



# HAWAII STATE ETHICS COMMISSION

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

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## APPLICATION OF THE STATE ETHICS CODE TO USE OF LEGISLATIVE ALLOWANCE FUNDS

June 5, 2014

### Staff Recommendations

#### I. INTRODUCTION

The Hawaii State Ethics Commission (“Commission”) has received complaints from legislators regarding expenditures made by other legislators using state funds from their annual legislative allowance accounts. These complaints raised issues under the State Ethics Code, chapter 84, Hawaii Revised Statutes (“HRS”).

In response to the complaints, the Commission’s staff requested records from the clerks of the Senate and the House of Representatives (“House”) relating to the use of legislative allowances by all legislators in 2012 and 2013. Based on the information provided by the Senate and House clerks,<sup>1</sup> the majority of disbursements from the legislative allowance accounts appeared to be for expenses reasonably related to a legislator’s official duties. However, some disbursements, on their face, appeared to be personal in nature and unrelated to a legislator’s official duties.

In a letter to the Senate President and the House Speaker dated February 28, 2014, the Commission’s staff identified several types of disbursements that appeared to raise concerns under the State Ethics Code, and invited the Senate and House leadership to provide their input and comments to assist the Commission in its review of this matter. Staff also conveyed the Commission’s preference to resolve this matter by offering general guidance to legislators regarding their use of the legislative allowance.

The Senate President and the House Speaker replied to the Commission, by way of a letter dated April 9, 2014, stating that, while they appreciated the Commission’s concerns, the responsibility for monitoring the use of the legislative allowance, or sanctioning any misuse of the legislative allowance, rests with the Legislature. The Senate President and the House Speaker also stated that the Legislature would be reviewing its current guidelines to see if further clarification was needed on use of the allowance.

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<sup>1</sup> The Senate and House clerks provided the Commission’s staff with summaries of disbursements from the legislative allowance accounts that appeared to cover the period of January 2012 to October 2013. The summaries listed expenditures by legislator, the payee, date, and payment description. The Commission’s staff did not review any documents submitted by legislators to support their claims for reimbursement from their legislative allowance accounts.

In the absence of further comment by the Legislature, the Commission's staff has prepared recommendations to the Commission on the application of the State Ethics Code to the use of the legislative allowance. The recommendations identify the types of expenditures of legislative allowance funds that appear to be prohibited by the State Ethics Code. These recommendations will be posted on the Commission's website to provide the public, individual legislators, and the Senate and House leadership the opportunity to submit public testimony on the issue of the use of the legislative allowance. The recommendations and all public testimony will be considered by the Commission at its June 18, 2014, meeting.

## II. APPLICABLE LAWS

### A. Annual Legislative Allowance

The State Constitution establishes an allowance "reasonably related to expenses as provided by law" for members of the Legislature.<sup>2</sup> The law which provides for this allowance is HRS section 24-1, which explicitly states that each legislator shall receive the annual allowance "to cover incidental expenses connected with legislative duties."<sup>3</sup> Emphasis added. In 2013, the legislative allowance for each legislator was \$11,261.<sup>4</sup> In total, \$855,836 was allocated in 2013 for legislative allowance funds for all seventy-six members of the Legislature.

Both the Senate and the House have provisions regarding use of the legislative allowance in their respective administrative and financial manuals. The 2013-2014 Administrative and Financial Manual of the Senate section 1.3 explains that the purpose of the allowance is for incidental expenses connected with legislative duties and interstate travel expenses. It defines "incidental expenses connected with legislative duties" as including:

all expenditures incurred in connection with carrying out of official duties or in connection with representational activities the nature of which will assist the legislator in: (i) developing the legislator's accessibility to, and communication with, the community and constituents concerning subjects of legislation and community concerns; (ii) educating the community and

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<sup>2</sup> Article III, Section 9.

<sup>3</sup> HRS section 24-1 states:

Each member of the legislature shall receive an annual allowance of \$7,500, which amount is to cover incidental expenses connected with legislative duties and the amount shall be payable in a manner prescribed by the respective rules of each house; provided that when the legislative salary is increased, the legislative allowance shall be increased by the same percentage.

<sup>4</sup> On May 9, 2014, staff sent a letter to Senate President Kim and House Speaker Souki requesting the 2014 legislative allowance amount provided to each legislator. Staff renewed the request in a May 15, 2014, letter to the Senate President and House Speaker and requested the information be provided by May 27, 2014. No additional information was provided by the legislature.

constituents on matters relating to the legislature, legislative process and subjects of legislation; and (iii) carrying out the public's expectations of a legislator's role to the community and constituents.

The 2013-2014 House Administrative and Financial Manual section 1.3 defines "incidental expenses connected with legislative duties" to include "expenses for meals, automobile mileage (beyond the mileage that a legislator necessarily incurs going to and from work), increases in home telephone bills, postage and mailings, and other miscellaneous expenditures."

Both the House and Senate Administrative and Financial Manuals require that use of this allowance is subject to reporting and accounting through forms for claims and disbursements submitted to the clerk of the appropriate legislative body.

