

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

HAWAII CAMPAIGN SPENDING COMMISSION

Amendment and Compilation of Chapter 3-160
Hawaii Administrative Rules

August 31, 2016

SUMMARY

1. §§3-160-1 and 3-160-2 are amended.
2. §3-160-3 is repealed.
3. §3-160-4 is amended
4. §3-160-5 is repealed.
5. §§3-160-7 and 3-160-8 are amended.
6. §3-160-9 is repealed.
7. §3-160-10 is amended.
8. §§3-160-20 through 3-160-24 are amended.
9. §§3-160-30 and 3-160-31 are amended.
10. §3-160-33 is amended.
11. §3-160-34 is repealed.
12. §§3-160-37 through 3-160-41 are amended.
13. §3-160-41.1 is added.
14. §§3-160-42 through 3-160-46 are amended.
15. §3-160-48 is repealed.

16. §3-160-49 is added.
17. §3-160-60 through 3-160-64 are amended.
18. §3-160-65 is added.
19. §3-160-70 is amended.
20. §§3-160-73 and 3-160-74 are added.
21. Chapter 160 is compiled.

HAWAII ADMINISTRATIVE RULES

TITLE 3

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

CHAPTER 160

ELECTION CAMPAIGN CONTRIBUTIONS AND EXPENDITURES

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Historical note: This chapter is based substantially upon Title 2, Office of the Lieutenant Governor, "Chapter 2-14.1, Election Campaign Contributions and Expenditures". [Eff 01/03/98; am 01/25/02; R 5/29/10]

SUBCHAPTER 1

GENERAL PROVISIONS

§3-160-1 Purpose and scope. (a) The campaign spending commission adopts chapters 3-160 and 3-161 to implement chapter 11, part XIII, Campaign Finance, Hawaii Revised Statutes.

(b) Chapter 3-160 contains general administrative provisions and other substantive provisions that clarify the application of the statute.

(c) Chapter 3-161 provides rules for contested case hearings, requests for declaratory relief, and petitions for rule changes.

(d) The purpose of chapters 3-160 and 3-161 is to clarify and interpret the law. [Eff 5/29/10; am and comp **DEC 09 2016**] (Auth: HRS §11-314(8)) (Imp: HRS §11-314(8))

§3-160-2 Definitions. Unless the context specifically indicates otherwise, as used in this chapter:

"Excess contributions" means contributions received by a candidate or committee in excess of any contribution limits in sections 11-357, 11-358, 11-359(b), and 11-360, Hawaii Revised Statutes.

"Matching payment period" means:

- (1) For a primary election, from January 1 of the year of a general election through the day of the primary election; and
- (2) For a general election, from January 1 of the year of a general election through the day of the general election.

"Sundry item" includes clothing, bumper stickers, pins, buttons, and similar small items upon which the notice required by section 11-391(a), Hawaii Revised Statutes, cannot be conveniently printed. [Eff 5/29/10; am and comp **DEC 09 2016**] (Auth: HRS §11-314(8)) (Imp: HRS §§11-302, 11-357, 11-364, 11-391, 11-425, 11-428, 11-429, 11-430)

§3-160-3 Repealed. [R **DEC 09 2016**]

§3-160-4 "Contribution", defined. (a) "Contribution" means the same as defined in section 11-302, Hawaii Revised Statutes, and includes any gift, deposit of money, or anything of value

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made by any person for the purpose of influencing an election for a Hawaii office. The term "contribution" is interpreted broadly.

(b) "Contribution" includes non-monetary contributions of goods or services without charge or at a charge that is less than the usual and normal charge for the goods or services.

(c) If goods or services are provided at less than the usual and normal charge, the amount of the non-monetary contribution is the difference between the usual and normal charge for the goods or services at the time of the contribution and the amount paid by the committee.

(1) "Usual and normal charge" for goods means the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution.

(2) "Usual and normal charge" for services other than those provided by an unpaid volunteer, means the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services were rendered.

(d) Whether a transaction is a contribution depends on the particular factual circumstances.
[Eff 5/29/10; am and comp DEC 09 2016] (Auth: HRS §11-314(8)) (Imp: HRS §§11-302, 11-333, 11-335, 11-357, 11-358)

§3-160-5 Repealed. [R DEC 09 2016]

§3-160-6 "Expressly advocating", defined.
"Expressly advocating" means a communication when taken as a whole and with limited reference to external events, could be susceptible to no other reasonable interpretation but as an exhortation to vote for or against a candidate because:

- (1) The communication is unmistakable, unambiguous, and suggestive of only one meaning;
- (2) The communication presents a clear plea for action and is not merely informative; and
- (3) Reasonable minds could not differ as to whether the communication encourages actions to elect or defeat a clearly identified candidate or encourages some other kind of action. [Eff 5/29/10; comp **DEC 09 2016**] (Auth: HRS §11-314(8)) (Imp: HRS §§11-302, 11-341, 11-391)

§3-160-7 "House bulletin", defined. (a) "House bulletin" means the same as defined in section 11-302, Hawaii Revised Statutes.

(b) "House bulletin" does not include paid political advertisements, and special edition publications for general distribution to the public. [Eff 5/29/10; am and comp **DEC 09 2016**] (Auth: HRS §11-314(8)) (Imp: HRS §§11-302, 11-341, 11-392)

§3-160-8 "Independent expenditure", defined.

(a) "Independent expenditure" means the same as defined in section 11-302, Hawaii Revised Statutes.

(b) An expenditure is not independent if:

- (1) The person making the expenditure shares financial responsibility for the costs, production, or dissemination of the communication with a candidate, candidate's committee, party, or their agents; or
- (2) A candidate, candidate's committee, party, or their agents are involved in decisions regarding:
 - (A) The content of the communication;
 - (B) The intended audience for the communication;
 - (C) The means or mode of the communication;

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- (D) The specific media outlet used for the communication;
- (E) The timing or frequency of the communication; or
- (F) The size or prominence of a printed communication, or duration of a communication. [Eff 5/29/10; am and comp DEC 09 2016] (Auth: HRS §11-314(8)) (Imp: HRS §§11-302, 11-363)

§3-160-9 Repealed. [R DEC 09 2016]

§3-160-10 Government records. All government records of the commission shall be available for inspection during regular business hours in accordance with chapter 92F, Hawaii Revised Statutes, and chapter 2-71, Hawaii Administrative Rules.

