



STATE OF HAWAII  
CAMPAIGN SPENDING COMMISSION

235 SOUTH BERETANIA STREET, ROOM 300  
HONOLULU, HAWAII 96813

February 13, 2013

Mr. Johnny Y. Higa, Executive Vice President  
General Contractors Association of Hawaii  
1065 Ahua Street  
Honolulu, Hawaii 96819

Re: Advisory Opinion 13-02

Dear Mr. Higa:

This is in response to the General Contractors Association of Hawaii's request for an advisory opinion dated November 7, 2012. We were informed that the General Contractors Association of Hawaii ("GCA") is an IRS 501(c)(6) trade organization that has over six hundred members including contractors that provide goods and services to federal, state, and county government agencies.

The GCA seeks an advisory opinion on five questions. The Campaign Spending Commission's responses to those questions are noted below.

1. Can the GCA, as a 501(c)(6) trade association, whose members include state and county government contractors for public works construction projects, form a noncandidate committee under current state law<sup>1</sup>?

Yes. Hawaii law requires all persons who receives more than \$1,000 in contributions or makes more than \$1,000 in expenditures, in a two-year election period, to register with the Campaign Spending Commission ("CSC") within ten days after receiving or spending the threshold amount. Hawaii Revised Statutes ("HRS") §§11-302, 11-321(g).

2. If yes to question #1, can a GCA member who may or may not be a state or county government contractor, serve as an Officer or Director of the noncandidate committee?

HRS §11-323 requires noncandidate committees to identify a chairperson (and deputy, if any), a treasurer (and deputies, if any), and a custodian of the books and accounts. These officers must be individuals, not corporate entities. Individuals associated with GCA members, who may or may not be government contractors, may be officers of the GCA's noncandidate committee. However, individuals who are GCA members and also a state or county contractor (*i.e.*, sole proprietors),<sup>2</sup> cannot be an officer of the noncandidate committee if that individual would have the authority to make political contributions on behalf of the GCA noncandidate committee. HRS §11-355(a)(1) prohibits state and county contractors to "[d]irectly or **indirectly** make any contribution, or promise expressly or impliedly to make any contribution to any candidate committee or noncandidate committee, or to any candidate or to any person for any political purpose." (Emphasis added.)

<sup>1</sup> This advisory opinion does not address any federal laws that may apply to 501(c)(6) organizations.

<sup>2</sup> Under HRS §11-355(a), a state or county contractor is "any person who enters into any contract with the State, any of the counties, or any department or agency thereof either for the rendition of personal services, the buying of property, or furnishing of any material, supplies, or equipment to the State, any of the counties, or any department or agency thereof, or for selling any land or building to the State, any of the counties, or any department or agency thereof, if payment for the performance of the contract or payment for material, supplies, equipment, land, property, or building is to made in whole or in part from funds appropriated by the legislative body."

3. If the GCA forms a noncandidate committee, can it be funded by using GCA general funds?

It is the Commission's understanding that GCA general funds are comprised of GCA membership dues. The noncandidate committee may be funded by GCA general funds. However, general funds that originate from GCA members who are state and county contractors prohibited from making contributions to candidates and noncandidate committees under HRS §11-355, cannot be used for political contributions. HRS §11-355(a)(1) prohibits state and county contractors to "[d]irectly or **indirectly** make any contribution, or promise expressly or impliedly to make any contribution to any candidate committee or noncandidate committee, or to any candidate or to any person for any political purpose." (Emphasis added.)<sup>3</sup> Thus, if the GCA intends to use general funds for its noncandidate committees' political contributions, the dues provided by state and county contractors must be segregated and those funds cannot be received and spent by the GCA for contributions to candidate or noncandidate committees.

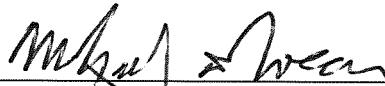
4. If no to Question #3, can GCA fund the noncandidate committee by using non-dues sources of revenue?

The GCA can fund its noncandidate committee by using non-dues sources of revenue so long as the source of this revenue is not from state and county contractors.

5. If GCA establishes and funds its noncandidate committee, would this action place GCA state and county contractors in violation of HRS §11-355.

The GCA members who are state and county contractors would not be in violation of HRS §11-355 so long as they are not the source of the GCA noncandidate committee's funds used for contributions to candidates or noncandidate committees.

CAMPAIGN SPENDING COMMISSION



By: MICHAEL E. WEAVER  
Its Chair

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<sup>3</sup> This ban on contributions applies from the date the government contract is executed through the completion of the contract.