



HAWAI‘I STATE ETHICS COMMISSION

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

Resolution of Charge **2021-1**

(COMPL-C-20-00227)

**State Public Charter School Commission Employee:
Gifts; Gifts Disclosure Statements; Fair Treatment**

September 10, 2021

The Hawai‘i State Ethics Commission (“Commission”) has resolved an investigation of Patrick John (“PJ”) Foehr (“Respondent Foehr”), an employee of the State Public Charter School Commission (“SPCSC”), for alleged violations of the State Ethics Code, Hawai‘i Revised Statutes (“HRS”) chapter 84.

I. Facts

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

Employment

- a) At all times relevant herein, Respondent Foehr was employed by the State Public Charter School Commission (“SPCSC”), a state agency. Respondent Foehr served as an Education Specialist with the SPCSC from October 2017 until February 2020, and he has served as Interim Deputy Director of the SPCSC since that time. As such, at all times relevant herein, Respondent Foehr was a state employee, as defined in HRS § 84-3, and required to comply with the State Ethics Code.
- b) The SPCSC authorizes public charter schools throughout the State of Hawai‘i. Among other things, the SPCSC approves applications for new charter schools, monitors the performance and legal compliance of existing

¹ This Resolution of Investigation does not make any formal findings; instead the Commission relies on the facts admitted by Respondent Foehr.

charter schools, provides technical assistance to charter schools, and acts as a liaison between the charter schools and state agencies.

- c) As an Education Specialist with the SPCSC, Respondent Foehr was a member of the SPCSC's Federal Programs Team, which provided technical assistance to public charter schools that received Title I federal funding (to ensure compliance with Title I regulations).

Neighbor Island Fundraiser

- d) In February 2018, Respondent Foehr traveled from Honolulu to a neighbor island – in his capacity as an SPCSC Education Specialist – to visit a public charter school (“School”) and meet with the Principal of the School. Respondent Foehr’s trip occurred during the business week and was paid for by SPCSC. Respondent Foehr returned to Honolulu on the same day.
- e) There is a nonprofit entity that serves as the School’s Governing Board (“Governing Board”). The Governing Board is responsible for the financial, organizational, and academic viability of the School and implementation of the charter; among other things, the Governing Board oversees the organization, management, and curriculum of the School.
- f) During his trip to visit the School, Respondent Foehr learned that the Governing Board was hosting its annual fundraiser event (“Fundraiser”) to benefit the School on the neighbor island that weekend, on Saturday.
- g) On Saturday, Respondent Foehr flew back to the neighbor island – in his private capacity and not as part of his job duties for the SPCSC – and attended the Fundraiser. Respondent Foehr paid for his own airfare.
- h) The Fundraiser took place at a hotel on the neighbor island (“Hotel”). The Fundraiser charged an admission fee of \$100.00. The School Principal did not know beforehand that Respondent Foehr was attending the Fundraiser. The Governing Board’s coordinator for the Fundraiser (“Coordinator”) learned from the School Principal that Respondent Foehr worked for SPCSC, whereupon the Coordinator gave Respondent Foehr complimentary admission to the Fundraiser and asked the Hotel to reserve a hotel room for Respondent Foehr. Respondent Foehr maintains that he was not aware of these actions taken by the Coordinator. The Hotel was known to donate one or two complimentary hotel rooms for the Fundraiser each year, for use by the Coordinator and/or the School.
- i) Respondent Foehr stayed overnight at the Hotel. When Respondent Foehr checked out of his room the next day, the Hotel informed him that there was no charge for his room, so Respondent Foehr did not pay for his lodging. The value of Respondent Foehr’s lodging was \$228.83.

- j) Respondent Foehr did not file a gifts disclosure statement with the Commission to report that he had received complimentary admission to the Fundraiser and complimentary lodging at the Hotel. Respondent Foehr maintains that he did not file a gifts disclosure because he was not aware he had received a gift.