(b) Requests for inspection of records of the commission shall be in writing.

(c) The cost of reproducing any government record shall be as provided in section 92-21, Hawaii Revised Statutes.

(d) Fees may be assessed for commission staff's time spent searching, reviewing, and segregating records in accordance with section 2-71-31, Hawaii Administrative Rules. [Eff 5/29/10; am and comp DEC 09 2016] (Auth: HRS §11-314(8) (Imp: HRS §11-314(4), §92-21)

§3-160-11 Commission chairperson and vice-chairperson. (a) A chairperson shall be elected by a majority of all the members to which the commission is entitled who shall serve for a term of one year or until a successor is elected.

(b) A vice-chairperson, who shall call and chair meetings in the incapacity or absence of the chairperson, shall be elected by a majority of all the

members to which the commission is entitled, and shall serve for a term of one year or until a successor is elected. [Eff 5/29/10; am and comp DEC 09 2016]
(Auth: HRS §11-314(8)) (Imp: HRS §11-311)

SUBCHAPTER 2

REGISTRATION, ORGANIZATION, AND RECORDKEEPING

§3-160-20 Committee reports. (a) A candidate committee's reports filed pursuant to chapter 11, part XIII, subpart D, Hawaii Revised Statutes, shall be certified by the candidate and treasurer as a true, complete, and accurate statement of the committee's activity during the reporting period. A noncandidate committee's reports filed pursuant to chapter 11, part XIII, subpart D, Hawaii Revised Statutes, shall be certified by the chairperson and treasurer as a true, complete, and accurate statement of the committee's activity during the reporting period.

(b) Any amendments to a report filed at the direction of the commission must be electronically filed as an amended report.

(c) The period of aggregation for contributions and expenditures for a candidate begins from the day after the general election for that office and continues through the day of the next general election for that office.

(d) The committee must report all contributions, including contributions from:

- (1) The sale of food and other items;
- (2) Service projects; and
- (3) Any other fundraising activity.

(e) Each report must include the name and address of each payee and the amount, date, and purpose of each expenditure. A report that fails to include the payee of the expenditure or describes the purpose of the expenditure in vague terms is defective.

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- (1) "Payee" means the vendor providing the goods or services to the committee and does not include the name of the credit card company or a person receiving reimbursement or advances for expenditures made to a vendor.
- (2) "Date" means the date the goods are delivered or the services are provided to the committee. [Eff 5/29/10; am and comp **DEC 09 2016**] (Auth: HRS §11-314(8)) (Imp: HRS §§11-331, 11-333, 11-335, 11-337, 11-340)

§3-160-21 Noncandidate committee registration and reports. (a) Any person must register as a noncandidate committee if the person receives contributions or makes expenditures, the aggregate amount of which is more than \$1,000, in a two-year election period.

(b) The noncandidate committee's reports must include information about:

- (1) Its expenditures (e.g., contributions to Hawaii state and local candidates); and
- (2) Its contributions received by the noncandidate committee.

(c) The noncandidate committee must segregate contributions and expenditures to Hawaii committees in a separate bank account or by a ledger account in the noncandidate committee's main account. [Eff 5/29/10; am and comp **DEC 09 2016**] (Auth: HRS §11-314(8)) (Imp: HRS §§11-321, 11-323, 11-335)

§3-160-22 Electronic filing. (a) Before filing reports electronically through the Internet in a format prescribed by the commission, a candidate or committee must obtain a username and password by mailing or delivering to the commission a signed copy of the "Electronic Filing Form" provided by the commission.

(b) The use of the password by the candidate, treasurer, chairperson, or committee provides additional certification that reports electronically filed by the candidate or committee are true, complete, and accurate.

(c) If a password is lost or forgotten, a request for a new password must be filed pursuant to subsection (a).

(d) A report filed electronically shall be deemed filed at the time posted on the confirmation report received by the commission.

(e) Any attachments or documents referred to or incorporated into any report, including copies of loan documents, must be mailed or delivered separately to the commission, and received by the commission by 4:30 p.m. on the due date of the applicable report.
[Eff 5/29/10; am and comp **DEC 09 2016**] (Auth: HRS §11-314(8)) (Imp: HRS §§11-321, 11-322, 11-323, 11-331, 11-333, 11-335)

§3-160-23 Recordkeeping. Each candidate, chairperson of a noncandidate committee, or treasurer of a candidate or noncandidate committee, and any other person who files any statement or report with the commission shall:

- (1) Maintain records, including bank records, with respect to the matters required to be reported, vouchers, worksheets, receipts, bills, and accounts, which shall provide in sufficient detail the necessary information and data with which the filed reports and statements may be verified, explained, clarified, and checked for accuracy and completeness;
- (2) Preserve a copy of each report or statement required to be filed and all records relevant to the reports or statements; and
- (3) Keep all records and reports available for audit, inspection, or examination by the commission for a period of not less than

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five years after the report or statement is filed, unless otherwise ordered by the commission's executive director. [Eff 5/29/10; am and comp **DEC 09 2016**] (Auth: HRS §11-314(8)) (Imp: HRS §§11-314, 11-324, 11-331, 11-333, 11-335)

§3-160-24 Termination of registration. (a) A candidate or noncandidate committee shall remain registered with the commission until the commission approves a request for termination.

