several years. If the Ethics Code needs to be changed or clarified, the only proper place to do so is here at the Legislature.

Sincerely yours, -



Joseph M. Souki

Speaker of the House of Representatives

cc: Vice Chair David O'Neal  
Commissioner Susan N. DeGuzman  
Commissioner Ruth D. Tschumy  
Commissioner Melinda Wood