



HAWAII STATE ETHICS COMMISSION

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

GUIDELINES ON THE USE OF LEGISLATORS' ANNUAL ALLOWANCE

I. THE STATE ETHICS CODE: THE CONSTITUTIONAL MANDATE AND STATUTORY PURPOSE

The Hawaii State Constitution, Article XIV, entitled “Code of Ethics,” declares that “[t]he people of Hawaii believe that public officers and employees must exhibit the highest standards of ethical conduct and that these standards come from the personal integrity of each individual in government.” (Emphasis added.)

With this constitutional mandate as its foundation, the Legislature adopted the State Ethics Code directing that the ethics laws be “liberally construed to promote high standards of ethical conduct in state government.” (Emphasis added.) It is in this light that the Hawaii State Ethics Commission (“Commission”) must interpret and apply the State Ethics Code, Hawaii Revised Statutes (“HRS”) chapter 84.

II. THE FAIR TREATMENT LAW, HRS §84-13

The Fair Treatment law prohibits legislators from using their official positions to “secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment” for themselves or others. Specifically, the Fair Treatment law provides:

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

* * *

Nothing herein shall be construed to prohibit a legislator from introducing bills and resolutions...or from making statements or taking official action as a legislator[.]

III. THE LEGISLATIVE ALLOWANCE, HRS §24-1, AND THE STATE ETHICS CODE

Article III, Section 9 of the Hawaii State Constitution establishes an allowance “reasonably related to expenses as provided by law” for members of the State Legislature. HRS §24-1 states that each legislator “shall receive an annual allowance . . . to cover incidental expenses connected with legislative duties.” Allowance funds are public monies provided to legislators for expenses incurred in carrying out their legislative duties. The allowance is not a salary supplement or subsidy that can be used for any purpose by legislators.

The plain language of HRS §24-1 clearly states that the allowance must be used for “expenses connected with legislative duties.” In the Commission’s view, a legislator who uses the allowance for expenses that are not related to his or her legislative duties, e.g., for personal expenses, likely confers on himself or herself an “unwarranted” benefit in violation of the Fair Treatment law, HRS §84-13.

IV. ANNUAL ALLOWANCE GUIDELINES¹

Allowance expenditures must be reasonably related to the legislator’s official duties, i.e., the normal and ordinary types of expenditures that a legislator is reasonably expected to incur in performing his or her representational duties.

Use of the 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.

A. Expenses Reasonably Related to Official Legislative Duties

Certain types of expenditures, clearly, relate to a legislator’s official duties and are the types of expenditures that a legislator is reasonably expected to incur in his or her performance of those duties. A legislator is entitled to use the allowance to pay for those types of expenses. The following are examples of expenditures that legislators have used their allowances for in the past that appear to be reasonably related to a legislator’s official duties:

- (1) **Office-related Expenses:** office supplies; postage; printing charges; newspaper and other publication subscriptions; cellular telephone and internet plans; constituent lists; and legislative newsletters.

¹ On June 5, 2014, staff submitted a report and recommended to the Commission that guidelines on the use of the legislative allowance be issued. On June 18, 2014, the Commission voted to issue the guidelines recommended by staff. A copy of the report and recommendation can be found here: <http://ethics.hawaii.gov/wp-content/uploads/2014/06/LegislativeAllowanceFunds.pdf>.

