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# HAWAI‘I STATE ETHICS COMMISSION

State of Hawai‘i · Bishop Square, 1001 Bishop Street, ASB Tower 970 · Honolulu, Hawai‘i 96813

## **Resolution of Investigation** **2020-3**

**(COMPL-I-20-00116)**

**Hawai‘i House of Representatives, Representative Scott K. Saiki,  
Alleged Violations of Fair Treatment Law**

**August 20, 2020**

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The Hawai‘i State Ethics Commission (“Commission”) has resolved the investigation of Scott K. Saiki (“Respondent Saiki”), Representative, House of Representatives, for alleged violations of the State Ethics Code, Hawai‘i Revised Statutes (“HRS”) chapter 84.

The Commission received several complaints alleging that Respondent Saiki improperly sent his constituents two legislative newsletters, displaying the State Seal and other indicia of state office, that were paid for with campaign funds. The complainants alleged that Respondent Saiki’s mailer was an improper use of state resources for campaign purposes.

As discussed below, the mere use of campaign funds to send a legislative newsletter is not prohibited by the State Ethics Code. As such, the complainants’ allegations do not give rise to any violations of the Ethics Code.

However, Respondent Saiki’s legislative newsletters raise ethics concerns for a different reason: the newsletters – displaying the State Seal and otherwise suggesting that they were official publications of the State of Hawai‘i – referred readers to the social media account for Respondent Saiki’s campaign. The inclusion of campaign-related information in what appeared to be an official legislative newsletter was improper.

### I. Facts

Respondent Saiki admitted and declared, under penalty of perjury, that the following facts are true and correct:<sup>1</sup>

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<sup>1</sup> This Resolution does not make formal findings, but relies on the facts admitted by Respondent Saiki.

- (a) Respondent Saiki, at all times relevant herein, was an elected member of Hawaii's House of Representatives.
- (b) The House of Representatives is a "state agency" as defined by HRS § 84-3. Respondent Saiki, at all times relevant herein, was a state legislator and was therefore required to comply with the State Ethics Code.
- (c) Each house of the Legislature permits its members to use their legislative allowances to mail newsletters to their constituents. These newsletters generally inform constituents about each legislator's work and the Legislature's accomplishments. Insofar as legislative newsletters are official communications by a legislator to the legislator's constituents, the newsletters often include the legislator's Capitol address, phone number, and e-mail, along with other indications that the newsletter is published by an official of the State of Hawai'i.
- (d) Respondent Saiki sends legislative newsletters to his constituents and has used his legislative allowance to do so, as permitted by the House of Representatives. Respondent Saiki's legislative newsletters refer readers to his official social media account, @RepScottSaiki, which he uses for official legislative business.
- (e) During any election year – to avoid any appearance that state funds are being used for campaign purposes – the House of Representatives prohibits its members from using legislative allowance funds to send newsletters after the deadline to file nomination papers to run for re-election.<sup>[2]</sup> Accordingly, this year, representatives were permitted to use their legislative allowances to send newsletters to their constituents prior to June 2, 2020 (the deadline to file nomination papers to seek re-election), but were not permitted to use legislative allowance funds to send legislative newsletters after that date.
- (f) In June and July 2020 – shortly after the deadline to file nomination papers for re-election – Respondent Saiki sent two legislative newsletters to his constituents. The June/July newsletters included Respondent Saiki's Capitol address, phone number, and e-mail, along with the State Seal and other indications that the newsletter was published by an official of the State of Hawai'i. The mailing list for the June/July newsletters was the same list used for Respondent Saiki's previous legislative newsletters.
- (g) Respondent Saiki used campaign funds to pay for the June/July newsletters to his constituents. Those newsletters disclosed that they were "Paid for by Friends of Scott Saiki, P.O. Box 12022, Honolulu, HI 96828," Respondent Saiki's Candidate Committee (i.e., his political campaign).

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<sup>2</sup> The Commission's understanding is that the Senate does not have a similar restriction on its members' use of legislative allowance funds after the filing deadline.

- (h) The June/July newsletters also referred readers to a social media account. However, instead of using Respondent Saiki's social media account for official legislative business (@RepScottSaiki), the June/July newsletters referred readers to his campaign social media account (@ScottSaikiHawaii).
- (i) Respondent Saiki uses @ScottSaikiHawaii on both Instagram and Facebook. Both are campaign sites: for example, both contain links to Respondent Saiki's campaign website, which in turn asks for donations to his political campaign.
- (j) Respondent Saiki recognizes that the use of his campaign social media account on the June/July newsletters was improper, and he maintains that its appearance on the newsletters was unintentional. Nevertheless, Respondent Saiki takes full responsibility for using his campaign's social media account, rather than his official legislative social media account, on what otherwise appeared to be official legislative newsletters.

## 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.”<sup>3</sup> To this end, the Hawai'i Constitution further directs that the Legislature enact a code of ethics that applies to all appointed and elected state officers and employees.

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.”<sup>4</sup> 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 legislator's actions.