(b) The candidate or noncandidate committee may submit a request to terminate the committee's registration if:

- (1) The candidate or noncandidate committee reports no remaining surplus or deficit to the commission;
- (2) Accompanying bank statements or other documents confirm that all accounts are closed and there is no surplus or deficit;
- (3) The candidate or noncandidate committee has paid all fines, if any, assessed by the commission, and has filed all reports required by chapter 11, part XIII, subpart D, Hawaii Revised Statutes; and
- (4) The commission has approved a request filed by the candidate or noncandidate committee to terminate. [Eff 5/29/10; am and comp **DEC 09 2016**] (Auth: HRS §11-314(8)) (Imp: HRS §§11-326, 11-334, 11-336, 11-339)

SUBCHAPTER 3

CONTRIBUTION AND EXPENDITURE REPORTING, LIMITATIONS, AND PROHIBITIONS

§3-160-30 Contributions; timely reporting. (a) A monetary contribution shall be deposited in a

depository institution. The contribution shall be segregated from, and not commingled with any other money that will not be solely used to influence the nomination or election of a candidate or the outcome of any question or issue which may appear on a ballot.

(b) A monetary contribution shall be deposited within seven days after a candidate or any individual authorized to receive contributions on behalf of a candidate or noncandidate committee that received the contribution. The committee shall report the contribution, even if the contribution was not deposited within seven days.

(c) The date a monetary contribution is deposited is deemed to be the date the contribution is received for purposes of disclosing information in reports filed with the commission.

(d) A monetary contribution which was not deposited and returned to the contributor within seven days after it was received need not be disclosed and reported as a contribution.

(e) A nonmonetary contribution to a committee shall be disclosed and reported at the contribution's reasonable market value on the date received. [Eff 5/29/10; am and comp DEC 09 2016] (Auth: HRS §11-314(8)) (Imp: HRS §§11-302, 11-324, 11-333, 11-335, 11-351)

§3-160-31 Contributions; limits for persons. (a) All of a person's contributions shall be aggregated and subject to the limits in sections 11-357, 11-358, 11-359(b), and 11-360, Hawaii Revised Statutes, except as provided in this section.

(b) A person's contribution limits are applicable to the election period in which the candidate is certified to be on the ballot, except as provided in this section.

(1) A person's contribution limits apply to the current election period even if the contributions are used to pay expenses incurred during a prior election period.

- (2) A person's contribution limits for the prior election period are applicable only if all the following requirements are met: the person contributes to a candidate who is term limited, is not a candidate for another office, has no surplus, and has unpaid expenses or loans.
- (c) A person's aggregate contributions to a candidate or candidate's committee include:
 - (1) A contribution to another committee that is organized to support the candidate unless that committee is a noncandidate committee making only independent expenditures;
 - (2) A contribution to another committee if the contribution is earmarked for the candidate. For purposes of this section, "earmarked" means a designation, instruction, whether direct or indirect, express or implied, oral or written, which results in all or any part of a contribution being made to, or expended on behalf of, a candidate or a candidate's committee;
 - (3) Any expenditures or coordinated activity made by the person for the benefit of a candidate in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's committee, or their agents.
- (d) Contributions or expenditures made by a person "financed, maintained, or controlled" by another person shall be aggregated. Whether a person is "financed, maintained, or controlled" by another person is determined by the totality of the factual circumstances, including but not limited to the following:
 - (1) Whether a sponsoring organization owns a controlling interest in the voting stock or securities of the sponsoring organization of another committee;
 - (2) Whether a sponsoring organization or committee has the authority or ability to

- direct or participate in the governance of another sponsoring organization or committee through provisions of constitutions, bylaws, contracts, or other rules, or through formal or informal practices or procedures;
- (3) Whether a sponsoring organization or committee has the authority or ability to hire, appoint, demote, or otherwise control the officers, or other decision making employees or members of another sponsoring organization or committee;
 - (4) Whether a sponsoring organization or committee has a common or overlapping membership with another sponsoring organization or committee which indicates a formal or ongoing relationship between the sponsoring organizations or committees;
 - (5) Whether a sponsoring organization or committee has common or overlapping officers or employees with another sponsoring organization or committee which indicates a formal or ongoing relationship between the sponsoring organizations or committees;
 - (6) Whether a sponsoring organization or committee has any members, officers, or employees who were members, officers, or employees of another sponsoring organization or committee which indicates a formal or ongoing relationship between the sponsoring organizations or committees, or which indicates the creation of a successor entity;
 - (7) Whether a sponsoring organization or committee provides funds or goods in a significant amount or on an ongoing basis to another sponsoring organization or committee, such as through direct or indirect payments for administrative, fundraising, or other costs;
 - (8) Whether a sponsoring organization or committee causes or arranges for funds in a

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significant amount or on an ongoing basis to be provided to another sponsoring organization or committee;

- (9) Whether a sponsoring organization or a committee or its agent had an active or significant role in the formation of another sponsoring organization or committee; or
- (10) Whether the sponsoring organizations or committees have similar patterns of contributions or contributors which indicate a formal or ongoing relationship between the sponsoring organizations or committees.

(e) A person who "controls" another person includes:

- (1) A person who has control over the disbursement of corporate assets, particularly the disbursement for political purposes; and
- (2) A person with the actual financial ownership of corporate assets.

(f) A person's contributions to a candidate shall not be aggregated if the candidate previously campaigned for and appeared on the ballot for a different elective office and the two offices have overlapping election periods. [Eff 5/29/10; am and comp **DEC 09 2016**] (Auth: HRS §11-314(8)) (Imp: HRS §§11-302, 11-357, 11-358, 11-359, 11-360, 11-361, 11-363)

§3-160-32 Contributions; joint functions or fundraisers. In the case of a fundraiser or function held by more than one candidate or committee, contributions shall be made to the individual candidates or each committee, not made in the name of one candidate or committee and later divided. [Eff 5/29/10; comp **DEC 09 2016**] (Auth: HRS §11-314(8)) (Imp: HRS §§11-302, 11-351, 11-352)

§3-160-33 Contributions; officer of multiple committees. An individual shall not serve as an officer on two or more committees which support or oppose the same candidate. An "officer", for purposes of this section, is defined as the candidate, chairperson, treasurer, deputy chairperson, or deputy treasurer. [Eff 5/29/10; am and comp DEC 09 2016] (Auth: HRS §11-314(8)) (Imp: HRS §11-325)

§3-160-34 Repealed. [R]