Tenancy with SPCSC Consultant

- k) Several years prior to becoming employed by SPCSC, Respondent Foehr worked in the private sector, where he became acquainted with a certain education consultant (“Consultant”).
- l) Respondent Foehr lost touch with the Consultant for a period of time but ran into the Consultant again at a workshop conducted by the Consultant in November 2017 (“November 2017 Workshop”). Respondent Foehr attended the November 2017 Workshop – with an SPCSC co-worker, in their capacities as SPCSC employees – soon after Respondent Foehr was hired by the SPCSC.
- m) At the conclusion of the November 2017 Workshop, Respondent Foehr spoke with the Consultant and expressed interest in having the Consultant assist with an SPCSC leadership conference to be held in late April 2018 (“Leadership Conference”).
- n) Respondent Foehr and the Consultant became reacquainted and friends after the November 2017 Workshop. For example, during the December 2017/January 2018 holiday season, Respondent Foehr took care of the Consultant’s pet dogs while the Consultant was traveling.
- o) In or around January 2018, Respondent Foehr and his SPCSC co-worker began organizing and coordinating the Leadership Conference for SPCSC, in alignment with the SPCSC Continual School Improvement plan that had been started prior to Respondent Foehr beginning at SPCSC.
- p) Respondent Foehr was involved in planning, coordinating, and executing the Leadership Conference, including as follows:
 - i. In or around January 2018, Respondent Foehr asked the Consultant if the Consultant could secure the speakers from the November 2017 Workshop, as well as another speaker, for the Leadership Conference. This led to further discussions between Respondent Foehr and the Consultant regarding this matter.
 - ii. The Consultant secured two speakers for the Leadership Conference, and Respondent Foehr and a colleague were involved in discussions regarding these speakers’ participation in the Leadership Conference. The Consultant put Respondent Foehr in

touch with the speakers, and Respondent Foehr met and communicated with the Consultant and the speakers (virtually and via email) several times during March and April 2018 to guide the development of the agenda for the Leadership Conference.

- iii. Respondent Foehr worked with the speakers to tailor the Leadership Conference for a specific group of charters schools that were going to participate in the event (“Participating Schools”). The speakers asked to see the Participating Schools’ strategic plans to better tailor their presentation, and Respondent Foehr helped to gather the documents and transmit them to the speakers. Respondent Foehr, the Consultant, and the speakers made site visits to three Participating Schools on O’ahu in April 2018 (the day prior to the Leadership Conference) to observe and gain first-hand knowledge of how the schools were being managed.
- q) Respondent Foehr was a relatively new employee at the time and was inexperienced in state procurement procedures. He did not obtain the Consultant’s services through a request for proposals (RFP) process, nor did he prepare an SPCSC contract for the Consultant. Respondent Foehr maintains that he believed a colleague at SPCSC was going to take care of the procurement.
 - r) At the end of April 2018, after the Leadership Conference was over, the Consultant invoiced SPCSC in the amount of \$25,500.00 plus tax, to pay for the Consultant’s and the speakers’ services. Respondent Foehr believes that the speakers themselves received the bulk of this amount. The Consultant’s services included planning and consultation meetings with Respondent Foehr, expenses for the speakers, school site visitations and observations, and a debriefing with Respondent Foehr after the Leadership Conference was over. The invoice was addressed to SPCSC, to the attention of Respondent Foehr.
 - s) In May 2018, Respondent Foehr filled out and submitted a purchase requisition to SPCSC for the Consultant’s invoice, which was approved by SPCSC’s Federal Programs Team Fiscal Manager, Finance Operations Director, and then-Executive Director. SPCSC paid the Consultant the invoiced amount in May 2018.
 - t) A fiscal audit did not reveal any record of a contract between the SPCSC and the Consultant for the Leadership Conference. SPCSC eventually corrected its procurement procedures to require a contract for such services in the future, but the SPCSC did not enter in any contract with the Consultant for the Leadership Conference. The SPCSC did not enter into any other contracts with the Consultant at any time before or after the Leadership Conference.

- u) In early April 2018 – prior to the Leadership Conference, during which time Respondent Foehr was involved in planning meetings with the Consultant and others regarding the Leadership Conference – Respondent Foehr became a private tenant of the Consultant. Respondent rented a room from the Consultant in the Consultant’s home for approximately four months, from early April to mid-August. During April and May 2018, when Respondent Foehr was interacting with the Consultant regarding the Leadership Conference, Respondent Foehr paid the Consultant a total of between \$1,000 and \$1,500 in rent and utilities. Respondent Foehr maintains that he paid fair market value for the tenancy.
- v) Respondent Foehr maintains that, at the time of his actions as described above, he was a new state employee and therefore was unaware that his actions were prohibited under the State Ethics Code. He likewise maintains that there was no connection between his official actions on behalf of SPCSC and his private tenancy with the Consultant, whom Respondent Foehr considered to be a personal friend.