#### B. Additional Allowance for Non-Oahu Legislators

HRS section 24-2 provides for an additional allowance for each of the twenty-four legislators whose legal residence is on an island other than Oahu for each day of session, including weekends, holidays and mandatory recess days; this allowance is provided to cover all personal expenses such as board, lodging, and incidental expenses but not travel expenses.<sup>5</sup> Both the House and Senate Administrative and Financial Manuals explain that the purpose of this allowance is to cover the costs of lodging, subsistence, and other incidental expenses necessitated by the legislator's presence on Oahu. Pursuant to section 1.4 of the House Administrative and Financial Manual and Title 1, section 1.4 of the Senate Administrative and Financial Manual, the additional allowance for non-Oahu legislators is not subject to reporting or accounting nor is the amount of the additional allowance subject to reduction or adjustment by reason of the receipt of any other allowance provided by statute or the House or Senate Administrative Manuals.<sup>6</sup>

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<sup>5</sup> HRS section 24-2 states:

A member of the legislature whose legal residence is on an island other than Oahu shall receive an additional allowance to cover all personal expenses such as board, lodging, and incidental expenses but not travel expenses. The allowance under this section shall be set at a single rate that will:

- (1) Not exceed the greater of the maximum allowance for such expenses payable to any public officer or employee of the federal government or the State;
- (2) Be reasonably calculated to cover the expenses specified in this section; and
- (3) Be determined jointly by the president of the senate and the speaker of the house of representatives for the legislature as a whole.

The allowance shall be paid to each member at the rate prescribed for each day, from the first to the last day of each session, including Saturdays, Sundays, holidays, and days of recess pursuant to the mandatory recess required by article III, section 10, of the Constitution or a concurrent resolution, except for days of recess when a session of the legislature is recessed for more than three days pursuant to a concurrent resolution and for days of unexcused absence of the member from a meeting of the respective house.

<sup>6</sup> Staff has attempted, via written requests on May 9, 2014, and May 15, 2014, to obtain the amount of the allowance for non-Oahu legislator allowance and the number of days during the 2014 session a non-Oahu legislator would be entitled to the allowance assuming he or she had no unexcused absences. Staff requested the information from the legislature by May 27, 2014. Staff also requested information

### C. Application of the State Ethics Code to Use of the Legislative Allowance

The Hawaii State Constitution expressly states that the State Ethics Code shall apply to all appointed and elected officers and employees of the State.<sup>7</sup> HRS section 84-1 further declares that the State Ethics Code “shall be liberally construed to promote high standards of ethical conduct in state government.”

Legislators are subject to the State Ethics Code, including the Fair Treatment law:

**§84-13 Fair treatment.** No legislator (emphasis added) or employee shall use or attempt to use the legislator's (emphasis added) or employee's official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for oneself or others[.]

Consistent with the Hawaii State Constitution, which provides a degree of immunity for legislators when they are engaged in legislative functions,<sup>8</sup> the Fair Treatment law contains an exemption for legislators when they are engaged in official legislative actions. For example, a legislator is exempt from the application of the Fair Treatment law when voting on a bill, engaged in a debate on the floor, or otherwise performing an official legislative function.

In letters to the Commission, the Senate President and the House Speaker have stated that, because the legislative allowance “is established by the Hawaii State Constitution, the Legislature is solely responsible for monitoring its usage and provid[ing] sanctions, if any, with regard to misuse.”<sup>9</sup> Consequently, the Legislature’s position appears to be that the Fair Treatment law does not apply to the use of the allowance; its use is solely within the discretion of the Legislature.

Staff disagrees with this interpretation. Neither the constitutional provision nor the statutes establishing the legislative allowance contains any language stating that the Legislature is solely responsible for monitoring the use and sanctioning the misuse of the legislative allowance. Simply because the State Constitution provides for the establishment of the allowance, the administration of that allowance is not beyond the

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from the House and Senate on how the use of the legislative allowance relates to the additional allowance for non-Oahu legislators for personal expenses incurred by being on Oahu during the legislative session and the per diem state employees receive for travel. No information on these issues has been received.

<sup>7</sup> Hawaii State Constitution Article XIV. HRS section 84-2.

<sup>8</sup> Hawaii State Constitution Article III Section 7.

<sup>9</sup> Letter from Senate President Donna Kim and House Speaker Joseph Souki dated April 9, 2014, and letter from Senate President Donna Kim and House Speaker Joseph Souki dated April 30, 2014.

reach of the State Ethics Code. The origin of the fund is not relevant to the legality of its use.

By its clear language, the Fair Treatment law applies to legislators except when they are engaged in official legislative action. Staff believes that this is a narrow exemption that does not apply when a legislator is using state funds or resources for personal reasons or for reasons that do not have a legitimate state purpose. For example, the Fair Treatment law prohibits a legislator from using state equipment for political campaign purposes because campaigning for office is not part of a legislator's state duties. HRS section 24-1 clearly provides that the legislative allowance may only be used for incidental expenses related to legislative duties. This is the only official use of the legislative allowance. Any personal use of the allowance, or any use not related to legislative duties, is not a part of the legislator's official duties or actions and is therefore fully subject to the Fair Treatment law. Any other interpretation would contradict the plain restrictions of the statutory provision.