§3-160-35 Contributions by limited partnerships, limited liability partnerships, or limited liability limited partnerships. (a) "Limited partnership, limited liability partnership, or limited liability limited partnership", as used in this section, means business entities that are recognized as such under the laws of the state in which they are established. (b) A contribution from a limited partnership, limited liability partnership, or limited liability limited partnership shall be treated as a contribution from a partnership. [Eff 5/29/10; comp DEC 09 2016] (Auth: HRS §11-314(8)) (Imp: HRS §§11-302, 11-333, 11-335, 11-361)

§3-160-36 Contributions by a sole proprietor. (a) "Sole proprietor" means a business in which one individual owns all the assets, owes all the liabilities, and operates in the individual owner's personal capacity, and has no legal identity apart from its owner. (b) A contribution from a sole proprietor shall be treated as a contribution from an individual. [Eff 5/29/10; comp DEC 09 2016] (Auth: HRS §11-314(8)) (Imp: HRS §§11-302, 11-333, 11-335, 11-361)

§3-160-37 Contributions by a state or county contractor prohibited. (a) A state or county contractor, as specified in section 11-355, Hawaii Revised Statutes, shall not make contributions to a candidate or committee; provided that the prohibition in section 11-355, Hawaii Revised Statutes, is not applicable to a state or county contractor contributing to a ballot issue committee.

(b) The assets of a partnership, including a limited liability company treated as a partnership by the Internal Revenue Service, which is a state or county contractor as specified in section 11-355, Hawaii Revised Statutes, shall not be used to make contributions. Individual partners and employees of a partnership may make contributions or expenditures in their own names from their personal assets.

(c) Stockholders, officers, or employees of a state or county contractor as specified in section 11-355, Hawaii Revised Statutes, may contribute in their own names from their personal assets.

(d) Individuals who are state or county contractors as specified in section 11-355, Hawaii Revised Statutes, may not contribute in their own names from their personal assets.

(e) Sole proprietors who are state or county contractors as specified in section 11-355, Hawaii Revised Statutes, may not make contributions.

(f) "Contract", as used in section 11-355, Hawaii Revised Statutes, means:

- (1) A written contract between any person and the State, any of its counties, or any department or agency thereof; and
- (2) Any written contract modification.

(g) "Execution", as used in section 11-355, Hawaii Revised Statutes, means the date the last party signs the contract.

(h) "Personal services", as used in section 11-355, Hawaii Revised Statutes, means the performance of services in the fields of health, law, engineering, architecture, construction, accounting, actuarial science, performing arts, or consulting. [Eff

5/29/10; am and comp DEC 09 2016] (Auth: HRS
§11-314(8)) (Imp: HRS §§11-302, 11-355)

§3-160-38 False name contributions prohibited.

(a) No person shall make a contribution in any name other than the true name of the owner of the money or the property.

(b) False name contributions include but are not limited to:

- (1) Giving a contribution, all or part of which was provided to the contributor by another person (the true contributor) without disclosing the source of the contribution to the recipient candidate or committee at the time the contribution is made;
- (2) Making a contribution and attributing as the source of the contribution another person when in fact the contributor is the source; or
- (3) Compensating an employee, director, or contractor for a contribution, through a bonus, expense account, or other form of direct or indirect compensation. [Eff
5/29/10; am and comp DEC 09 2016]
(Auth: HRS §11-314(8)) (Imp: HRS §§11-302, 11-351, 11-352)

§3-160-39 Loans to candidates or committees.

(a) A candidate or candidate's committee may receive loans from:

- (1) A financial institution regulated by the State or a federally chartered depository institution and made in accordance with applicable law in the ordinary course of business;
- (2) The candidate's own funds;
- (3) The candidate's immediate family in an aggregate amount with contributions not to exceed \$50,000 during an election

- period; and
- (4) Persons other than immediate family of a candidate in an aggregate amount not to exceed \$10,000 during an election period.
- (b) All loans to a candidate or candidate's committee must be reported to the commission in the report covering the period when the loan was received.
- (1) The loan and payments made to repay the loan must be reported in each reporting period until the loan is repaid.
 - (2) A copy of the loan agreement, for every loan in excess of \$100 containing the terms of the loan shall be mailed and received or delivered to the commission by 4:30 p.m. on the due date of the report covering the applicable reporting period and the following information shall be disclosed in the report:
 - (A) The lender's name, address, employer, and occupation and purpose of the loan;
 - (B) The date, amount, repayment schedule, and interest rate of the loan; and
 - (C) The types and value of collateral, if any, or other sources that secure the loan.
- (c) The failure to document the loan or to disclose the loan to the commission in the report covering the reporting period when the loan was received shall cause the loan to be treated as a contribution, unless the loan is from the candidate, in which case it shall be treated as an other receipt.
- (d) The following records must be preserved for five years after the loan is paid or until ordered by the executive director:
- (1) Records to demonstrate the ownership of the accounts or assets securing the loans;
 - (2) Copies of the executed loan agreement and all security and guarantee statements;
 - (3) Statements of account for all accounts used to secure any loan for the period the loan

is outstanding, and statements on any line of credit account that were used for the purpose of influencing the candidate's election; and

- (4) Documentation for all payments to repay the loan.

(e) The \$10,000 loan limit for loans from persons other than immediate family and commercial depository institutions, in section 11-371, Hawaii Revised Statutes, is applicable to the candidate, rather than the person making the loan.

(f) A candidate or candidate's committee may receive loans from the candidate's immediate family in an aggregate amount with contributions not to exceed \$50,000 during an election period.

(g) A loan from a financial institution is made in the ordinary course of business if it meets the following requirements:

- (1) The terms and conditions of the loan are incorporated into a written promissory note or loan agreement;
- (2) The loan shall be fully repaid within one year from the effective date of the loan except that home equity or business loans may be repaid within the terms and conditions of that particular loan;
- (3) The loan is secured by collateral with a market value covering at least eighty per cent of the amount borrowed; except that loan for less than \$5,000 requires only a signature of the candidate and no collateral; and
- (4) The loan includes the payment of interest at a rate that is not less than the prevailing market rate for a similarly secured institutional loan.