### B. Application of the State Ethics Code to Respondent Saiki

As a legislator, Respondent Saiki is required to comply with the State Ethics Code.<sup>5</sup> Pursuant to HRS § 84-13(a), “No legislator or employee shall use or attempt to use the legislator's or employee's official position to secure or grant unwarranted

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<sup>3</sup> Hawai'i State Constitution, Art. XIV.

<sup>4</sup> HRS Chapter 84, Preamble.

<sup>5</sup> HRS § 84-2.

privileges, exemptions, advantages, contracts, or treatment, for oneself or others[.]” Pursuant to HRS § 84-13(a)(3), legislators are prohibited from “[u]sing state time, equipment or other facilities for private business purposes[.]”

As the Commission has previously explained, “there is general acceptance of the proposition that campaigning is a private, rather than official, activity. The Commission has thus held that use of state resources for campaigning is generally ‘unwarranted’ and therefore a violation of section 84-13.” Advisory Op. No. 89-1, 1989 WL 1842464, at \*2. Legislators are prohibited from using state time, state personnel, state e-mail, or other state resources to promote their campaigns. Therefore, the Commission always advises that legislators separate their private business (i.e., their campaign activities) from their official legislative business.

This matter was brought to the Commission’s attention by several individuals who believed that the June/July newsletters were campaign materials masquerading as official legislative newsletters – that is, the complainants believed it was improper for Respondent Saiki to have used the State Seal, a Capitol address and e-mail, and other indicia of an official legislative publication when, in fact, the publication was paid for using campaign funds and labeled as “Paid for by Friends of Scott Saiki.”

The Commission agrees that the June/July newsletters present ethics issues, though for different reasons.

As an initial matter, Hawaii’s Campaign Spending Law authorizes legislators to spend campaign funds on legislative newsletters. Specifically, HRS § 11-381(a)(8) provides that campaign funds may be used “[t]o pay for ordinary and necessary expenses incurred in connection with the candidate’s duties as a holder of an office,” and the Campaign Spending Commission has interpreted this provision as allowing campaign funds to be used on legislative newsletters.<sup>6</sup>

The Ethics Code, HRS chapter 84, does not prohibit the use of campaign funds for legislative newsletters. Ordinarily, the State can receive donations of private funds for state purposes, though there are ethics restrictions in doing so. See Advisory Op. No. 2019-2, 2019 WL 2112500, at \*1. Legislative newsletters serve a state purpose: they inform constituents of legislative business, improving the connection between the public and those elected to represent them. As such, the mere fact that Respondent

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<sup>6</sup> The Campaign Spending Commission, rather than the Ethics Commission, has jurisdiction to administer and enforce Hawaii’s campaign spending laws, such that the Ethics Commission defers to the Campaign Spending Commission’s guidance on this provision. The analysis herein is based on the Ethics Commission’s understanding of the Campaign Spending Commission’s interpretation of HRS § 11-381(a)(8).

Saiki mailed a legislative newsletter, paid for by campaign funds,<sup>7</sup> does not constitute a violation of the Ethics Code.

However, the June/July newsletters present ethics concerns for a different reason: the inclusion of a campaign social media account, @ScottSaikiHawaii. As the Commission has explained:

The Commission has long maintained that legislative newsletters cannot be used for campaign purposes, and that there should be no references in legislative newsletters to campaign-related information or events, such as information about upcoming fundraisers, or other information that would serve to promote a candidate.

Informal Advisory Op. No. 2005-05 at 3, available at <http://files.hawaii.gov/ethics/advice/IAO2005-05.pdf>. Whether the newsletter is paid for with public funds or campaign funds, a legislative newsletter – containing a legislator’s Capitol contact information, the State Seal, and/or other indicia that the document is an official publication of the officeholder – may not contain campaign materials.

The inclusion of Respondent Saiki’s campaign social media account, on a newsletter that otherwise appeared to be an official publication of the State, was improper. Respondent Saiki maintains that the inclusion of the campaign social media account in his legislative newsletters was inadvertent, but he recognizes the ethics concerns involved and he takes full responsibility for the error.

### III. Resolution of Investigation

The Commission concludes that, based on the facts admitted above, Respondent Saiki likely violated the Fair Treatment law. Therefore, the Commission believes it is reasonable, fair, and in the public interest to resolve this investigation by (1) issuing this Resolution of Investigation, and (2) requiring Respondent Saiki to pay an administrative penalty of \$250.00 to the State of Hawai‘i.

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<sup>7</sup> The Commission’s further understanding – again, via the Campaign Spending Commission – is that these campaign-funded legislative newsletters do not require a disclaimer that they are paid for by the campaign. Again, the final determination on that matter is best left to the Campaign Spending Commission. When considering only the Ethics Code, however, there are competing concerns as to whether to include this disclaimer. On one hand, including the disclaimer increases transparency (because constituents can see that the newsletter was funded by campaign funds rather than public funds). On the other hand, including the disclaimer leads to the exact kind of complaint received in this case: a concern by the public that a legislator is using the State Seal and other state resources to promote the legislator’s candidacy. The Commission intends to review the matter and may propose an administrative rule to address these concerns.