

TITLE 21 LEGISLATIVE AGENCIES

CHAPTER 4

STATE ETHICS COMMISSION

ADVISORY OPINIONS

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Historical Note: This chapter is based substantially upon rule 4 of the State of Hawaii Ethics Commission Rules and Regulations. [Eff. 1/7/74 and 11/11/78; R \_\_\_\_\_]

§21-4-1 Request for advisory opinion. (a) All requests for advisory opinions made to the commission shall be in writing and shall contain:

- (1) The name of the person requesting the opinion;
- (2) The state agency for which the person works;
- (3) That person's position in the state agency;
- (4) The nature and duties of that person's state employment;
- (5) The date of request;
- (6) That person's business and home address;
- (7) That person's business and home telephone numbers;
- (8) A complete statement of the facts and circumstances upon which the commission can make a determination; and
- (9) The signature of the person requesting the opinion.

(b) A request for an advisory opinion is considered filed when the commission has received in writing or the executive director has obtained through an interview process all the information deemed necessary by the commission. When the opinion is requested by an employee or legislator regarding a situation involving another employee or legislator, the filing shall not be deemed completed until the employee

or legislator who will be the subject of the opinion has had a reasonable opportunity to review the facts submitted and to present that employee's or legislator's view of the factual circumstances. [Eff. ] (Auth: HRS §84-31(a)(5)) (Imp: HRS §84-31)

§21-4-2 Rendering of advisory opinion. (a) An advisory opinion will be in writing and signed by all commissioners subscribing to the opinion. It will be considered rendered when it is signed and placed in the mails, postage prepaid and addressed to the person requesting the opinion at the address furnished by the person or upon personal delivery.

(b) Any commissioner who agrees with the commission's opinion but for different reasons than as stated may file a written concurring opinion; any member of the commission who disagrees with the commission's opinion may file a written dissenting opinion, which will be placed at the end of the majority opinion or at the end of the concurring opinion, if any.

(c) An advisory opinion will be issued to the person requesting the opinion except that when the request for an advisory opinion involves a legislator or employee other than the person requesting the opinion, then a copy of the advisory opinion, without the name of the person requesting the opinion or facts identifying such person, if any, will be sent to the legislator or employee concerned.

(d) Requests for copies of the opinion will be referred by the commission to the person to whom the opinion was issued, unless the person has indicated in writing that the commission may release copies of the opinion upon request.

(e) Within forty-five days after an opinion has been rendered, the commission shall submit a deleted opinion to the person affected by the opinion who shall have ten days to submit comments or request for recommendations for amendment. The commission may in its discretion consider the comments of the person prior to filing of the deleted opinion, which shall be completed no later than ninety days after the opinion has been rendered. The deleted opinion shall be a matter of public record. The executive director shall provide copies of deleted opinions upon request without charge. At the end of each calendar year, the opinions

issued during the calendar year shall be printed, along with an index, and copies shall be available upon request. [Eff. ] (Auth: HRS §84-31(a)(5)) (Imp: HRS §84-31)

§21-4-3 Interim rulings. In a case where a person requesting an opinion indicates that due to circumstances, that person must make an immediate decision, the commission may, in its discretion, issue a ruling signed by three or more commissioners, which ruling briefly states the commission's opinion and which may be followed within the original thirty day period by a full advisory opinion. [Eff. ] (Auth: HRS §84-31(a)(5)) (Imp: HRS §84-31)

§21-4-4 An opinion rendered by lapse of thirty days. Upon the receipt of a request for an advisory opinion, the executive director or delegate may determine whether or not the situation is in violation of the ethics law based upon a prior opinion of the commission. Such a determination, if approved in writing by a commissioner, will become the opinion of the commission by lapse of thirty days from the date of the receipt of the request. The executive director shall notify person requesting the opinion of the determination and approval. An opinion issued in this manner will not be published. [Eff. ] (Auth: HRS §84-31(a)(5)) (Imp: HRS §84-31)

§21-4-5 Hearings. Generally, an opinion will be rendered only upon facts submitted in writing. The employee or legislator subject to an opinion, however, may request a hearing in writing, stating the reason for making the request, and may request that other persons attend. The commission may limit the time allowed for the hearing and the number of persons attending the hearing. The commission, at any time, with notice to the person requesting the opinion, may interview persons who may have information desired by the commission in the consideration of a request for an advisory opinion. [Eff. ] (Auth: HRS §84-31(a)(5)) (Imp: HRS §84-31)