(h) If a loan from a financial institution provides for the payment of interest at a rate that is less than the prevailing market rate for a similarly secured institutional loan, the difference between the

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rate charged the candidate and the prevailing market rate is deemed to be a contribution from the lender to the candidate. [Eff 5/29/10; am and comp

DEC 09 2016] (Auth: HRS §11-314(8)) (Imp: HRS §§11-302, 11-357, 11-359, 11-371)

§3-160-40 Expenditures; reporting. (a)

Expenditures coordinated with the candidate or candidate committee authorized by a candidate, shall be reported as non-monetary contributions to the candidate.

(b) A noncandidate committee, required to register and file reports, that coordinates expenditures with a candidate shall keep complete records of such coordinated expenditures and file reports pursuant to sections 11-335, 11-336, 11-337, and 11-338, Hawaii Revised Statutes.

(c) Any expenditures authorized by a candidate, committee, or party shall be reported in the report covering the reporting period in which the expenditure is made or incurred, unless the person filing the required report furnishes detailed information to justify an allocation to another reporting period.

(d) Unpaid expenditures must be reported until payment is made in full or the debt is forgiven.

(e) Expenditures made for or on behalf of more than one candidate shall be attributed to each candidate according to the benefit reasonably expected to be derived as follows:

- (1) In the case of a publication or broadcast communication, the expenditures shall be attributed based upon the proportion of time or space devoted to each candidate.
- (2) In the case of a phone bank, the expenditures shall be attributed based upon the number of questions or statements devoted to each candidate as compared to the number of questions or statements devoted to all candidates.
- (f) In the case of a fundraiser or event held by

more than one candidate, the expenditures will be reported by each participating candidate pro rata.
[Eff 5/29/10; am and comp **DEC 09 2016**] (Auth: HRS §11-314(8)) (Imp: HRS §§11-302, 11-333, 11-334, 11-335, 11-336, 11-337, 11-338, 11-363)

§3-160-41 Expenditures; donations. (a) A candidate or candidate committee may donate to a community service, educational, youth, recreational, charitable, scientific, or literary organization.

(b) "Community service, educational, youth, recreational, charitable, scientific, or literary organization", as used in this section, does not include:

- (1) Organizations or trust funds established by a candidate or the candidate's committee;
- (2) Organizations whose beneficiaries include the candidate, the candidate's immediate family members, officers of the candidate's committee and their immediate families; and
- (3) Any organization where one individual constitutes the entire organization.

(c) "Educational organization" does not include organizations that are established temporarily to advocate or promote political or ballot issues.
[Eff 5/29/10; am and comp **DEC 09 2016**] (Auth: HRS §11-314(8)) (Imp: HRS §11-381)

§3-160-41.1 Expenditures; scholarships. A candidate or candidate committee shall not use campaign funds for a scholarship for the candidate or the candidate's immediate family. [Eff and comp **DEC 09 2016**] (Auth: HRS §11-314(8)) (Imp: HRS §11-381(a)(5))

§3-160-42 Expenditures not allowed for personal expenses. (a) Candidates and committees shall not use campaign funds for "personal expenses".

(b) "Personal expenses", as used in this section, means expenses that would exist irrespective of a candidate's campaign to seek the nomination or election to office or being elected to an office and includes the following expenses:

- (1) Household food items and supplies purchased for daily personal consumption by the candidate, a family member of the candidate, or members of a committee, candidate committee, or noncandidate committee;
- (2) Gifts or donations for weddings, Christmas, birthdays, funerals, or other personal occasions, except gifts to campaign employees or volunteers as provided in section 3-160-43(a)(5);
- (3) Clothing usually and customarily worn for every day wear; provided that a campaign expense for clothing identifying the candidate or campaign for an office shall not be prohibited;
- (4) Tuition and educational fees or expenses not directly related to the performance of duties or responsibilities in a candidate's campaign for elected office;
- (5) Mortgage, rent, and utility expenses for a personal residence; provided that if a clearly segregated portion of the personal residence is being used for campaign purposes, contributions may be used to reimburse the owner of the property a fair rental value for the apportioned actual use of the personal residence;
- (6) Entertainment or sporting events;
- (7) Dues, fees, or other expenses to a country club, health club, recreational or exercise facility and not arising from a fundraising activity or function held at the facility;
- (8) Compensation for personal services paid to the candidate;
- (9) Compensation for personal services paid to the candidate's immediate family or

- relatives, unless the payments are for bona fide services necessary to maintain a campaign to influence the nomination or election of the candidate and is comparable to the compensation paid to other persons in the community providing similar services;
- (10) Legal expenses not related to the nomination or election of a candidate; provided that personal expenses do not include legal expenses specifically related to the nomination or election of a candidate in:
 - (A) Proceedings before the commission; or
 - (B) Proceedings before an administrative agency or a court of law; or
 - (11) Vacation expenses. [Eff 5/29/10; am and comp **DEC 09 2016**] (Auth: HRS §11-314(8)) (Imp: HRS §§11-302, 11-382)

§3-160-43 Expenditures directly related to a candidate's campaign; unauthorized expenditures. (a) A candidate or candidate's committee may pay expenses that are predominantly and directly related to a candidate's campaign to influence the nomination or election of the candidate and includes the following:

- (1) Airfare and hotel accommodations;
- (2) Meal or food expenses incurred at a fund-raising event or other campaign activity;
- (3) Professional services that are necessary in a candidate's campaign to seek the nomination or election of the candidate;
- (4) Penalties, fines, judgments, or settlements imposed on a candidate or candidate committee by a court or regulatory agency for violations of part XIII of chapter 11, Hawaii Revised Statutes, or this chapter;
- (5) Personal gifts:
 - (A) For one or more campaign employees or volunteers or for one or more employees

working for the candidate who voluntarily campaigned for the candidate;

- (B) Of not more than an aggregate of \$500 for a two-year office, \$1,000 for a four-year non-statewide office, or \$1,500 for a four-year statewide office in the applicable election period;
- (6) Mixed benefit expenditures authorized in section 3-160-45;
- (7) State and county political convention expenses to attend and participate in the convention, including travel, meals, and registration, but not including expenses for clothing and entertainment; or
- (8) Reasonable expenses for "Mahalo parties" and newsletters to supporters.

