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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** **2020-7**

**(COMPL-20-00222)**

**Department of Transportation Employee’s Violation of the Fair Treatment law**

**November 19, 2020**

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The Hawai‘i State Ethics Commission (“Commission”) has resolved the investigation of Randy Keopuhiwa (“Respondent Keopuhiwa”), Carpenter I, O‘ahu District, Highways Division, Department of Transportation (“DOT”), for alleged violations of the State Ethics Code, Hawai‘i Revised Statutes (“HRS”) chapter 84.

The Commission received a complaint that Respondent Keopuhiwa used state equipment – specifically, a DOT Bobcat skid-steer – at his personal residence. The Commission investigated this matter and entered into a settlement agreement to resolve this investigation without further administrative proceedings.

### I. Facts

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

- a) Respondent Keopuhiwa is employed as a Carpenter I, O‘ahu District, Highways Division, DOT, and is required to comply with the State Ethics Code, Hawai‘i Revised Statutes chapter 84.
- b) On or around November 2, 2020, Respondent Keopuhiwa used a DOT truck and trailer, while on state time (i.e., while on work time for DOT), to take DOT equipment – a Bobcat skid-steer (“Bobcat”) – to his personal residence in Nānākuli. Respondent Keopuhiwa then used the Bobcat to clear rocks, mud, and other debris from his personal residence.

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

- c) Prior to taking the Bobcat to his personal residence, Respondent Keopuhiwa asked Robert Chang, Construction and Maintenance Superintendent of the O‘ahu District, DOT-Highways (“Superintendent Chang”), whether he (Respondent Keopuhiwa) could store the Bobcat at his personal residence. At the time, DOT-Highways was working on a multi-day project close to Respondent Keopuhiwa’s personal residence in Nānākuli; Respondent Keopuhiwa reasoned that storing the Bobcat in Nānākuli would be easier than returning the Bobcat to the DOT baseyard near the Honolulu Airport at the end of the workday and then towing it back to Nānākuli again the next day. Superintendent Chang agreed that Respondent Keopuhiwa could store the Bobcat at his personal residence.
- d) Respondent Keopuhiwa also asked Superintendent Chang whether he (Respondent Keopuhiwa) could use the Bobcat to clear debris from his personal residence. Respondent Keopuhiwa is licensed to operate the Bobcat. Superintendent Chang agreed.
- e) Over the course of several days – from approximately November 2, 2020 to November 10, 2020 – Respondent Keopuhiwa used the DOT Bobcat to clear debris from the Nānākuli property where he has his personal residence.

## 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>2</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>3</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 employee’s actions.

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<sup>2</sup> Hawai‘i State Constitution, Art. XIV.

<sup>3</sup> HRS Chapter 84, Preamble.

B. Application of the State Ethics Code to Respondent Keopuhiwa

Respondent Keopuhiwa is a state employee<sup>4</sup> and is bound by the State Ethics Code's Fair Treatment law, HRS § 84-13(a). Pursuant to HRS § 84-13(a), "No . . . employee shall use or attempt to use the . . . employee's official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for oneself or others[.]" As the Commission has stated,

The State Constitution mandates the highest standards of ethical conduct by all state employees. These standards of conduct do not allow state employees to use their official positions to obtain unwarranted personal privileges or advantages. Employees who are entrusted with state property and other state resources for the performance of their official duties must uphold the public's trust by ensuring that state property and state resources are used for official purposes only.

Resolution of Charge 2016-04 at 4, available at <https://files.hawaii.gov/ethics/advice/ROC2016-4.pdf>.

Respondent Keopuhiwa admits that he violated the Fair Treatment law, and he takes full responsibility for the violations: he used state resources – a DOT truck, a DOT trailer, and state time – to deliver a DOT Bobcat to his personal residence; he then used the Bobcat to clear debris from his personal residence. The fact that a supervisor purportedly gave Respondent Keopuhiwa permission to deliver and use the Bobcat does not insulate Respondent Keopuhiwa from responsibility for the ethics violations here: as the Hawai'i Constitution states, the high ethical standards expected of all government officials shall "come from the personal integrity of each individual in government." Hawai'i State Constitution, Art. XIV.

III. Resolution of Investigation

Respondent Keopuhiwa admits that he violated the Fair Treatment law (HRS § 84-13(a)). Respondent Keopuhiwa cooperated with the Commission's investigation, has not previously been the subject of a Commission charge, and indicated that he would comply with the State Ethics Code going forward.

Given the violations of the State Ethics Code, the Commission believes it is reasonable, fair, and in the public interest to resolve this investigation by (1) issuing this Resolution of Investigation; (2) requiring Respondent Keopuhiwa to pay an administrative penalty of \$1,500 to the State of Hawai'i; and (3) referring this matter to the Department of Transportation for further disciplinary action as appropriate.

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<sup>4</sup> HRS § 84-3.