



# HAWAII STATE ETHICS COMMISSION

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## SENATE COMMITTEE ON JUDICIARY AND LABOR

The Honorable Gilbert S.C. Keith-Agaran, Chair  
The Honorable Maile S.L. Shimabukuro, Vice Chair

### **H.B. No. 1713, H.D. 2, S.D. 1, Relating to Ethics**

Decision Making: Friday, April 1, 2016, 9:30 a.m.

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The State Ethics Commission (“Commission”) **opposes** H.B. No. 1713, H.D. 2, S.D. 1, which creates a blanket exemption to the State Ethics Code for employees who engage in “extracurricular service” that is related to their state duties. The bill is unnecessary, overly broad, and contrary to the stated purpose of the State Ethics Code.

H.B. No. 1713, H.D. 2, S.D. 1 appears intended to respond to the concerns raised by the Commission in Advisory Opinion No. 2015-1, regarding the free travel and other personal benefits that a number of Department of Education (“DOE”) teachers were receiving from the tour companies that the teachers selected to organize student trips. In the advisory opinion, the Commission explained that the State Ethics Code prohibits teachers from accepting free travel from the tour companies because of the way the trips are organized and arranged. Specifically, in response to a request by a DOE complex area office for guidance, the Commission advised that the State Ethics Code prohibits teachers from accepting free travel and other benefits from tour companies where the teachers planned a Spring Break trip, decided which teachers would travel as chaperones, selected the tour company that would organize the trip, and solicited their students and parents of their students to participate in the trip using the tour company’s promotional material. Teachers received free travel and other benefits from the tour company based on the number students who purchased tour packages. The value of the travel for some of those trips may exceed \$6,000.

The manner in which the Spring Break trip was organized raised issues under numerous sections of the State Ethics Code, namely the conflicts of interests law, the fair treatment law (misuse of position), and the gifts law. Teachers simply cannot use their official positions to, in essence, serve as a private company’s sales representatives; and they cannot accept free travel and other personal benefits under circumstances in which it can reasonably be inferred that the travel and other benefits are offered to influence the teachers in actions that they take as teachers or reward them for their actions.

The Commission’s advice regarding student trips chaperoned by teachers appears to have been misunderstood. The Commission has never stated that the State Ethics Code prohibits student trips or that the State Ethics Code prohibits teachers from

serving as chaperones on those trips. The Commission has never said that teachers must pay if they are going to chaperone the students.

Rather, the Commission's advisory opinion was intended to help teachers and the DOE understand how the State Ethics Code applied to one school's Spring Break trip and others trips that were similarly organized. As stated above, the Commission's concern about the free travel and other personal benefits that teachers were receiving was because of the way student trips were structured, i.e., the teachers' role in selecting the tour company, soliciting the students and their parents, and then being given free trips.

The Commission repeatedly has explained that the State Ethics Code issues can be addressed if the trips are organized differently, i.e., if the teachers are not directly involved in selecting the company and soliciting the students and their parents. It simply is unnecessary to create an exception in the State Ethics Code so that teachers can accept free travel from tour companies. If the DOE believes that the trips are part of the DOE student learning experience and should continue, the DOE can develop a process that addresses the Commission's concerns and protects its teachers from actions that may violate the State Ethics Code.

In fact, the DOE was developing a Student Travel Policy and Guidelines to address the Commission's concerns that were raised in Advisory Opinion No. 2015-1. Under that policy, the DOE would create a "pre-approved" student travel vendor list. Teachers could propose a travel itinerary, and their school's Student Activities Coordinator ("SAC") would select the tour company that offered the desired itinerary. Communications with the students' parents about the trip would be through the SAC, and the chaperones for the students would be selected by the principal. In addition, the draft policy would create a "fund" to pay the travel expenses of the teacher-chaperones as well as to provide scholarships for students who are financially unable to participate. The Board of Education ("BOE") subsequently adopted a travel policy that superseded the DOE's policy; however, the DOE's policy that was being developed clearly demonstrates that the DOE can structure student travel in a way that is consistent with the State Ethics Code.

Moreover, the BOE's travel policy appears to structure student travel in a way that is consistent with the State Ethics Code. The BOE's policy requires that all student trips be either "private" or "school-sponsored." For "school-sponsored" trips, the BOE policy's requirement that the tour companies be selected in accordance with the State Procurement Code likely removes those teachers who may chaperone the students from the selection process. It also appears that the DOE and/or the school will be responsible for the teachers' travel expenses. Stated differently, it is the Commission's understanding that the BOE does not expect teachers to receive free travel and other benefits directly from the tour company for "school sponsored" trips. For "private trips," the BOE's travel policy provides that teachers who may travel as chaperones will do so outside of their official duties as DOE teachers and in their private capacities, i.e., not as DOE employees. The BOE's policy regarding "private trips" appears to address the

Commission's concerns that teachers were taking action and receiving the free travel in their official DOE capacities.

In short, it is unnecessary to change the State Ethics Code so that student trips can continue or to enable teachers to serve as chaperones on those trips. The student travel policies developed by both the DOE and the BOE demonstrate that student trips can be structured in ways that are consistent with the State Ethics Code.

In addition to teacher travel, H.B. No. 1713, H.B. 2, S.D. 1 will have the unintended effect of allowing employees to secure substantial personal benefits while performing services relating to their state jobs. The term "extracurricular service" contemplated by the bill is unduly broad and includes virtually any activity by any employee, so long as it is somewhat related to an employee's state job duties. For example, a Department of Accounting and General Services motor pool mechanic is asked to help recommend new cars that the motor pool intends to purchase. The employee, outside of his work hours, meets with car dealership representatives to learn about their companies' vehicles. One sales representative invites the employee to an expensive dinner to talk about his company's fleet; another loans the employee a vehicle for the employee's personal use. The bill likely would exempt the employee from the State Ethics Code, meaning that the employee can accept the dinner and the free use of the vehicle. Allowing employees to accept those types of personal benefits is clearly inconsistent with the State Ethics Code.

The Hawaii Constitution mandates that there be a code of ethics, which must be liberally construed, to promote high standards of ethical conduct in state government. To this end, the Commission is charged with administering and enforcing the State Ethics Code to ensure that public confidence in public servants is preserved. In order to maintain the integrity of the statute, amendments creating exemptions to the statute should be made sparingly and only when absolutely necessary. For the foregoing reasons, H.B. No. 1713, H.B. 2, S.D. 1 is completely unnecessary and so broad that it allows employees to engage in conduct contrary to the purpose and intent of the statute. In short, this bill significantly weakens the State Ethics Code and is contrary to the constitutional mandate.

The Commission urges the Committee to hold H.B. No. 1713, H.B. 2, S.D. 1.

Thank you for your continuing support of the Commission's work and for considering the Commission's testimony.