



HAWAII STATE ETHICS COMMISSION

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

Resolution of Investigation **2020-8**

(COMPL-20-00222)

Department of Transportation Superintendent's Violation of the Fair Treatment law

November 19, 2020

The Hawai'i State Ethics Commission ("Commission") has resolved the investigation of Robert Chang ("Respondent Chang"), Construction and Maintenance Superintendent, 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 Chang authorized a subordinate employee to use state equipment – specifically, a DOT Bobcat skid-steer – at the subordinate employee's personal residence. The Commission investigated this matter and entered into a settlement agreement to resolve this investigation without further administrative proceedings.

I. Facts

Respondent Chang admitted and declared, under penalty of perjury, that the following facts are true and correct:¹

- a) Respondent Chang is employed as the Construction and Maintenance Superintendent, O'ahu District, Highways Division, Department of Transportation ("DOT"), and is required to comply with the State Ethics Code, Hawai'i Revised Statutes chapter 84.
- b) Respondent Chang has supervisory authority over approximately 100 other DOT employees, with direct supervision over ten or eleven DOT employees.

¹ This Resolution does not make formal findings, but relies on the facts admitted by Respondent Chang.

- c) Respondent Chang has supervisory authority over DOT Carpenter I Randy Keopuhiwa, though Mr. Keopuhiwa does not report directly to Respondent Chang.
- d) On or around November 2, 2020, DOT-Highways was working on a multi-day project close to Mr. Keopuhiwa's personal residence in Nānākuli. Among other equipment, DOT-Highways was using a Bobcat skid-steer ("Bobcat") to perform the work for the State of Hawai'i.
- e) In late October or early November 2020, Mr. Keopuhiwa asked Respondent Chang whether he (Mr. Keopuhiwa) could store the Bobcat at his personal residence in Nānākuli. Mr. 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. Respondent Chang agreed that Mr. Keopuhiwa could store the Bobcat at his personal residence.
- f) Mr. Keopuhiwa then asked Respondent Chang whether he (Mr. Keopuhiwa) could use the Bobcat to clear debris at his personal residence. Mr. Keopuhiwa is licensed to operate the Bobcat. Respondent Chang agreed.
- g) Thereafter, Mr. Keopuhiwa used a DOT truck and trailer, while on state time (i.e., while on work time for DOT), to take the Bobcat to his personal residence in Nānākuli. Over the course of several days in early November 2020, Mr. Keopuhiwa used the Bobcat at 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."² 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

² Hawai'i State Constitution, Art. XIV.

that public confidence in public servants will be preserved.”³ 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 Chang

Respondent Chang is a state employee⁴ 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 Chang admits that he violated the Fair Treatment law, and he takes full responsibility for the violations: he authorized a subordinate employee to use state resources – a DOT truck, a DOT trailer, and state time – to deliver a DOT Bobcat to the subordinate employee’s personal residence; he then authorized the subordinate employee to use the Bobcat to clear debris from the subordinate employee’s personal residence. In so doing, Respondent Chang granted an unwarranted benefit to his subordinate employee, in violation of the Fair Treatment law.

III. Resolution of Investigation

Respondent Chang admits that he violated the Fair Treatment law (HRS § 84-13(a)). Respondent Chang 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.

³ HRS Chapter 84, Preamble.

⁴ HRS § 84-3.

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 Chang to pay an administrative penalty of \$1,000 to the State of Hawai'i; and (3) referring this matter to the Department of Transportation for further disciplinary action as appropriate.