



HAWAI‘I STATE ETHICS COMMISSION

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

ADVISORY OPINION NO. 2021-3

October 15, 2021

A State Board (“Board”) requested an advisory opinion regarding whether it may allow specialized employees (“Specialized Employees”) of a State agency (“Agency”) to use state equipment during their personal time. Specifically, the Specialized Employees would use the state equipment to perform activities and training to ensure that they are safe and proficient during their state employment. The Commission agrees that there is a state purpose in allowing the Specialized Employees to use state equipment in their personal time to ensure they are capable and safe employees for the Board and the Agency. Nevertheless, the Commission does not believe that the employees should have unlimited personal use of state equipment. Therefore, while the Commission advises that the Specialized Employees may use state equipment for personal proficiency activities, the Commission also advises that the Agency and the Board develop and implement a policy for the personal use of state equipment.

I. Facts

The Specialized Employees conduct highly specialized and hazardous activities (the “activity” or “activities”) on behalf of the Agency. The Agency has an exemption from Occupational Safety and Health Administration (“OSHA”) standards, and therefore develops its own standards to oversee the specialized activities conducted by its program. The Board, which is a voluntary board under the Agency, is composed mainly of the Specialized Employees; the Board’s purpose is to develop and enforce safe

standards for all of its employees. The Agency is a member of an international organization (“International Organization”) and generally follows its standards regarding the specialized activity.

To ensure that all Agency employees remain proficient in their skills, regardless of how often they are required to perform at work, the Agency has long allowed the Specialized Employees to use state-owned equipment for personal, non-work-related, proficiency activities. This is standard practice by most organizations affiliated with the International Organization and is important in ensuring safety. Specifically, the Agency has allowed Specialized Employees to use Agency equipment for personal proficiency activities because: (1) the Agency wants to encourage its Specialized Employees to engage in the activity enough to ensure that they are safe during their state employment; (2) the Agency wants to ensure that the Specialized Employees are familiar with their equipment, which is a key element to ensuring their safety during their state employment; (3) the equipment required is expensive, making it unlikely that all of the Specialized Employees will own their own equipment; and (4) the equipment requires use and maintenance to be reliable and safe, and the Agency wants to ensure that its employees are using reliable equipment when performing personal proficiency activities.

The Board recently voted to continue to allow state-owned equipment for personal proficiency activities, subject to review by the Commission. The Board then requested advice as to whether the personal use of state equipment by the Specialized Employees is permitted under the State Ethics Code.

II. Application of the State Ethics Code

As state employees, the Specialized Employees are subject to the State Ethics Code.¹ The Fair Treatment law, Hawai'i Revised Statutes ("HRS") § 84-13(a), prohibits state employees from using their state positions to obtain unwarranted advantages or benefits for themselves or others; this law prevents employees from obtaining special perks or treatment for themselves or others as a result of their state employment.²

Ordinarily, state equipment must be used for state business and cannot be used for personal business. However, the Commission has allowed for exceptions to this rule when using equipment outside of state work hours served a legitimate state purpose. For instance, in Advisory Opinion No. 2017-4, the Commission determined that a law enforcement officer was able to use the officer's state uniform when performing off-duty work paid for by a third-party. See Advisory Opinion No. 2017-4, at 4, available at <https://files.hawaii.gov/ethics/advice/AO2017-04.pdf>. The Commission noted that the officer was engaged in a "public safety function," and could use a state uniform to effectuate that purpose. Id. The Commission declined to opine regarding the use of additional equipment, leaving that decision to the agency "as the Agency had the expertise to determine what equipment the law enforcement officers required to perform their public safety functions." Id.

¹ See HRS § 84-2 ("This chapter shall apply to every nominated, appointed, or elected officer, employee, and candidate to elected office of the State and for election to the constitutional convention . . .").

² HRS § 84-13(a) states that: "No legislator or employee shall use or attempt to use the legislator's or employee's official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for oneself or others"

Likewise in this case, although the Specialized Employees will be using state equipment in their personal time, they are fulfilling a state purpose by ensuring that they meet the minimum qualifications to perform their state duties. The Agency has informed the Commission that the activities performed by the Specialized Employees present a personal safety risk, and the safety of state personnel when performing their state duties is of utmost importance. Therefore, the Commission believes that the Board may allow the Specialized Employees to use state equipment in their personal time for non-work-related proficiency activities.

However, the Commission does not believe that the Specialized Employees should have unrestrained access to Agency equipment for personal purposes: Agency equipment should only be used for personal activities to the extent necessary to ensure that Agency employees are safe and competent. For example, the Agency and Board should ensure that the Specialized Employees do not use Agency equipment for paid private work, as this would be prohibited by the Fair Treatment law;³ given the Agency's and Board's justifications for allowing the personal use of state equipment, there does not appear to be any state purpose for the Specialized Employees to perform commercial work. As in Advisory Opinion 2017-4, the Commission leaves it to the Agency and the Board to formulate a policy that balances the need for the Specialized Employees to remain safe with the Fair Treatment law's mandate that state resources should only be used for a state purpose. The Agency and Board may wish to consider limiting the amount of personal activities the Specialized Employees may perform using

³ The Fair Treatment law, HRS § 84-13(a)(3), specifically prohibits using "state time, equipment, or other facilities for private business purposes."

Agency equipment, and/or developing other common-sense limits to ensure that state equipment is used for personal activities only to the extent necessary to meet the Agency's and the Board's goals.

III. Conclusion

For the reasons discussed above, the Commission believes that the Specialized Employees may use state equipment for non-work-related proficiency activities. However, the Commission respectfully requests that the Agency and Board formulate a policy to ensure that state equipment is only used when necessary and to accomplish a legitimate state purpose. The Commission also requests that the Agency and Board provide the Commission with a copy of the written policy on the use of state equipment after the policy has been drafted.

Dated: Honolulu, Hawai'i, October 15, 2021.

HAWAI'I STATE ETHICS COMMISSION

Melinda Wood, Chair
Wesley Fong, Vice Chair
Reynard D. Gaulty, Commissioner
Harry McCarthy, Commissioner
Beverley Tobias, Commissioner