This position is consistent with a prior Commission opinion. In Advisory Opinion No. 93-6, the State Ethics Commission opined on a legislator's use of his legislative allowance to purchase certain non-perishable items such as computer hardware, computer software and books; the legislator asked the Commission what should be done with the items when the legislator left office. The Commission replied that:

... a proper exercise of state powers would entail using the legislative allowance exclusively for purposes reasonably relating to legislative duties. If a legislator were to use the allowance for another purpose, then the legislator would likely be in violation of section 84-13. For example, a legislator clearly could not use the allowance to subsidize his personal income. This would amount to a misuse of position in violation of HRS section 84-13.

Staff believes that the application of the Fair Treatment law to the use of the allowance is proper and consistent with the Commission's earlier opinion.

#### D. Reimbursement Policies from Other Jurisdictions

Staff obtained and reviewed information from other government agencies relating to the use of discretionary funds by government officials. This information is summarized below and discussed further in the staff analysis in Part IV below. Staff has reviewed information from the following: 1) U.S. House of Representatives; 2) City and County of Honolulu; 3) County of Maui; 4) County of Hawaii; 5) State Department of Accounting and General Services; and 6) Hawaii Health Systems Corporation.

## 1. U.S. House of Representatives

During each session of Congress, Members are given a representational allowance “to support the conduct of official and representational duties.” Regulations adopted by the Committee on House Administration, known as the Members’ Congressional Handbook (“Handbook”), govern allowance expenditures and provide guidelines in determining whether expenses are reimbursable. The Handbook states that when an expense is incurred, the Member must determine if the primary purpose of the expenditure is official and representational or if it is primarily personal or campaign-related. Only expenses which are official and representational are reimbursable. The following summarizes reimbursable and non-reimbursable expenses for Members of Congress.

### Office-Related Reimbursable Expenses:

- Office supplies;
- Printing and production, including newsletters and notices of town meetings;
- Postage;
- Office equipment;
- Procurement and production of mailing lists;
- Printing and preparation of a member’s correspondence;
- Ordinary and necessary expenses related to conducting official meetings, including costs associated with securing space, ads, and signs and banners;
- Purchasing or subscribing to publications;
- Ordinary and necessary expenses related to programs established by the member to promote the public good or civil service, or to solicit information from constituents related to official business;
- Official travel.

### Food and Beverage Expenses:

- Members may be reimbursed for food and beverage expenses incidental to an official and representational meeting that includes one or more person(s) who are not a member or an employee of the House;
- Members may not be reimbursed more than two times per year for food and beverage expenses for legislative planning session meetings with members and staff;
- Members may not be reimbursed for food and beverage expenses related to social activities or social events (e.g., hospitality, receptions, entertainment, holiday or personal celebrations, and swearing-in or inauguration day celebrations).

### Reimbursable Gifts (exclusive list - no other gifts or donations are reimbursable):

- Protocol gifts for official presentation when on official travel;
- U.S. flags flown over the Capitol for official presentations;

- Ordinary and necessary expenses associated with the purchase of presentation folders or frames, which are of nominal value;
- Informational and educational federal government publications of nominal value;
- U.S. Capitol Historical Society publications of nominal value (including calendars);
- Expenses relating to framing the Congressional Art Competition winning artwork, when a member determines in his or her discretion that a hardship case is demonstrated.

Not Reimbursable:

- Dues, membership fees, assessments, and annual fees;
- Expenses relating to the purchase or distribution of greetings, including holiday celebrations, condolences, and congratulations for personal distinctions (wedding anniversaries, birthdays, etc.).

2. City and County of Honolulu (“City”)

Members of the City Council are provided with an Annual Contingency Allowance (“ACA”) similar to the state legislative allowance. Section 3.05 of the City Council’s Administrative Manual provides that, “ACA expenses shall conform to the (Honolulu) Ethics Commission’s guidelines regarding appropriate use of public funds and be a part of a Member’s role and responsibilities. ACA expenditures shall be reasonable and necessary for City business, and related to the conduct of official duties and activities of a Member.” Use of the ACA for any personal, private, political or other non-City business purposes is prohibited.<sup>10</sup>

If meals are charged to the ACA, council members are required to submit the names of the people present or the name of the organization and the justification for convening at a dining establishment.