(b) A candidate or candidate committee shall not pay for expenses not predominantly and directly related to a candidate's campaign to influence the nomination or election of the candidate, including:

- (1) An expenditure to compensate an individual who approved the expenditure;
- (2) An expenditure to purchase a fee simple interest in real property;
- (3) An expenditure for the lease of real property or the purchase, lease, or refurbishment or repair of any appliance or equipment, if the candidate, campaign treasurer, or any individual with authority to approve the expenditure maintains any legal interest in the real property, appliance, or equipment. "Equipment", as used in this section, includes vehicles, office equipment, and electronic devices such as television, phone, computers, printers, copiers, calculators and other similar devices;
- (4) Expenditures for a federal elective office; or

- (5) Expenditures to endorse another candidate or oppose any candidate, other than the opponent of the candidate who received the contribution. [Eff 5/29/10; am and comp
DEC 09 2016] (Auth: HRS §11-314(8))
(Imp: HRS §§11-302, 11-381, 11-382)

§3-160-44 Expenditures; ordinary and necessary expenses. A candidate may pay ordinary and necessary expenses incurred in connection with the candidate's duties as a holder of an elected state or county office. These expenses must be reasonable, usual, and directly related to the office. [Eff 5/29/10; am and comp
DEC 09 2016] (Auth: HRS §11-314(8))
(Imp: HRS §§11-302, 11-381, 11-382)

§3-160-45 Mixed benefit to the candidate. (a) A candidate or candidate's committee may purchase goods or services and lease goods and real property, except as provided in section 3-160-43(b)(3), that provide a mixed benefit to the candidate; provided that the amount attributed to the candidate's personal use shall be determined and reimbursed by the candidate to the committee, unless the personal benefit is "de minimis".

(b) "Mixed benefit to the candidate", for purposes of this section, means any use of goods or services both for personal use and to influence the nomination or election of a candidate or to satisfy a function of the candidate's elected office and includes the following:

- (1) Expenses to purchase, lease, maintain, and repair a vehicle if the title to the vehicle is in the name of the candidate committee. Contributions shall not be used to pay vehicle expenses including maintenance, towing, or repair for a candidate's personal vehicle; or

- (2) Reimbursement for the use of a personal vehicle at the federal optional standard mileage rate for computing deductions for operating an automobile for business purposes, in effect at the time the vehicle is used. A daily mileage log, noting the campaign use and personal use, that is maintained and retained as part of the candidate and candidate committee's records would satisfy the recordkeeping requirements of section 3-160-23; and
- (3) Lease of real property to a candidate or candidate committee, except as provided in section 3-160-43(b)(3) for a renewable period not to exceed one year.

(c) "De minimis", as used in this section, means that the personal use from the goods or services is five per cent or less of the total use of the property or services in a calendar month and the expenditure for the personal use of the goods or services did not exceed a usual and normal charge of \$100 in any one calendar month.

(d) Expenditures made to purchase or lease goods or services that provide a mixed benefit to the candidate shall be disclosed in the report covering the reporting period in which the product is delivered or services rendered. [Eff 5/29/10; am and comp

DEC 09 2016] (Auth: HRS §11-314(8)) (Imp: HRS §§11-302, 11-381, 11-382)

§3-160-46 Durable asset; acquisition and disposition. (a) "Durable asset", as used in this section, means non-consumable supplies or equipment with a minimum purchase value of \$250 and a useful life of twelve months or more.

(b) Any acquisition or disposition of a durable asset by a candidate, candidate's committee, or noncandidate committee shall be reported on the

commission's electronic filing system's durable assets schedule, and the report shall include the following current information:

- (1) Detailed description and cost of the durable asset;
 - (2) Date of acquisition or disposition;
 - (3) Full name, street address, city, state, and zip code of the vendor or contributor.
- (c) If the durable asset is sold, the sales proceeds shall be reported as an "other receipt" on the commission's electronic filing system's durable asset schedule.
- (d) If the durable asset is donated to a community organization by a candidate or candidate committee as specified in section 11-381, Hawaii Revised Statutes, the asset's fair market value at the time it was donated shall be reported on the commission's electronic filing system's durable asset schedule. [Eff 5/29/10; am and comp **DEC 09 2016**]
(Auth: HRS §11-314(b)) (Imp: HRS §§11-302, 11-333, 11-335, 11-381)

§3-160-47 Newsletters, reports, surveys, and polls. (a) The payment of costs to prepare, publish, and distribute reports, surveys, or polls which influence the nomination for election, or election of any candidate must be reported unless specifically excepted by this section.

(b) Use of personal funds by a candidate to pay the costs to prepare, publish, and distribute reports, surveys, or polls shall be reported as expenditures, and "other receipts" from the candidate.

(c) The payment of costs for the following reports, surveys, or polls are not reported as expenditures:

- (1) Reports, surveys, or polls of independent organizations not affiliated with any candidate and who have not received or expended any money on behalf of any candidate, and whose report, survey, or poll

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is either available to all candidates as well as the general public or is confidential and not distributed or publicized at any time prior to an election in which the report, survey, or poll would have an influence;

- (2) Reports, surveys, or polls required by law to be made by any governmental agency and for which funds have been appropriated by law;
- (3) Reports, surveys, or polls of incumbent officeholders, not candidates, who pay for costs of publication and distribution from funds which have been specifically appropriated by law; and
- (4) Reports, surveys, or polls of any news reporting agencies or communications media who have neither received nor contributed any moneys on behalf of any candidate.

(d) The exceptions stated in subsection (c) are not applicable and the expenditures must be reported if the report, survey, or poll clearly identifies a person who is a candidate and advocates or supports the candidate's nomination for election or defeat.