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 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.

² Hawai‘i State Constitution, Art. XIV.

³ HRS chapter 84, Preamble.

B. Application of the State Ethics Code to Respondent Foehr

As an SPCSC employee, Respondent Foehr is a state employee for purposes of the State Ethics Code.⁴ As a state employee, Respondent Foehr is, and was, at all times relevant to this case, required to comply with the State Ethics Code. The sections of the State Ethics Code relevant to this case are discussed below.

1. The Gifts Law (HRS § 84-11)

HRS § 84-11, the Gifts law, states, in relevant part:

No . . . employee shall solicit, accept, or receive, directly or indirectly, any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, thing, or promise, or in any other form, under circumstances in which it can reasonably be inferred that the gift is intended to influence the . . . employee in the performance of the . . . employee's official duties or is intended as a reward for any official action on the . . . employee's part.

The Gifts law prohibits an employee from accepting a gift directly or indirectly from any source where there is an appearance that the gift is intended to influence or reward the employee in the performance of the employee's state duties.

2. The Gifts Reporting Law (HRS § 84-11.5)

HRS § 84-11.5, the Gifts Reporting law, states, in relevant part:

- (a) Every . . . employee shall file a gifts disclosure statement with the state ethics commission no later than June 30 of each year if all the following conditions are met:
- (1) The . . . employee . . . received directly or indirectly from one source any gift or gifts valued singly or in the aggregate in excess of \$200, whether the gift is in the form of money, service, goods, or in any other form;
 - (2) The source of the gift or gifts have interests that may be affected by official action or lack of action by the . . . employee; and
 - (3) The gift is not exempted by subsection (d) from reporting requirements under this subsection.

⁴ HRS § 84-3.

(b) The report shall cover the period from June 1 of the preceding calendar year through May 31⁵ of the year of the report.

...

(d) Excluded from the reporting requirements of this section are the following:

- (1) Gifts received by will or intestate succession;
- (2) Gifts received by way of distribution of any inter vivos or testamentary trust established by a spouse or ancestor;
- (3) Gifts from a spouse, fiancé, fiancée, any relative within four degrees of consanguinity or the spouse, fiancé, or fiancée of such a relative. A gift from any such person is a reportable gift if the person is acting as an agent or intermediary for any person not covered by this paragraph;
- (4) Political campaign contributions that comply with state law;
- (5) Anything available to or distributed to the public generally without regard to the official status of the recipient;
- (6) Gifts that, within thirty days after receipt, are returned to the giver or delivered to a public body or to a bona fide educational or charitable organization without the donation being claimed as a charitable contribution for tax purposes; and
- (7) Exchanges of approximately equal value on holidays, birthday, or special occasions.

(e) Failure of a legislator or employee to file a gifts disclosure statement as required by this section shall be a violation of this chapter.

In sum, the Gifts Reporting law requires an employee to file a gifts disclosure statement with the Commission if the following conditions are met: (1) the employee received a gift or gifts from one source exceeding \$200 in value; (2) the source of the gift(s) has interests that may be affected by the employee's official action; and (3) the gift is not excluded from the reporting requirements. A gifts disclosure statement is due no later than June 30 of each year and covers the period of June 1 of the preceding calendar year through May 31 of the year of the report.

⁵ HRS § 84-11.5 was amended in 2019; these amendments included changing the final day of the reporting period from June 1 to May 31 and other amendments not relevant herein.

3. The Fair Treatment Law (HRS § 84-13(a) and § 84-13(a)(4))

HRS § 84-13(a), the Fair Treatment Law, states in relevant part:

§84-13 Fair treatment. (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; including but not limited to the following:

. . .

- (4) Soliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate or a person or business whom the . . . employee inspects or supervises in the . . . employee's official capacity.⁶

The Fair Treatment law, HRS § 84-13(a), prohibits an employee from using or attempting to use the employee's official position to secure unwarranted privileges, advantages, or treatment for the employee or others. This law prohibits an employee from receiving unwarranted benefits because of the employee's official position.