The expenditure of ACA funds for meals became the issue in two Honolulu Ethics Commission investigations and advisory opinions (Advisory Opinions 2010-2 and 2012-6). The 2010 opinion revolved around reimbursements for 90 meals by Councilmember Rod Tam. In the 2010 opinion, the Honolulu Ethics Commission tried “to effectuate the intent of the Council’s policy while ensuring that the ethics laws are followed.” Therefore, in this case, for a meal to qualify for ACA reimbursement, the meal had to be directly related to a discussion of a Council matter or a councilmember’s duty, including dealing with a constituent concern. Councilmember Tam felt that all meals should be reimbursable as long as there was discussion during the meal of matters of potential relevance to the City; the Honolulu Ethics Commission rejected this since it would be impractical to determine whether a particular meal expenditure was for a legitimate government purpose. Citing

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<sup>10</sup> City councilmember’s ACA expenditure reports are posted on the City Council website at: <http://www1.honolulu.gov/council/ccl.htm>.

Revised Charter of Honolulu (“RCH”) section 13-110,<sup>11</sup> the Honolulu Ethics Commission opined that City officers who seek reimbursement must “demonstrate that the expense was reasonable and necessary. If the officer does not provide sufficient details to justify repayment, the lack of information should not be used to his or her advantage, especially when there is no practical way after the fact to confirm or refute whether the expense was legitimate.”

Councilmember Tam also recognized that meals were not necessary to conduct his duties or discuss constituent issues and that he could meet with constituents in cheaper ways such as at his office, his constituent’s home or business or other public places. He also acknowledged that he could also pay for a meal without reimbursement if he thought it was important to provide the meal.

The 2012 Honolulu Ethics Advisory opinion dealt with Councilmember Rod Tam’s claim for ACA reimbursement for: 1) the purchase of 114 lunches for City employees in appreciation for City employees’ work decorating City Christmas displays; and 2) the purchase of dinner for foreign delegates from Henan Province, China. In the first instance, Councilmember Tam justified the purchase of lunches for the City employees because “it was the most efficient and economical way to communicate with a large number of City workers about payroll budget issues confronting the City council. The expenditure made it possible to get a number of City workers together from different departments in one place at one time...if the meals were not provided, the workers would disperse and go to different locations to buy and eat their lunches.” The Honolulu Ethics Commission rejected this explanation because this justification was not on the receipts; the sole explanation on the receipts was that the meals were intended to show appreciation for the City workers decorating Honolulu Hale for Christmas. Furthermore the Honolulu Ethics Commission found no direct relationship between the purchase of meals for City workers with taxpayer funds and Councilmember Tam’s duties.

In the second instance, Councilmember Tam explained that the purpose of the dinner for the foreign delegates was related to his duty to “formulate international diplomatic relations” and that his invitation to dinner was the “proper way to establish a business relationship with the delegation.” Councilmember Tam described the topics discussed at dinner as the characteristics of the cities, the delegation’s comfort in coming to Hawaii, Chinese restaurant food, student teacher exchanges and Hawaii tourism. The Honolulu Ethics Commission rejected these justifications since the original documentation submitted with the receipt for dinner stated it was for “food for meeting with delegates from Henan Province, China; RE: City and County of Honolulu’s democratic government vs. communism in China and formulating diplomatic relationship into the future for City Council.”

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<sup>11</sup> RCH section 13-110 states:

Except as otherwise provided in this charter and subject to procedures prescribed by the director of budget and fiscal services and approved by the mayor, all officers and employees of the city shall be entitled to their travelling or other necessary expenses incurred in the performance of their official duties.



The Honolulu Ethics Commission also dismissed Councilmember Tam's claim that the meal expenditure was authorized by two City resolutions on establishing Sister City relationships. The Honolulu Ethics Commission noted that other council members were instrumental in establishing Sister City relationships with other cities yet did not make meal reimbursement claims. In addition, Councilmember Tam was unable to provide any subsequent correspondence or actions on his part or on the delegation's part to develop a Sister City relationship.

### 3. County of Maui

The County of Maui permits elected and appointed officers, employees and members of boards and commissions and duly appointed committees to be reimbursed from county funds when they incur necessary expenses in the performance of their public duties.<sup>12</sup> Guidelines for Reimbursement of Expenses were issued to assist county officers, employees, commissioners and committee members in determining when reimbursement from county funds was appropriate and when it was not. The Guidelines provide that reimbursement is permitted when the expense is incurred: 1) in performance of the person's public duties; 2) under circumstances where there is no other provision for payment by the county; 3) was primarily for the benefit of the county or one of its agencies; and 4) was required to be incurred to allow the claimant to carry out his or her public duty or responsibility in an efficient manner.

#### Reimbursement for the following expenses is prohibited:

- Conference fees for purely recreational activities which do not provide community benefits (e.g. golf, bowling and other recreational activities which do not directly relate to the carrying out of official duties).
- Meals for employees (based on the principle that the taxpayer should not be paying for what is normally a personal expense.) There are exceptions for: 1) meals provided as part of certain service awards ceremonies or training programs; 2) members of boards and commissions when the meal is served while the meeting is in session; 3) meals for voluntary participants in projects that provide community benefits; and 4) meals while hosting special guests/dignitaries if prior approval of the Mayor has been obtained; however any employee receiving per diem or a meal allowance must pay for their own meal.
- Purchase of alcohol in most instances.
- Political or charitable contributions, including gifts to legislators.
- Gifts or donations which do not directly support the function of the county department (e.g. cards, flowers, and fruit baskets sent for sickness or death to employees or relatives or employees; and appreciation gifts for employees).
- Coffee type refreshments (e.g. coffee, tea, milk, soft drinks, pastries, etc.) and the supplies and utensils used to prepare or serve the refreshments

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<sup>12</sup> Maui Code of Ordinances, chapter 2.76.

are not considered a necessary business expense; refreshments for staff meetings or office consumption is considered a personal expense of the county employee or officer making the purchase. Exceptions include: 1) voluntary participants in a service related project that provides community benefits; and 2) board/commission members during scheduled meetings.

