

BEFORE THE HAWAI'I STATE ETHICS COMMISSION

STATE OF HAWAI'I

HI STATE ETHICS COMMN
DEC 20 2023 PM 01:30

HAWAI'I STATE ETHICS COMMISSION,)	COMPL-C-22-00465
)	
Complainant,)	FINDINGS OF FACT, CONCLUSIONS OF
)	LAW, AND DECISION AND ORDER
vs.)	
)	
CLYDE M. LEWMAN,)	
)	
Respondent.)	
)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER

Pursuant to Haw. Rev. Stat. § 84-31(a)(3), Hawai'i State Ethics Commission ("Commission") is authorized to initiate, consider, and hold hearings on charges concerning alleged violations of the State Ethics Code. Accordingly, the Commission, through its Charge Counsel, brought the matter of Hawai'i State Ethics Commission vs. Clyde M. Lewman, COMPL-C-22-00465.

The Commission is also authorized to hear dispositive motions, including motions for summary judgment on charges of alleged violations of the State Ethics Code. Haw. Admin. R. § 21-5-6.5. On November 15, 2023, at 10:00 a.m., in Suite 900 of the ASB Building, 1001 Bishop Street, the Commission convened a properly noticed hearing for consideration of a motion for summary judgment brought by Charge Counsel.

At the hearing, Robert D. Harris, Esq., and Kee Campbell, Esq., appeared for Complainant Hawai'i State Ethics Commission. Respondent Clyde M. Lewman ("Respondent"), having been personally served with the Notice of Hearing on the Motion for Summary Judgment

on August 17, 2023, did not appear at the hearing and did not file an objection to the motion. After careful consideration of the motion, supporting memoranda, and the argument of counsel, on November 15, 2023, the Commission granted Charge Counsel's Motion for Summary Judgment. A written Order Granting Charge Counsel's Motion for Summary Judgment was subsequently issued by the Commission on December 6, 2023.

The Commission has carefully considered all testimony, evidence, and argument in this matter, and under the authority of Haw. Rev. Stat. § 84-31, hereby makes the following Findings of Fact, Conclusions of Law, and Decision and Order based upon competent and substantial evidence.

To the extent that any statement denominated as a finding of fact is more properly considered a conclusion of law, then it should be treated as a conclusion of law. Conversely, if any statement denominated as a conclusion of law is more properly considered a finding of fact, then it should be treated as a finding of fact. Furthermore, to the extent that any finding of fact also contains a conclusion of law, it shall be deemed incorporated by reference into that applicable conclusion of law section.

I. Findings of Fact

1. On March 10, 2022, Respondent Lewman filed nomination paperwork with the Office of Elections, to enter the race for State of Hawai'i Governor. (Declaration of K. Uyeda).
2. The State Ethics Code requires candidates running for state elective office to file with the Commission a disclosure of their financial interests. Haw. Rev. Stat. §

84-17(c)(10).

3. Haw. Rev. Stat. § 84-17(b) requires the financial disclosure statement to be filed twenty days before “date of the primary election” The primary election was on August 13, 2022. (Declaration of K. Uyeda).
4. Twenty days before August 13, 2022 was Sunday, July 24, 2022. Pursuant to Haw. R. Admin. P. § 21-2-2 “[t]he last day of the period so computed is to be included unless it is a Saturday, Sunday, or legal holiday in the State of Hawai‘i, in which event the period runs the next day which is neither a Saturday, Sunday nor a holiday.” Accordingly, the financial disclosure statement was due the following day on Monday, July 25, 2022.
5. Commission staff sent courtesy notices to Respondent on June 20, 2022, July 6, 2022, and July 21, 2022, providing reminders of the requirement to file a financial disclosure statement. (Declaration of L. Santiago at ¶ 4).
6. Respondent did not file a financial disclosure statement by July 25, 2022. (Santiago Declaration at ¶¶ 4, 6).
7. On July 29, 2022, Commission staff issued a Notice of Failure to File Financial Disclosure Statement and Assessment of \$50 Penalty via email and United States Service first-class mail. (Santiago Declaration at ¶ 5). Multiple follow-up efforts occurred thereafter. (Santiago Declaration at ¶¶ 7-9).8.
8. Respondent never paid the required \$50 fine. (Santiago Declaration at ¶ 13).
9. On November 16, 2022, the Commission issued Charge No. COMPL-C-22-00465 (the “Charge”) against Respondent pursuant to Haw. Rev. Stat. § 84-31 and Haw.

Admin. R. § 21-5-2.