HRS § 84-13(a)(4), part of the Fair Treatment law, specifically prohibits an employee from engaging in a substantial financial transaction with anyone whom the employee supervises or inspects in the employee's state capacity. The drafters of the Fair Treatment law were aware that sometimes it may be difficult to determine if an employee has used his or her state position for unwarranted advantages; therefore, they included HRS § 84-13(a)(4) as a representative type of activity, which, if engaged in, would be a *per se* violation of HRS § 84-13(a).⁷

If this case were to proceed a contested case hearing, the Commission would likely conclude that Respondent Foehr violated (1) HRS § 84-11 (gifts), by accepting gifts of complimentary admission to the Fundraiser and complimentary lodging at the Hotel from the School and the Governing Board, which, collectively, were subject to his official action as an SPCSC employee; and/or (2) HRS § 84-13(a) (fair treatment), by receiving these gifts because of his official position.

⁶ HRS § 84-13 was amended in 2019; these amendments included the addition of subsection enumeration (*i.e.*, adding in "(a)" through "(d)") and substantive amendments not relevant here. The substantive text quoted herein has not changed since prior to the actions at issue herein.

⁷ See Advisory Opinion No. 290 (1977), available at <https://files.hawaii.gov/ethics/advice/AO290.pdf>.

If this case were to proceed a contested case hearing, the Commission would also likely conclude that Respondent Foehr violated HRS § 84-11.5 (gifts reporting) by failing to file a gifts disclosure statement to report the gifts he received from the School and the Governing Board.

Finally, if this case were to proceed a contested case hearing, the Commission would also likely conclude that Respondent Foehr violated HRS § 84-13(a)(4) by engaging in a substantial financial transaction – that is, private tenancy – with the Consultant. Respondent Foehr disputes this conclusion and asserts that, as an SPCSC employee, he did not “supervise” the Consultant. However, the Commission has interpreted HRS § 84-13(a)(4) to prohibit state employees from engaging in substantial financial transactions with persons or businesses involved in official action taken by state employees in their state positions.⁸ In this case, Respondent Foehr was involved in procuring the Consultant’s services, monitoring Consultant’s services to the SPCSC, and arranging for payment of the Consultant’s invoice, while at the same time becoming a private tenant of the Consultant. Although Respondent Foehr disagrees, if this case were to proceed to a contested case hearing, the Commission would likely find that Respondent Foehr violated HRS § 84-13(a)(4).

Respondent Foehr maintained that, at the time of his actions as described above, he was a new state employee and therefore unaware that his actions were prohibited by the State Ethics Code. Respondent Foehr asserted that he did not travel to attend the Fundraiser with the intent to accept any gifts. Respondent Foehr also asserted he did not know that his relationship with the Consultant in his SPCSC capacity prohibited him from engaging in a substantial financial transaction with the Consultant in his private capacity. As the Commission has stated repeatedly, however, ignorance of the law is not an excuse for violating the Ethics Code.

⁸ See Advisory Opinion No. 431 (1980), available at <https://files.hawaii.gov/ethics/advice/AO431.pdf> (concluding that the section of the Fair Treatment law now codified at HRS § 84-13(a)(4) prohibited a state employee who monitored a private company’s contracts with his department from engaging in a substantial financial transaction with that company); Advisory Opinion No. 387 (1979), available at <https://files.hawaii.gov/ethics/advice/AO387.pdf> (concluding that the section of the Fair Treatment law now codified at HRS § 84-13(a)(4) prohibited a state employee from becoming involved in substantial financial transactions with any businesses that were involved in official action the employee took in his state position); Advisory Opinion No. 290 (1977), available at <https://files.hawaii.gov/ethics/advice/AO290.pdf> (concluding that the section of the Fair Treatment now codified at HRS § 84-13(a)(4) prohibited a state employee from contracting with a private company to build his home where the company had a substantial contract with the employee’s state agency).

III. Resolution of Charge

Respondent Foehr has not previously been the subject of a Commission investigation.

Based on the facts admitted above, the Commission believes it is reasonable, fair, and in the public interest to resolve the Charge by: (1) issuing this Resolution of Charge; (2) requiring Respondent Foehr to pay an administrative penalty of \$1,250.00 to the State of Hawai'i; (3) requiring Respondent Foehr pay the School the amount of \$328.83 (i.e., the total value of the gifts he accepted from the School and the Governing Board); and (4) requiring Respondent Foehr to file a gifts disclosure statement with the Commission to report the gifts.