#### 4. County of Hawaii

The Hawaii County Council has two policies covering reimbursement for expenses incurred by county officials. The first is the Administrative Manual Guidelines covering the Hawaii County Council, the Office of the County Clerk and the Legislative Branch. These Guidelines acknowledge that public funds must be spent responsibly and in the best interest of the County taxpayers. The Guidelines are mandatory, although exceptions may be approved by the Council Chair or County Clerk.

##### Permitted expenses include:

- Reimbursement of up to \$75 per month for use of a personal cell phone for County business.
- Costs for frames and framing for certificates presented by the Council up to \$15.00.
- Gifts for visitors or gifts to be used when traveling to another jurisdiction (when approval of the Council Chair or County Clerk has been obtained).
- Retirement gifts for County employees when approved by the County Clerk or the Council Chair.
- Refreshments for meetings, interviews, presentations or training under certain circumstances and when approval has been obtained; however expense may not exceed \$12 per person. Any Council Member or employee receiving a per diem must reimburse the County for the cost of their portion of the meal.

##### Prohibited expenses include:

- Meals purchased for others (exceptions allowed when approved). But the purchase of refreshments may be approved if expense does not exceed \$12 per person.
- Decorations for offices or for an event.
- Flower purchases (including lei purchases for retirees and staff appreciation). Exceptions are allowed for the purchase of a funeral wreath for a deceased employee or flowers for the Council Chambers when the Council Chair or the County Clerk has approved the purchase.
- Purchase of liquor (no exceptions).
- Retirement gifts for non-County employees.
- Staff room appliances, supplies and snacks.

The second set of guidelines covers the “district allowance expense” allotment which appears similar to the Legislature’s legislative allowance in that each

Council Member receives the allotment to cover expenses in carrying out their official duties. All purchases must comply with the Hawaii County Council's Legislative Branch Spending Guidelines, County policies and procurement laws.

Permitted expenses include:

- Community meeting expenses such as facility rental fees, charges of maintenance or security services, light refreshments, special mailings or handouts, lei for speakers and the rental of special equipment.
- Lei for recipients of honorary certificates and frames for honorary certificates.
- Purchase of research or reference materials, publication subscriptions or other materials related to legislative issues or procedures.
- Conference and seminar registration fees to certain specific organizations.
- Miscellaneous office supplies, equipment or materials.
- Monthly cell phone reimbursements of up to \$75 per month.
- Printing and mailing costs for surveys, bulk mailing and newsletters.

Prohibited expenses include:

- Personal, political or campaign related expenses, and those outside the scope of a Council Member's official duties and activities.
- Donations to community organizations.

5. Department of Accounting and General Services

In 2003, the State Legislature funded protocol accounts for several executive departments to be used at the discretion of the department head. Comptroller's Memorandum No. 2003-22 allows these department heads to use their protocol funds to purchase meals and refreshments when entertaining private and public sector officers on official business, fellow cabinet members on tour of their department, and fellow employees during staff meetings. Token gifts (including lei) are permitted when welcoming or visiting with government officials and miscellaneous client groups; gifts such as plaques, framed communications, or trophies to recognize services rendered to a department by board members, commission members, and volunteers are also permitted.

Prohibited expenditures include: club memberships, political and charitable contributions (including gifts to legislators and their staff), show and sporting event tickets, gifts which do not directly support the function of a government entity (e.g. fruit or flowers sent to employees or relatives of employees because of an illness or death, appreciation gifts for employees) and alcoholic beverages and tobacco products.

## 6. Hawaii Health Systems Corporation (“HHSC”)

HHSC’s FIN 0001 policy states that a protocol fund is established “for ordinary and necessary business expenses incurred by the executive management team during the course and scope of business.” Permitted expenditures include those incurred during the recruitment of essential personnel and staff, key business meals, small gift purchases (under \$25) for business associates (e.g. lei) and related protocol expenses that are not otherwise recoverable under training or travel policies. Expenses incurred in educational briefings with legislators (e.g. breakfast meeting to discuss legislation) may also qualify for reimbursement.

Prohibited expenditures include: contributions or gifts to legislators, fundraiser tickets and alcoholic beverages.