- (2) **Office Equipment/Appliances:** furniture; computers and iPads; televisions; cellular telephones; coffee makers; and refrigerators. Office equipment and appliances purchased using the allowance are state property and cannot be used for private business purposes.
- (3) **Official Duty-Related Expenses:** lei (for ceremonial occasions); protocol-type gifts; room/facility rental costs; parking for persons having official business with the legislator; parking for legislators and staff attending meetings or functions away from the Capitol; conference registration fees; membership fees and dues to legislator/governance-related organizations, such as the Council on State Governments (CSG) and the National Conference of State Legislatures (NCSL); intrastate and interstate travel-related expenses, including airfare, hotel and food, to attend an event having a “state benefit;” and automobile mileage reimbursement associated with a legislator’s use of his or her personal vehicle to attend meetings and other events in his or her official legislative capacity (excluding mileage relating to a legislator’s commute to work).
- (4) **Opening Day Food and Beverages:** expenses relating to food and beverages that are available to constituents and others who visit a legislator’s office during the opening day of the legislative session. These expenses must not only be reasonably related to a legislator’s official duties, they also must be reasonable in cost for the given situation.
- (5) **Other Food and Beverages:** expenses relating to food and beverages for visitors to a legislator’s office; for constituents and others (excluding legislative staff) who attend official meetings or functions involving a legislator at which the food and beverages are provided (e.g., meetings with constituents, community meetings); and for legislators and legislative staff who are required to attend the meeting or function at which the food and beverages are provided (e.g., caucus meetings). These expenses must be reasonably related to a legislator’s official duties; they also must be reasonable in cost for the given situation.

B. Expenses Not Reasonably Related to Official Legislative Duties

There are other types of expenditures that appear to be more personal in nature or otherwise do not appear to be reasonably related to a legislator’s official duties. A legislator’s use of the legislative allowance for these expenditures is likely prohibited by the Fair Treatment law. The following are examples of expenditures that legislators appear to have used their allowances for in the past that do not appear to be reasonably related to a legislator’s official duties:

- (1) **Personal Expenses:** dry cleaning; cough drops; birthday cakes; legislator and staff monthly parking costs at the Capitol; and transportation

expenses (e.g. monthly bus passes and mileage reimbursements for use of a personal vehicle) incurred by legislators or staff in commuting from their lodgings to the Capitol.

- (2) **Celebration and Appreciation Gifts (for legislators, legislative staff, and others):** birthday gifts; congratulation gifts; welcome gifts; retirement gifts; thank you/appreciation gifts; farewell gifts; anniversary gifts; and funeral/sympathy flowers.
- (3) **Charitable Donations/Charitable Fundraisers:** Children and Youth Day; Ask-A-Lawyer; East West Center Foundation dinner; Historic Hawaii Foundation fundraiser; COVO Foundation; Helping Hands Annual Dinner; Philippines Medical Association dinner; and Hawaii Jaycees fundraising events.
- (4) **Political Contributions/Donations.**
- (5) **Food and Beverages for Legislators and/or Legislative Staff:** office refreshments, pastries, snacks, meals and beverages for legislators and/or staff (except for meetings at which the legislator and/or staff is required/expected to attend).
- (6) **Food and Beverage for Others/Unrelated to the Legislator's Official Duties:** food and beverages for Children and Youth Day judges and volunteers; Hawaii Alliance for Community Based Economic Development tax volunteers; Play It Safe contest judges; and Sergeant-at-Arms office staff.
- (7) **Entertainment:** tickets to sporting and entertainment events; and recreational activities, including those that benefit a non-profit organization (e.g., charity golf tournaments).
- (8) **Membership Fee and Dues:** business, community or social organizations such as Sierra Club, American Civil Liberties Union, Lions Club, and Rotary Club (with the exception of certain legislator/governance type organizations, such as CSG and NCSL).
- (9) **Any Expenses Reimbursed from Another Source.**

V. CONCLUSION

The Commission emphasizes that these are general guidelines and are not intended to encompass every type of expenditure. The Commission is issuing these guidelines to assist legislators in understanding how the State Ethics Code and, more specifically, the Fair Treatment Law, may be applied by the Commission on matters

involving a legislator's use of his or her allowance. The Commission recognizes that there may be circumstances where the State Ethics Code would not prohibit a legislator from using the allowance for an expenditure that is listed above as being personal in nature. The Commission, therefore, strongly urges legislators to seek advice from Commission staff before using their allowance for those types of expenditures and for other expenditures for which they may be uncertain as to whether their allowance may be used.