



HAWAII STATE ETHICS COMMISSION

State of Hawaii • Bishop Square, 1001 Bishop Street, ASB Tower 970 • Honolulu, Hawaii 96813

MEMORANDUM

Date: April 5, 2006

To: Legislators

From: Daniel J. Mollway
Executive Director and General Counsel

Re: Legislative Interns

Our office recently received an inquiry from a legislator concerning the use of legislative interns at the Legislature. The legislator stated that the current use of interns is presently a matter of public concern, and wished to know the policy of the State Ethics Commission regarding the use of legislative interns. Further, as you know, this issue has been addressed recently by the media and other concerned citizens.

The issue of the use of a legislative intern was first brought to our attention around 1994. At that time, our office issued advice to the effect that so long as the internship program was a bona fide program, the Legislature could accept interns from companies. At the time, our office was told that interns came to learn of the legislative process for their personal development in their respective companies, and, in return, the State received free work from interns. The internship program was thus, as is common, an educational opportunity for interns. It was clear that the intern the legislator contacted our office about came from a company that also lobbied the Legislature. We were also told at the time that the legislative internship program was sanctioned by the Legislature.

In 1994, we advised the legislator that acceptance of an intern under the facts that were represented to us did not create a problem under the State Ethics Code, which is set forth in chapter 84, Hawaii Revised Statutes ("HRS"). However, we advised that interns would be subject to the State Ethics Code, and would have to adhere to the various pertinent provisions of the State Ethics Code. Our office believed that interns were subject to the jurisdiction of the State Ethics Code because they were performing state duties, and had been authorized to do so. The fact that interns were not compensated by the Legislature was not an issue. In the State, there are over 160 boards and commissions whose members, for the most part, are not compensated. However, state board and commission members are subject to the State Ethics Code.

Our office in 1994 informed the legislator who contacted our office for advice that since interns were subject to the State Ethics Code, interns, under the conflicts of interests provision of the State Ethics Code (HRS section 84-14(a)), could not take any action that directly affected their own companies. Such action includes recommendations

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and advocacy concerning bills or other legislative matters that would directly affect the company an intern came from. Similarly, interns could not disclose, or use for their benefit or the benefit of anyone, confidential information (HRS section 84-12). Under HRS section 84-14(d), interns are precluded from assisting or representing their companies before the Legislature. The conflicts law in the State Ethics Code thus bars interns, while in the role of an intern, from working on any bill or taking action on any bill that would directly affect their companies. Since interns would be working at the Legislature, HRS section 84-14(d) would prohibit interns in their private capacities from "lobbying" the Legislature. HRS section 84-14(d) prohibits state employees from representing or assisting a business for pay before one's own state agency. This provision of the State Ethics Code would apply to interns. Thus, an intern cannot lobby at the Legislature while serving as an intern. HRS section 84-13 would bar interns from using state resources for their own companies, or for private business purposes or other non-state purposes. In short, interns are subject to the same provisions of the State Ethics Code that apply to state employees.

A question has been raised as to whether some interns are in actuality "embedded" lobbyists. However, interns, as stated above, cannot lobby the Legislature as long as they are interns.

If an individual is in fact a lobbyist rather than an intern, the individual would have to comply with the State's Lobbyists Law, set forth in chapter 97, HRS, assuming the requirements of that law are met.

I hope this information clarifies the position of the State Ethics Commission concerning interns. Because of the numerous questions that have been raised and continue to be raised about the internship program, our office will examine the program to insure that both the State Ethics Code and the State Lobbyists Law are being complied with.

If there are any questions concerning the above, please do not hesitate to contact me at 587-0460.