[Eff 5/29/10; comp **DEC 09 2016**] (Auth: HRS §11-314(8)) (Imp: HRS §§11-302, 11-333, 11-335)

§3-160-48 Repealed. [R **DEC 09 2016**]

§3-160-49 Disclosure of top contributors; hardship exception. (a) If a noncandidate committee making only independent expenditures is required to disclose its top contributors in an advertisement pursuant to section 11-393, Hawaii Revised Statutes, the following requirements also apply:

- (1) In a written advertisement, the disclosure must be in at least ten-point type, not be subject to the half-tone or screening process, and be set apart from any other printed matter;

- (2) In a radio or other audio advertisement, the disclosure must be clearly spoken; and
- (3) In a television or other video advertisement, the disclosure must be either clearly spoken, or appear in print and be visible for at least four seconds, appear in letters greater than four per cent of the visual screen height, and have a reasonable color contrast with the background.

(b) The requirement to disclose the top contributors shall not apply to radio or other audio advertisement under thirty seconds in duration, or television or other video advertisement, under twenty seconds in duration. [Eff and comp **DEC 09 2016**]
(Auth: HRS §11-314(8)) (Imp: HRS §11-393)

SUBCHAPTER 4

PARTIAL PUBLIC FINANCING OF CAMPAIGNS

§3-160-60 "Qualifying contribution", defined.

(a) "Qualifying contribution" means the same as defined in section 11-302, Hawaii Revised Statutes, and does not include:

- (1) Loans;
 - (2) Non-monetary contributions;
 - (3) Contributions from individuals who are not Hawaii residents;
 - (4) The candidate's own funds;
 - (5) Contributions received prior to the filing of the "Statement of Intent to Seek Public Funds" form; and
 - (6) Contributions of \$100 or less received from a person during the matching payment period if the person's aggregate contributions exceed \$100 during the matching payment period.
- (b) An individual may contribute \$100 to a

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candidate in the primary matching payment period, and may contribute \$100 to the same candidate in the general matching payment period. [Eff 5/29/10; am and comp **DEC 09 2016**] (Auth: HRS §11-314(8)) (Imp: HRS §§11-302, 11-428, 11-429, 11-430, 11-431, 11-434)

§3-160-61 Campaign expenditures. (a) Campaign expenditures for purposes of the voluntary expenditure limit, include expenses for a fundraiser or other political fundraising activities for the candidate.

(b) Campaign expenditures for purposes of the voluntary expenditure limit do not include amounts paid to repay or forgive a loan.

(c) There is no aggregation of campaign expenditures between candidates for governor and lieutenant governor of the same political party for purposes of the voluntary expenditure limit in section 11-423, Hawaii Revised Statutes, when a candidate for governor or lieutenant governor supports a co-candidate in the general election. [Eff 5/29/10; am and comp **DEC 09 2016**] (Auth: HRS §11-314(8)) (Imp: HRS §§11-363, 11-423)

§3-160-62 Application for public funds. (a) To apply for public funds a candidate shall:

- (1) File a "Statement of Intent to Seek Public Funds" form with the commission. Contributions received prior to the filing of this form are not qualifying contributions and shall not be included on the "Statement of Qualifying Contributions" form;
- (2) Mail or deliver an "Affidavit to Voluntarily Agree with Campaign Expenditure Limits" form to the commission on or before the deadline for filing nomination papers which states that the candidate is aware of the campaign expenditure limit for the candidate's office and is willing to abide by this limit;

- (3) File a "Statement of Qualifying Campaign Contributions" form on the commission's electronic filing system, with the following information:
 - (A) The name and address of each person who contributed an aggregate of \$100 or less to the candidate since filing the statement of intent to seek qualifying campaign contributions; and
 - (B) The total amount of each qualifying contribution and the date the contribution was received;
 - (4) Mail or deliver an "Application For Public Funds" form, along with a copy of the "Statement of Qualifying Campaign Contributions" form, to the commission requesting public funds;
 - (5) Not owe fines to the Hawaii election campaign fund;
 - (6) Be qualified to be on the election ballot in a primary or general election; and
 - (7) Have an opponent qualified to be on the election ballot in a primary or general election.
- (b) After initial certification for eligibility for public funds has been made by the commission, a candidate may receive additional funding by:
- (1) Mailing or delivering an "Application For Public Funds" form to the commission requesting additional funds; and
 - (2) Mailing or delivering a "Statement of Qualifying Campaign Contributions" form listing:
 - (A) The name and address of each person who contributed an aggregate of \$100 or less to the candidate since the candidate filed the preceding "Statement of Qualifying Campaign Contributions"; and

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(B) The total amount of each qualifying campaign contribution and the date the contribution was received since the candidate filed the preceding "Statement of Qualifying Campaign Contributions".

(c) Applications for funding shall not be submitted more frequently than every fourteen calendar days after the last filed application.

(d) The death, withdrawal, or disqualification of an opponent in an election does not disqualify the remaining candidate from receiving public funds.

[Eff 5/29/10; am and comp DEC 09 2016] (Auth: HRS §11-314(8)) (Imp: HRS §§11-428, 11-429, 11-430)

§3-160-63 Authorized expenditures of public funds. (a) A candidate shall use public funds only for the following expenses:

- (1) Filing fees;
- (2) Television or radio broadcast costs;
- (3) Newspaper, other print, and internet advertising;
- (4) Mail-outs;
- (5) Bumper stickers;
- (6) Sundry items such as pens, pencils, magnets, and stickers;
- (7) Banners and signs;
- (8) Printing;
- (9) Postage;
- (10) T-shirts;
- (11) Loan repayment if the proceeds of the loan were used to pay for the authorized campaign expenses listed in paragraphs (1) to (10); and
- (12) Airfare, ferryfare, and ground transportation for candidates with multi-island constituencies.

(b) "Broadcast costs" means the costs for on-air time and costs for production of a radio spot, video, or television advertising.

(c) "Printing" includes the costs for shirts, hats, other articles of clothing, and paper.

(d) A candidate shall keep a complete record of expenses paid for with public funds.

(e) A candidate shall use public funds to pay for campaign expenditures incurred during the matching payment period for which the candidate received the public funds.

(f) Public funds received during a primary matching payment period shall not be carried over and used by the candidate in a general matching payment period. The candidate shall return public funds not used in a primary election to the commission on the deadline for filing a final report for the primary election.