### III. REVIEW OF LEGISLATIVE ALLOWANCE EXPENDITURES

Staff has reviewed Senate and House allowance expenditures for 2012 to October 2013 and identified the following categories:

- A. Office-related Expenses:
  - Office supplies
  - Postage/priority mail
  - Mailing lists
  - Printing
  - Internet/data/cell phone plans
  - Office books
  - Newspaper and other publication subscriptions
  - Advertising
  - Legislative newsletters
  
- B. Office Equipment:
  - Cameras
  - Televisions
  - iPads
  - Computer monitor
  - Furniture
  
- C. Office Appliances:
  - Coffee machines
  - Refrigerators
  
- D. Miscellaneous Official Duty-Related:
  - Lei
  - Ceremonial gifts
  - Room/facility rental

- Mileage Reimbursement
- Parking (offsite)
- Parking expenses (for others)
- Organization meeting fees
- Conference expenses/registration fees
- Airfare (interisland, mainland, international)
- Airfare for staff (interisland)
- Car rentals
- Taxi
- Hotel

E. Meals/Refreshments:

- Office refreshments/pastries/snacks/drinks
- Food and beverages to commemorate birthdays, retirements, or staff departures
- Legislator meals (for themselves and others, including meals for the caucus)
- Staff meals
- Meals for others (meetings, constituents, retirement, congratulations, contest judges)

F. Opening Day Expenses:

- Opening Day flowers
- Opening Day food
- Opening Day gifts

G. Membership Dues/Fees:

- Community/business organization membership dues and fees

H. Personal Expenses:

- Retirement gifts
- Dry cleaning expenses
- Event tickets
- Charitable donations/contribution toward non-profit organization event
- Thank you gift for staff, others
- Funeral flowers
- Flower arrangements to welcome new legislator
- Gift cards for school functions
- Gift card for state retiree
- Gift certificate for fellow legislator

#### IV. STAFF ANALYSIS

In reviewing expenditures of legislative allowance funds and formulating recommendations, staff attempted to identify types of expenditures which appeared to be more personal in nature or which did not appear to be reasonably connected with the official duties of a legislator. These expenditures appeared to be inconsistent with the

Fair Treatment law. Staff also considered the policies and guidelines from other agencies in formulating staff's recommendations.

#### A. Food and Beverage Expenses

The policies and guidelines from other jurisdictions illustrate several different approaches to expenditures for food and beverages. For example, the Congressional Handbook states that members may be reimbursed for food and beverage expenses for an official and representational meeting but may not be reimbursed more than two times a year for food and beverage expenses for legislative planning session meetings with members and staff.

The City and County of Honolulu, through the ACA policy and the two Honolulu Ethics Commission opinions, permit meal expenses to be reimbursed only when the meal is directly related to a discussion of a Council matter or a councilmember's duty, including dealing with a constituent concern.

Maui County's Guidelines for Reimbursement of Expenses limits reimbursement for food and beverages for employees to certain specific situations,<sup>13</sup> otherwise reimbursement for employee food or beverages expenses is not permitted.

Hawaii County Council's policies permit the purchase of food and beverages for meetings, interviews, presentations or training under certain circumstances and when approval has been obtained but restricts the reimbursement to no more than \$12 per person.

Department of Accounting and General Service's protocol permits state department heads to purchase meals and refreshments for others on official business, cabinet members on tour of state departments and fellow employees during staff meetings.

HHSC permits use of its protocol fund to key business meals and food and beverages expenses incurred during educational briefings with legislators.

Staff saw a wide variation between legislators in their expenditures of food and beverages. Staff considered the various approaches provided by other jurisdictions. Staff found approaches which restricted the number of times the official could be reimbursed or which proposed a per person cost limit on the meal costs problematic since it is difficult to determine the exact number of times meals can be bought or a specific dollar limit for food which would be reasonably related to a legislator's duties and, above which, would not reasonably be related to a legislator's duties. Staff

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<sup>13</sup> The exceptions are: 1) meals provided as part of a certain service awards ceremonies or training programs; 2) members of boards and commissions when the meal is served while the meeting is in session; 3) meals for voluntary participants in projects that provide community benefits; and 4) meals while hosting special guests/dignitaries if prior approval of the Mayor has been obtained.

believes that if the food and beverage expense appears to be reasonably connected with legislative duties, then the expense may be reimbursed through the legislative allowance.<sup>14</sup> However, meal and beverage costs may be unreasonable for the given situation, e.g. expenses for a legislative meeting at an expensive restaurant may not reasonably be related to a legislator's official duties and could constitute an unwarranted privilege. Staff suggests that this may be an issue that requires consideration of the circumstances to determine whether or not the meal expense is reasonably connected with legislative duties.

As to expenses for food and beverages for opening day, staff realizes that it is a long standing tradition in Hawaii for the Legislature to open its session with food and beverages available for constituents who visit their legislators and that some legislators regard this as a part of their representational duties to their constituents. Staff believes that the Fair Treatment law does not prohibit use of the legislative allowance for reasonable expenses for food and beverages for opening day festivities that are reasonably related to a legislator's official duties. Staff also noticed a wide range between legislators in their expenditures for food on opening day. Staff is unsure why there is such wide variation but considered some possible reasons for the variations, such as a legislator's chairmanship of a legislative committee or leadership position that might tend to increase the legislator's expenditures. However, without input from the Legislature on why there is such a variation, staff is unable to determine whether specific levels of expenditures appeared reasonably related to a legislator's duties. Nevertheless, if food expenditures for opening day were excessively high, staff recognizes that it may violate the Fair Treatment law since it would not be reasonably related to a legislator's duties.

