



HAWAI‘I STATE ETHICS COMMISSION

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

December 7, 2020

Dear Lobbyists,

As many of you know, the Hawai‘i State Ethics Commission (“Commission”) has been working on new administrative rules for some time; thank you again to those of you who offered feedback and testimony throughout the process! The rules are now final and are effective immediately. You can find the rules, along with an Impact Statement with commentary on the rules, here: <https://ethics.hawaii.gov/wp-content/uploads/2019/07/TITLE21.pdf>

We strongly encourage lobbyists to attend a training session (by Zoom) on January 6, 2021 at 10:00 a.m. or January 12, 2021, at 10:00 a.m. You can register for the trainings here:

January 6, 2021, 10:00 a.m.:

<https://zoom.us/meeting/register/tJIpde6pqzgrHtT53hImjGB5m2WO7WfHPBtl>

January 12, 2021, 10:00 a.m.:

<https://zoom.us/meeting/register/tJUkcO6urD0tG9aJeCO7ZBTcq1ALONBxaDqN>

If you cannot attend one of those sessions, please let us know – we may hold the training a third time, or record one of the existing trainings, depending on demand. Until then, we wanted to advise you of several provisions that may impact your work:

1) Gifts from lobbyists and their clients – to legislators and legislative staff – are generally prohibited.

As a general rule, legislators and legislative staff may not accept “gifts of aloha” (or items under \$25), meals, or any other items of value from lobbyists or their clients:

Except as specifically provided in this chapter, a gift is generally prohibited where the recipient is in a position to take official action specifically affecting the donor, such as where the donor is a party to a contested case hearing before the recipient, regulated by the recipient or the recipient’s agency, involved in procurement with the recipient or the recipient’s agency, or a lobbyist seeking legislative or administrative action from the recipient or the recipient’s agency[.]

Hawai‘i Administrative Rules (“HAR”) § 21-7-2 (emphasis added). Furthermore, a gift to a legislator’s office – where the offeror does not specify a recipient – will be deemed a gift to the legislator if the legislator knew or should have known of the gift. Chapter 7 of the administrative rules covers other matters relating to gifts (including circumstances under which legislators may accept invitations to attend nonprofit organizations’ events, see HAR § 21-7-4), and we encourage you to review these provisions.

We strongly advise you to consult with the Ethics Commission before offering anything of value to a legislator or a legislative branch employee: by offering a gift, you may put the would-be recipient in the position of having to refuse your gift or risk violating the Ethics Code (and facing penalties of up to \$1,000 per violation). We have attorneys available every day to answer your questions quickly and confidentially (and at no charge to you or your clients).

2) A new chapter of rules (Chapter 10) provides greater clarity on lobbyist registration and reporting requirements.

Chapter 10 provides detailed information as to who needs to register as a lobbyist, what needs to be reported on expenditure statements, and what activities constitute “lobbying.” Many of the new rules simply memorialize longstanding advice given by Commission staff – such as how to account for time spent waiting to testify, or how to report background research work that might (or might not) lead to lobbying, HAR §§ 21-10-2, 21-10-8), so there should not be too many surprises here. There are a few new provisions, however, that you should note:

a) Expenditures shall be reported on an accrual basis (HAR § 21-10-9).

This rule is designed to clarify situations in which clients pay a flat fee, whether monthly or annually, for lobbying purposes – as well as those situations in which clients are obligated to pay for lobbying services but have not yet made the payment itself. This may require some adjustment for lobbyists and clients who have traditionally reported expenditures on a cash basis, but will provide greater information for the public to know which entities are seeking to influence legislative action.

We recognize that these rules have become effective in the middle of the May 1 to December 31 reporting period. As such, we advise that:

- 1) You file your May-December expenditure report using the accounting methods you have used for the first two periods of 2020, ensuring that you have accounted for all expenditures made by your clients for the 2020 calendar year (without double-counting); and
- 2) Beginning January 1, 2021, you report all expenditures on an accrual basis.

As always, please contact us if you have questions on how to complete your expenditure reports.

b) Individuals may perform “background work” in support of lobbying activities without personally registering as lobbyists (HAR § 21-10-4).

This rule is designed to allow for an individual to work behind the scenes, drafting testimony or performing research, without necessarily having to register as a lobbyist – provided the individual works under the direction of a registered lobbyist; the individual does not directly communicate with legislative or executive branch officials; and all expenditures relating to the individual’s work are reported on the organization’s expenditure statement.

Again, these new rules are currently in effect, and again, we will be incorporating these rules into our trainings for legislators and lobbyists. We will also be reaching out to lobbyists to educate them as to these new requirements. And as always, please contact us with questions: we remain ready and able to provide fast, confidential guidance, and we look forward to working with you this legislative session and beyond.

Sincerely yours,

A handwritten signature in cursive script, appearing to read 'DG' followed by a flourish.

Daniel Gluck
Executive Director and General Counsel

DG/lis