(g) The candidate shall return public funds not used in a general election to the commission on the deadline for filing a final report for the general election. [Eff 5/29/10; am and comp DEC 09 2016]
(Auth: HRS §11-314(8)) (Imp: HRS §§11-432, 11-433, 11-434)

§3-160-64 Voluntary campaign expenditure limitation affidavit. (a) A candidate who agrees to comply with the voluntary expenditure limit shall file the "Affidavit to Voluntarily Agree with Campaign Expenditure Limits" with the commission no later than the deadline for filing of nomination papers, stating that the candidate shall not exceed the voluntary expenditure limit.

(b) The benefits of filing the "Affidavit to Voluntarily Agree with Campaign Expenditure Limits" include:

- (1) Reduced filing fee with Office of Elections; and
- (2) Fulfills one requirement to be eligible for public funding.

(c) The commission shall keep copies of all affidavits.

(d) Any candidate who files the affidavit agreeing to limit expenditures and who exceeds the voluntary expenditure limits for that election shall:

- (1) Notify all opponents, the office of elections, and the commission by telephone and in writing on the day that the expenditure limit is exceeded, except when such day falls on a Saturday, Sunday, or holiday designated in section 8-1, Hawaii Revised Statutes, then notifications shall be on the next succeeding day that is not a Saturday, Sunday, or holiday;
- (2) Return all public funds to the commission within fourteen days of the day that the expenditure limit is exceeded, except when such day falls on a Saturday, Sunday, or holiday then return of all public funds to the commission shall be on the next succeeding day that is not a Saturday, Sunday, or holiday;
- (3) Pay the balance of the full filing fee to the chief election officer, or for candidates for county offices, the county clerk.; and
- (4) Provide reasonable notice to all contributors within thirty days of exceeding the limit that the voluntary expenditure limit was exceeded. [Eff 5/29/10; am and comp DEC 09 2016] (Auth: HRS §11-314(8)) (Imp: HRS §§11-423, 11-426)

§3-160-65 Depletion of fund. (a) The Hawaii election campaign fund shall be considered close to depletion when the balance in the trust fund equals the sum of the average amount of operating expenses, including staff salaries and fringe benefits, paid by the commission in the two prior fiscal years, added to the average amount of public funds paid by the commission to candidates in the partial public

financing program in the two prior two-year election periods.

(b) The Hawaii election campaign fund shall be considered at near depletion when the balance in the trust fund equals the average amount of operating expenses, including staff salaries and fringe benefits, paid by the commission in the two prior fiscal years. [Eff and comp DEC 09 2016]
(Auth: HRS §11-314(8)) (Imp: HRS §11-422)

SUBCHAPTER 5

COMPLIANCE

§3-160-70 Complaints of violations; administrative fines; referral. (a) Any complaint of a violation of the Hawaii election campaign laws in chapter 11, part XIII, Hawaii Revised Statutes and this chapter, shall be filed with the commission.

- (1) A complaint shall be in writing and signed under oath by the complainant. The oath shall verify that the statements provided in the complaint were made with sufficient personal knowledge or information to form an understanding and belief that the statements are true. Complaints initiated by the commission or its staff shall be in writing and signed by the executive director;
- (2) The complaint shall provide specific and detailed statements that are based upon a complainant's personal knowledge and belief;
- (3) The complaint shall cite the statute or rule that has been violated, and allege facts to support the claim that a specific statute or rule has been violated; and
- (4) The complaint shall specify the remedy sought.

(b) If a complaint does not comply with the requirements of this section, the commission staff

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shall notify the complainant and any persons identified in the complaint as respondents that no action shall be taken on the basis of that complaint. [Eff 5/29/10; am and comp DEC 09 2016] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 11-340, 11-402, 11-404, 11-408)

§3-160-71 Determination of complaint; summary dismissal. The commission may determine without regard to chapter 91, Hawaii Revised Statutes, to summarily dismiss a complaint if:

- (1) The complaint fails to comply with the requirements of section 3-160-70;
- (2) The complaint fails to provide statements that were based upon sufficient knowledge or information to form a belief that the statements are true;
- (3) The complaint fails to provide sufficient statements to support a claim that a law or rule may have been violated; or
- (4) The complaint clearly lacks merit. [Eff 5/29/10; comp DEC 09 2016] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 11-404, 11-408)

§3-160-72 Determination of complaint; further investigation. (a) The commission may request a complaint be further investigated by its staff for reasons including:

- (1) The complaint may involve other candidates, parties, committees, or persons not stated in the complaint;
- (2) The complaint provides statements that may support a claim that other laws or rules may have been violated; or
- (3) An investigation by the commission staff will assist in a prompt and efficient determination of any violation of law or rule.

(b) The investigation may include, but is not limited to field investigations, audits, and other methods of information-gathering.

(c) The commission may also cause another complaint to be initiated by its staff. [Eff 5/29/10; am and comp DEC 09 2016] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 11-404)

§3-160-73 Administrative fines; adoption of guidelines. (a) The commission may adopt a schedule of fines for violations of chapter 11, part XIII, Hawaii Revised Statutes, and this chapter, in guidelines approved by the commission at a meeting conducted under chapter 92, Hawaii Revised Statutes.

(b) These guidelines, which may be amended from time to time by the commission in accordance with subsection (a), shall be posted on the commission's website.

(c) The executive director may assess fines for violations in accordance with the guidelines adopted by the commission.

(d) The executive director shall report to the commission the amount of fines paid by persons pursuant to subsection (c), in the annual report. [Eff and comp DEC 09 2016] (Auth: HRS §11-314(8)) (Imp: HRS §§11-340, 11-410)

§3-160-74 Conciliation agreements. (a) After a complaint is filed with the commission, the executive director may enter into a conciliation agreement with the person(s) against whom the complaint is filed, to resolve the complaint.

(b) A conciliation agreement shall be approved by the commission at a meeting conducted under chapter 92, Hawaii Revised Statutes. [Eff and comp

DEC 09 2016] (Auth: HRS §11-314(8)) (Imp: HRS §§11-340, 11-410)