



HAWAII STATE ETHICS COMMISSION

State of Hawaii · Bishop Square, 1001 Bishop Street, ASB Tower 970 · Honolulu, Hawaii 96813
50th ANNIVERSARY 1968-2018

Resolution of Charge **2018-05**

(COMPL-C-17-00001)

Department of Land and Natural Resources, Division of Boating and Ocean Recreation, Kauai Office, Building Maintenance Worker's Alleged Violations of Fair Treatment Law

December 14, 2018

The Hawaii State Ethics Commission ("Commission") has resolved a Charge issued against Manuel Andrade, Building Maintenance Worker II, Department of Land and Natural Resources ("DLNR"), Division of Boating and Ocean Recreation, Kauai Office ("DOBOR-Kauai"), for alleged violations of the State Ethics Code, Hawaii Revised Statutes ("HRS") chapter 84.

I. Facts

Respondent Andrade admitted and declared, under penalty of perjury, that the following facts are true and correct:

- a) Respondent Andrade, at all times relevant herein, was employed by the Department of Land and Natural Resources ("DLNR"), a state agency, in the Kauai office of the Division of Boating and Ocean Recreation ("DOBOR-Kauai"). He has worked for DOBOR-Kauai since approximately 2003, first as a Harbor Agent, and since approximately 2006 as a Building Maintenance Worker ("BMW"). His current position is BMW II.
- b) Respondent Andrade, at all times relevant herein, was a state employee as defined in HRS § 84-3. As a state employee, Respondent Andrade was required to comply with the State Ethics Code.
- c) On or about October 14, 2016, Respondent Andrade and several other DOBOR-Kauai employees were tasked with disposing of a 55-gallon barrel of diesel fuel that had washed up on a Kauai beach. The fuel should have been disposed of as hazardous waste at the Nawiliwili Small Boat Harbor. Instead, Respondent Andrade assisted another DOBOR-Kauai employee (hereinafter referred to as "DOBOR-Kauai Employee #1")

in transporting the diesel fuel to private pasture land leased or otherwise controlled by a family member of DOBOR-Kauai Employee #1 in Anahola on state work time, using a state truck, so that it could be used for personal purposes. The fuel was later poured on fence posts (as a preservative) at the Anahola pasture land, rather than being disposed of as hazardous waste. Respondent Andrade believes that his supervisor, DOBOR-Kauai District Manager Joseph Borden, approved of the disposal of the diesel fuel in this manner.

- d) In or around April 2017, at the request of District Manager Borden, Respondent Andrade assisted DOBOR-Kauai Employee #1 in identifying and gathering state materials, including several light fixtures and/or light poles, to give to a private individual at no charge. Respondent Andrade provided these materials to District Manager Borden, and Respondent Andrade believes that District Manager Borden then provided these materials to the private individual.
- e) For multiple weeks in early 2017, Respondent Andrade used state tools and equipment at the DOBOR-Kauai maintenance facility to attempt to fabricate a headstone cover (also known as a “Dutch”) for his mother’s gravestone. This project involved the use of DOBOR-Kauai’s Tweco brand welder and other pieces of DOBOR-Kauai equipment. District Manager Borden authorized Respondent Andrade to use state tools and equipment to attempt to fabricate the headstone cover.
- f) For years, including multiple occasions between 2013 and 2018, Respondent Andrade took DOBOR-Kauai equipment away from state premises for his personal use, including a string trimmer, a chainsaw, a vacuum cleaner, and a bush cutter. District Manager Borden authorized Respondent Andrade to borrow state tools and equipment, both at the DOBOR-Kauai facility and away from the DOBOR-Kauai facility.

II. The State Ethics Code, HRS Chapter 84

A. Constitutional Mandate and Statutory Purpose

The State Ethics Code arises from the declaration contained in the State Constitution 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.”¹ To this end, the Hawaii Constitution further directs that the legislature enact a code of ethics that applies to all appointed and elected state officers and employees.

¹ Hawaii State Constitution, Art. XIV.

In accordance with this constitutional mandate, the legislature enacted the State Ethics Code and charged the Commission with administering and enforcing the law “so that public confidence in public servants will be preserved.”² Additionally, the legislature explicitly directed that the State Ethics Code be liberally construed to promote high standards of ethical conduct in state government. HRS § 84-1. It is in this context that the Commission examines every employee’s actions.

B. Application of the State Ethics Code to Respondent Andrade

As an employee of DOBOR-Kauai, Respondent Andrade is a state employee for purposes of the State Ethics Code.³ As a state employee, Respondent Andrade is required to comply with the State Ethics Code.

HRS § 84-13 (the “Fair Treatment Law”) prohibits a state employee from using her or his state position to obtain unwarranted privileges, advantages, or benefits for the employee or others.

The Commission investigated Respondent Andrade’s actions and believes that Respondent Andrade likely violated the Fair Treatment law by using state time and equipment for his personal use; by using state resources to transport diesel fuel to private property; and by assisting other DOBOR-Kauai employees in providing state equipment to a private individual. Particularly relevant in this case, diverting state property to private individuals, even at the direction of a supervisor, raises serious concerns under the State Ethics Code and undermines the trust placed in government officials by the people of Hawaii.

III. Resolution of Charge

The Commission issued a Charge against Respondent Andrade on May 17, 2018. The Commission believes that, based on the facts admitted above,⁴ Respondent Andrade likely violated the Fair Treatment Law (HRS § 84-13).

Respondent Andrade fully cooperated with the Commission in its investigation; he was forthcoming with the Commission’s investigators and has taken responsibility for his actions. Respondent Andrade has not previously been the subject of a Commission charge or investigation.

² HRS Chapter 84, Preamble.

³ HRS § 84-3.

⁴ This Resolution does not make formal findings, but relies on the facts admitted by Respondent Andrade.

Given the likely violations of the State Ethics Code, the Commission believes it is reasonable, fair, and in the public interest to resolve the Charge by (1) issuing this Resolution of Charge, and (2) requiring Respondent Andrade to pay an administrative penalty of \$2,000 to the State of Hawaii.