10. On May 9, 2023, Respondent was served with the Charge via personal service.
(Return and Acknowledgement of Service, Dated May 9, 2023).
11. Respondent did not answer the Charge.
12. On August 16, 2023, the Commission issued a Further Statement of Violation against Respondent in furtherance of the Charge.
13. On August 16, 2023, Charge Counsel also filed a Motion for Summary Judgment.
14. The Commission noticed a hearing on Charge Counsel's Motion for Summary Judgment for November 15, 2023, and set a procedural framework for filing an answer and reply to the Motion for Summary Judgment.
15. On August 17, 2023, Respondent was served with the Further Statement of Violation and Notice of Hearing of Charge Counsel's Motion for Summary Judgment via personal service. (Return and Acknowledgement of Service, Dated August 17, 2023).
16. Respondent did not file an answer to the Further Statement of Violation and did not file a memorandum in opposition to Charge Counsel's Motion for Summary Judgment.
17. Respondent also failed to appear or otherwise make an objection at the November 15, 2023 hearing on the Motion for Summary Judgment.
18. The Commission voted to grant Charge Counsel's Motion for Summary Judgment at the November 15, 2023 hearing.

II. Conclusions of Law

1. Article XIV prescribes that a state code of ethics shall be established and contain financial disclosure provisions requiring candidates for elective office to file public financial disclosures. Haw. Const. Art. XIV.
2. The State Ethics Code, codified in Haw. Rev. Stat. § 84 pursuant to the constitutional mandate of Article XIV, authorizes the Commission to establish orderly procedures for implementing the financial disclosure provisions required by Article XIV of the Hawai'i Constitution. Haw. Rev. Stat. § 84-31(a)(1).
3. Under the financial disclosure provisions implemented by the Commission, Respondent was required to file financial disclosure statements by July 25, 2022. Haw. Rev. Stat. § 84-17. It is uncontested that Respondent failed to do so.
4. As a matter of law, on the expiration of the file financial disclosure statements filing deadline, the Commission must release to the public a list of candidates who failed to file, and "immediately assess a late filing penalty fee against those candidates of \$50 which shall be collected by the state ethics commission and deposited into the general fund." Haw. Rev. Stat. § 84-17(j).
5. Under the powers authorized by Haw. Rev. Stat. § 84-31(a)(2), the Commission may initiate, consider charges, and hold hearings concerning alleged violation of the State Ethics Code.
6. Charge Counsel filed a Charge on November 16, 2022, and a Further Statement of Violation filed August 16, 2023 alleging Respondent's violation of Haw. Rev. Stat. § 84-17 and claiming Respondent owed the penalty fee established by Haw. Rev. Stat.

§ 84-17(j). Respondent failed to establish any genuine issue of material fact regarding these allegations.

7. Upon its motion, Charge Counsel was entitled to summary judgment as a matter of law because there existed no genuine issue of material fact. Haw. R. of Civ. Proc. R. 56(c), *Haw. Cmty. Fed. Cred. Union v. Keka*, 94 Hawai'i 213 (2000), *see also* Haw. R. Admin. § 21-5-6.5 (expressly allowing motions to be filed and to "state the relief" sought).
8. On November 15, 2023, the Commission granted summary judgment in favor of Charge Counsel on all claims in the Charge filed November 16, 2022, and the Further Statement of Violation filed August 16, 2023.

III. Decision and Order

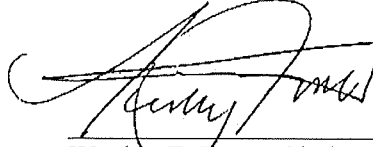
Based on these Findings of Fact and Conclusions of Law, the Commission hereby determines as follows:

1. Respondent violated Haw. Rev. Stat. § 84-17 by failing to timely file the financial disclosure statement required of candidates to state elective office.
2. A late filing penalty fee of FIFTY DOLLARS (\$50.00) is assessed against Respondent, pursuant to Haw. Rev. Stat. § 84-31(j).

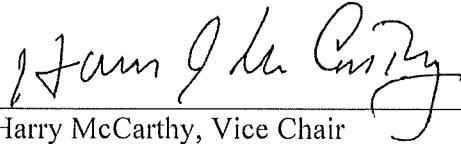
Therefore, it is hereby ORDERED that an administrative fine of FIFTY DOLLARS (\$50.00) is hereby imposed against Respondent Clyde M. Lewman.

DATED: Honolulu, Hawai'i, December 20, 2023

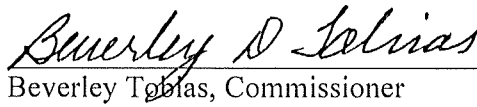
HAWAI'I STATE ETHICS COMMISSION



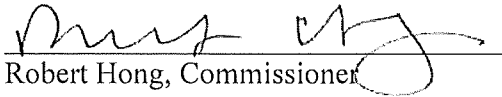
Wesley F. Fong, Chair



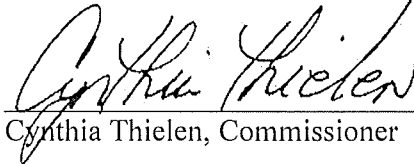
Harry McCarthy, Vice Chair



Beverley Tobias, Commissioner



Robert Hong, Commissioner



Cynthia Thielen, Commissioner