



**STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION**

Leiopapa A Kamehameha
235 S. Beretania Street, Room 300
Honolulu, Hawaii 96813
Phone: (808) 586-0285
Fax: (808) 586-0288

Docket No.

COMPLAINT FORM

Nancy E. McGee
Name (Complainant)

Calvin Say & Friends of Calvin Say
Name of company or individual against whom you
complain (Respondent)

2021 Iwi Way
Address

2247 Star Road
Address

Honolulu HI 96816
City State Zipcode

Honolulu HI 96813
City State Zipcode

() - (310) 406-4156
Residence Phone Business Phone

(808) 23-3627 () -
Residence Phone Business Phone

The complaint must be completed by including the following items. Attach the information to this complaint form.

- I. Cite the law(s) or rule(s) that you believe has been violated.
- II. Provide a specific and detailed statement of the complaint, and the reasons why the law(s) or rule(s) has been violated.
- III. Provide a complete description of the incident or evidence to support the claim that a specific law or rule has been violated, including all dates and parties involved.
- IV. Attach all documents or other data that you believe supports the complaint, including the originals whenever available. If the documents or other data on which you rely is not in your possession, please provide specific information regarding their location and accessibility.
- V. Provide a statement of the action requested or the remedy you desire.

Complaints made on behalf of another individual or organization must have the express authorization to represent such individual or organization.

I

HRS §11-381 Campaign funds only used for certain purposes. (a) Campaign funds may be used by a candidate, treasurer, or candidate committee:

- (1) For any purpose directly related:
 - (A) In the case of the candidate, to the candidate's own campaign

HRS §11-382 Prohibited uses of campaign funds. Campaign funds shall not be used:

- (1) To support the campaigns of candidates other than the candidate with which they are directly associated;
- (2) To campaign against any other candidate not directly opposing the candidate with which they are directly associated; or
- (3) For personal expenses.

HAR §3-160-42 Expenditures not allowed for personal expenses. (a) Candidates and committees shall not use campaign funds for “personal expenses”.

(b) “Personal expenses”, as used in this section, means expenses that would exist irrespective of a candidate’s campaign to seek the nomination or election to office or being elected to an office and includes the following expenses:

- (10) Legal expenses not related to the nomination or election of a candidate

II

As of July 28, 2014, Calvin Say expended \$61,677.20 on attorneys fees and court costs defending against a quo warranto action. This was prior to two months of the substantive and contention court hearings and filings through September 30, 2014. It is likely that Say has expended well over \$80,000 on attorneys fees and court costs by the time his next report is filed.

These expenses were not incurred in connection with the duties of an office holder. Quo warranto inquires into the authority by which one possesses office. The writ issues if a prima facie case has been established to the satisfaction of the issuing judge that the possessor of office lacks the legal requirements to hold office and orders him to appear and prove his rightful title to office.

Usurping office is not a duty of an office holder just as bribery is not a duty of office while it can only occur if someone is possessing office. Paying attorneys to defend the usurpation, like bribery, cannot be characterized as “ordinary and necessary” expenses incurred in connection with those duties.

Say's request to have the House defend him were declined because the House deemed it to be personal and having nothing to do with his performance of his official duties.

It is important to distinguish between expenses which arise because of legal campaign activities and expenses as a result of activities which are illegal regardless of their purported connection to a campaign or holding office. The law does not permit and the Commission must not interpret it to suggest that a candidate or holder of public office can commit an unlawful act or criminal act in furtherance of his campaign and designate the legal defense of that action as a campaign expense. Such expenses do not arise with respect to the candidate’s campaign, but because he decided to act irrespective of both his campaign obligations and the Hawaii State Constitution, in what can only be described as an abuse of office.

III

Friends of Calvin Say (the “Committee”) has filed several campaign spending reports over the last eighteen months which show payments to the law firm of Kobayashi Sugita Goda on Calvin Say's behalf. Kobayashi Sugita Goda is the law firm that represents Mr. Say in the quo warranto action.

IV

The Commission can obtain by subpoena the billing statements of Kobayashi Sugita Goda to get a task by task account of what Mr. Say was billed for and for what his campaign paid.

V

The Commission must order Say to disgorge the converted funds and pay the maximum penalty for his violation of a critical part of the State's campaign finance system. The campaign finance system promotes ethical leadership in state government as well as public faith in government. Disgorgement and civil penalties will prevent unjust enrichment, deterrence and punishment for injury to contributors and the public.

