



HAWAII STATE ETHICS COMMISSION

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

March 28, 2014

The Honorable Sylvia Luke, Chair
The Honorable Scott Y. Nishimoto, Vice Chair
The Honorable Aaron Ling Johanson, Vice Chair
House Committee on Finance
Hawaii State Capitol, Room 306
415 South Beretania Street
Honolulu, Hawaii 96813

Re: **S.B. 2423, S.D. 2, Relating to the Department of Education**

Hearing: Friday, March 28, 2014, 3:00 p.m.
State Capitol, Conference Room 308

The Honorable Sylvia Luke, Chair; The Honorable Scott Y. Nishimoto, Vice Chair;
The Honorable Aaron Ling Johanson, Vice Chair; and The Honorable Members of
the House Committee on Finance:

The Hawaii State Ethics Commission has strong concerns about S.B. No. 2423, S.D. 2. The Commission urges the Committee to fully consider and understand the broad scope of the bill and the possible (and maybe even likely) application of the provision.

The State Ethics Code does not allow a state employee to use his position to give himself or others an “unwarranted advantage” or special treatment. Haw. Rev. Stat. § 84-13. The statute also specifically prohibits the use of “state time, equipment or other facilities for private business purposes.” Haw. Rev. Stat. § 84-13(3). “Business” is defined in the statute to include both for-profit and non-profit organizations. Haw. Rev. Stat. § 84-3.

This bill, in essence, will create an exception to the State Ethics Code’s provision that prohibits using state resources for private business activities. It will allow public school administrators and teachers to dedicate class time, school facilities, and other resources to fundraise for, or to otherwise support, a private, non-profit organization, no matter the mission or purpose of the non-profit organization. It will allow public school administrators and teachers to direct students to participate in fundraising and charitable activities, irrespective of whether the student’s parents know of and support the non-profit organization.

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The Commission appreciates the intent of the bill: To enrich student learning, improve the school environment and support school programs. The Commission also appreciates that schools and school employees may be eager to support a non-profit organization, particularly a popular organization. However, as written, the bill is extremely broad, allows fundraising for any non-profit organization without any guidance or controls, and raises numerous concerns. The Commission offers the following as examples of issues that the Committee should consider:

- Although there are many worthy charities, there are also many non-profit, 501(c)(3)-type organizations which are not widely accepted, which may have a mission that is inconsistent with or objected to by some school employees and/or parents. Stated differently, one teacher's belief that a charity or its cause is worthy may not be universally shared. For example, Hawaii Right to Life Education Fund, Planned Parenthood, and Hawaii Family Forum are non-profit organizations whose missions may not be universally supported by teachers, students, and/or parents. The bill will allow fundraising for any and all of these organizations.
- Given the number of non-profit, 501(c)(3)-type organizations, there invariably will be issues relating to why a public school administrator or teacher supported one charity but not another (i.e., is it fair for a school employee to choose which charity is more "worthy" and to allow public school resources to be used to fundraise for or support that charity rather than another charity). For example, is it "fair" for a public school to fundraise for and support the Susan G. Komen Foundation, but not Make-A-Wish, the American Heart Association or the American Diabetes Association?
- Where a school administrator or teacher (or the employee's spouse) is involved with a non-profit organization (e.g., the school principal is a director on the non-profit's board or the teacher's spouse works for the non-profit) and the administrator or teacher elects to use students, school time, and other school resources to fundraise for or support the non-profit organization, there likely are concerns as to whether the administrator or teacher misused his position to cause school resources to be dedicated to support that charity. Similarly, there may be questions about whether the administrator or teacher has a conflict of interest in allowing school

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resources to be used to support an organization. For example, a teacher's daughter is a girl scout and she uses class time and student labor to sell girl scout cookies; or the principal's son plays Pop Warner football and he fundraises at school, during school hours, and using the school equipment to support the team; a school principal's spouse is employed by the American Cancer Society and allows fundraising for the organization at the school.

- Given that students and their parents likely will be asked to participate in fundraising if it is a school-sanctioned activity, the Commission suggests that the Committee consider that students are unlikely able to decline their teacher's request that they participate in the fundraising activities. Moreover, school-sponsored fundraising activities may create or facilitate an environment where certain families feel "pressured" to participate notwithstanding their limited financial resources or objection to the organization and/or its mission.

The Commission realizes that some of these issues may eventually be addressed in the rule making requirements of this bill; however, the Commission strongly suggests that the State Ethics Commission is able to provide more comprehensive and clearer guidance to the Department and its employees than the rules that may be promulgated pursuant to this bill.

Recently, the Commission has received many complaints and questions relating to fundraising and other charitable activities in schools and in other state offices. Some of the inquiries endorse using state resources for such activities; however, many others clearly object to state resources being used to support private charitable activities.

In the near future, the Commission intends to consider, comprehensively, the application of the State Ethics Code to such fundraising activities by state employees and expects to issue broad guidance on the matter. Many of the concerns expressed by the Superintendent and other school employees as well as by other state agencies that this bill may be attempting to address will be considered by the Commission. **For that reason, the Commission suggests that the Committee defer the bill until after the Commission has had an opportunity to thoroughly consider the issues and the application of the State Ethics Code.**

Thank you for the opportunity to testify on S.B. No. 2423, S.D. 2.