#### B. Political and Charitable Contributions

Staff saw a number of charitable donations from legislative allowances. Several guidelines and policies (Maui County, Hawaii County Council, Department of Accounting and General Service, and HHSC) specify that political and charitable contributions by a public officer are not reimbursable from public allowances created to reimburse public official for expenses reasonably relating to their duties. Staff believes that donations to a political candidate, campaign or charity is essentially a personal choice to support the particular individual or cause and that the use of the legislative allowance to benefit a particular political campaign or charity is inconsistent with the Fair Treatment law, which prohibits a legislator from using his or her official position to grant unwarranted advantages for oneself or others. This situation should be distinguished from the situation where a legislator approves a grant-in-aid or a legislative appropriation to a charity because these are legislative functions with procedures for application and review of funding requests by the Legislature.

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<sup>14</sup> The Legislature may if it desires, propose additional limitations or more detailed guidelines on food and beverage expenses.

### C. Personal Expenses

Staff saw expenditures from legislative allowances for birthday celebrations for legislators and staff, farewell lunches and lei for staff, staff appreciation meals, flowers to welcome new legislators, and condolence flowers for staff. In addition, there were several reimbursements from legislative allowances for dry cleaning expenses, employee and legislator's monthly parking, and monthly bus passes purchased for employees.

Several guidelines and policies feature restrictions on certain expenses which are deemed primarily social or personal and not related to the public officer's official duties. For instance, U.S. House of Representative members may not be reimbursed for food and beverage expenses related to social activities or social events, such as hospitality, receptions, entertainment, holiday or personal celebrations and swearing-in or inauguration day celebrations. In addition, U.S. House of Representative members may not be reimbursed for expenses relating to the purchase or distribution of greeting cards, including holiday celebrations, condolences, and congratulations for personal distinctions (wedding anniversaries, birthdays, etc).

Maui County prohibits reimbursement for gifts or donations which do not directly support the function of the county department (e.g. cards, flowers, and fruit baskets sent for sickness or death of employees or relatives and appreciation gifts for employees).

The Hawaii County Council permits reimbursement for retirement gifts for County employees when approved by the County Clerk or the Council Chair but prohibits reimbursement for retirement gifts of non-County employees. Flower purchases for staff appreciation and retirees are also not reimbursable.

The Department of Accounting and General Service's protocol prohibits state department heads from being reimbursed for club memberships, show and sporting event tickets and for gifts which do not directly support the function of a government entity (e.g. fruit or flowers sent to employees or relatives of employees because of an illness or death, and appreciation gifts for employees).

Staff believes that reimbursements for the purchase of retirement gifts, staff appreciation gifts, bereavement gifts or flowers, flower arrangements to welcome new legislators, gift cards or certificates for state retirees or other legislators are inconsistent with the Fair Treatment law since the giving of these items do not generally appear related to a legislator's official duties. These gifts generally appear to be a personal expression of appreciation, condolence, farewell or welcome to staff, friends or colleagues. However, there may be a few unique situations where, for example, the purchase of bereavement flowers might be related to a legislator's duties because the legislator is attending the funeral of a public figure in his or her official capacity and donates the flowers as a representative of his or her district; on occasions such as these, reimbursement from the legislative allowance may be consistent with the legislator's duties.



Reimbursement for the purchase of event tickets for a recreational or entertainment purpose (such as a sporting event or a show) also appears not to be reasonably related to a legislator's official duties and inconsistent with the Fair Treatment provision. Staff realizes that legislators may feel that their presence at an event demonstrates their official and personal support for a particular endeavor; however, the use of the legislative allowance requires that the expenditure be reasonably related to legislative duties, and attending primarily recreational or entertainment events appears to provide more of a personal benefit than any state purpose.

As to expenses for dry cleaning, staff is aware that certain public employees, such as sheriffs, police officers and firefighters receive public allowances to clean and maintain their clothing. However in these cases, employees are required to wear uniforms or specific items of clothing and the public allowances are provided for by their collective bargaining agreement. Other public employees who adhere to a general dress code, such as court attire for government attorneys, do not receive public allowances to clean or maintain their clothes. Since their legislative duties do not require legislators to wear specific items of clothing, staff believes that dry cleaning and laundry expenses are personal expenses for which the legislative allowance should not be used.

Transportation expenses such as mileage to and from work, monthly employee or legislator parking expenses<sup>15</sup> and monthly bus pass purchases also do not appear to be reasonably related to a legislator's official duties and seems to be inconsistent with the Fair Treatment law. These transportation expenses are normally personal expenses which one bears when one enters employment. Staff is aware that some private employers do cover an employee's monthly parking expenses or provide a transportation subsidy as a part of a private sector compensation package; however, this is not a normal feature of public employment with the State. Given this, staff believes that reimbursement for these expenses from the legislative allowance appears to be inconsistent with the Fair Treatment provision.

## V. STAFF RECOMMENDATIONS

Staff's recommendations are as follows:

- A. The legislative allowance, which consists of public funds, must be used for purposes that are reasonably related to a legislator's official duties. Use of the legislative allowance for personal purposes or other purposes that are not reasonably related to a legislator's official duties is prohibited by the Fair Treatment law of the State Ethics Code, HRS section 84-13.

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<sup>15</sup> Staff has been informed that the Department of Accounting and General Services has set the rate for assigned parking at the State Capitol at \$60 per month and that each legislator and legislative employee that is given an assigned parking stall is billed for the monthly charge.

- B. Expenditures which appear reasonably related to a legislator's official duties and do not appear to be prohibited by the Fair Treatment law include:
1. Office related expenses such as supplies, postage, mailing lists, printing, newsletters, internet and cell phone plans and newspaper subscriptions;
  2. Purchase of protocol and ceremonial lei and gifts for persons being honored by the legislature;
  3. Room and facility charges for community meetings and functions whose purpose is to communicate with the community and constituents concerning subjects of legislation and community concerns or to educate the community and constituents on matters relating to the legislature, legislative process and subjects of legislation;
  4. Parking, mileage, and car rentals when the expenditure reasonably relates to a legislator's official duties. However, costs for an employee's or legislator's monthly parking at their work location, mileage to and from one's lodging to one's work location, purchase of a bus pass for the purpose of commuting to and from work, or rental car costs associated with travelling between one's lodging and work are personal expenses whose reimbursement from the legislative allowance is inconsistent with the Fair Treatment provision;
  5. Organization meeting fees, conference and registration fees when the expenditure reasonably relates to a legislator's official duties;
  6. Travel costs such parking, airfare, taxis, conference and registration fees, hotel costs and meals when the travel reasonably relates to a legislator's official duties. However, if the travel cost has been fully reimbursed by another source,<sup>16</sup> then reimbursement from the legislative allowance is inconsistent with the Fair Treatment law; reimbursement for any travel cost which is reasonably related to a legislator's official duties and which is not fully covered by the other source, is consistent with the Fair Treatment law;
  7. Membership dues and fees to organizations whose focus involves state legislatures and governance such as the Council of State Governments and the National Conference of State Legislatures;
  8. Reasonable expenses for food, beverages and flowers for opening day; and
  9. Reasonable expenses for food or beverages purchased for others (persons who are not legislators or staff) at meetings or functions whose purpose is to communicate with the community and constituents concerning subjects of legislation and community concerns or to educate the community and constituents on matters relating to the legislature, legislative process and subjects of legislation.

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<sup>16</sup> For example, the legislator has been fully reimbursed by the travel per diem provided to state employees pursuant to Hawaii Administrative Rule 3-10-10.

- C. Expenditures which do not appear to be reasonably related to a legislator's official duties and appear to be prohibited by the Fair Treatment law include:
1. Food or beverages for legislators and staff except when reasonably related to a legislator's or staff member's official duties, e.g. purchase of meals for legislators and staff members on cross-over days when session extends through lunch or the evening and the legislator or the staff member is required to be present. Food or beverages purchased to thank or appreciate staff or for social occasions or events such as birthday celebrations, farewell or retirement parties, are personal expenses and are not reasonably related to a legislator's official duties;
  2. Political or charitable contributions;
  3. Expenses which are personal in nature such as dry cleaning expenses, transportation costs to and from work (including mileage), and monthly parking costs for employee or legislator parking. If the legislator is a non-Oahu legislator, some of these expenses appear to be covered by the additional allowance for non-Oahu legislators; and
  4. Purchase of retirement gifts, staff appreciation gifts, tickets for recreational or entertainment events, bereavement gifts or flowers, flower arrangements to welcome new legislators, and gift cards or certificates for state retirees, other legislators or for a charity.

## VI. CONCLUSION

The Commission will discuss staff's recommendations regarding use of the legislative allowance at its June 18, 2014, meeting. Public testimony on this matter will be accepted at the meeting.

Staff notes that legislative allowance funds are public funds and the public should have an opportunity to review and comment upon recommendations concerning the use of public funds by elected officials. The Commission should be mindful that the Legislature, in adopting the State Ethics Code, charged the Commission with the responsibility to enforce the law "so that public confidence in public servants will be preserved."<sup>17</sup> Staff also believes that the Legislature should have an opportunity to provide additional information or comment about the recommendations. This would be helpful to the Commission in its review of this matter. The Commission has previously expressed its willingness to work collaboratively with the Legislature to provide legislators with general guidance about the application of the State Ethics Code to their use of the legislative allowance.

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<sup>17</sup> Preamble, HRS chapter 84.