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December 2, 2024

Chair Colleen Hanabusa
Commission on Salaries
c/o Department of Human Resources Development
Leiopapa A Kamehameha Building, Room 1202
235 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Hanabusa:

This responds to your request for a legal opinion regarding the “legal parameters” of the Commission on Salaries. More specifically, this letter provides advice on whether the Commission on Salaries can make a recommendation for other types of compensation, such as fringe benefits.

Discussion

The Commission on Salaries is established by Article XVI, section 3.5 of the Hawaii State Constitution. It provides in relevant part:

SALARY COMMISSION

Section [3.5]. There shall be a commission on salaries as provided by law, which shall review and recommend salaries for the justices and judges of all state courts, members of the legislature, department heads or executive officers of the executive departments and the deputies or assistants to department heads of the executive departments as provided by law, excluding the University of Hawaii and the department of education. The commission shall also review and make recommendations for the salary of the administrative director of the State or equivalent position and the salary of the governor and the lieutenant governor. (Emphasis added).

The duties of the Commission on Salaries is also provided for in Hawaii Revised Statutes §26-56(b), which states in part, “The commission shall review and recommend an appropriate salary for the governor, lieutenant governor, members of the legislature, justices and judges of all state courts, administrative director of the State or an equivalent position, and department heads or executive officers and the deputies or assistants to the department heads of the departments of...” (Emphasis added). Additionally, Hawaii Revised Statutes §26-56(d) provides, “the commission shall submit a report of its findings and its salary recommendations to the legislature, through the governor.” (Emphasis added).

Based on the foregoing, the Commission on Salaries is charged with reviewing and making recommendations on the appropriate salaries of certain enumerated state officers. To further understand the scope of the Commission’s authority to make a recommendation requires a legal interpretation of the term “salary.”

The Supreme Court of Hawaii has repeatedly recognized that “[w]hen construing a statute, our foremost obligation ‘is to ascertain and give effect to the intention of the legislature’ which ‘is to be obtained primarily from the language contained in the statute itself.’” In re Hawaiian Telephone Co., 61 Haw. 572, 577, 608 P.2d 383, 387 (1980). When interpreting statutes, Hawaii law recognizes that that a fundamental starting point for statutory interpretation is the language of the statute itself. See Haw. Gov’t Emps. Ass’n, AFSCME Local 152, AFL-CIO v. Lingle, 124 Haw. 197, 202, 239 P.3d 1, 6 (2010).

Both Article XVI, Section 3.5 of the Hawaii State Constitution and Hawaii Revised Statutes §26-56 specifically use the term “salary” or “salaries.” This term is repeatedly used throughout these sections. The online version of the Merriam-Webster dictionary defines salary as “fixed compensation paid regularly for services.” The online version of the Oxford Languages dictionary offers an expanded definition of salary that states “fixed regular payment, typically paid on a monthly or biweekly basis but often expressed as an annual sum, made by an employer to an employee, especially a professional or white-collar worker. Compare with wage.” Based on these definitions of salary, other types of compensation that are not fixed and paid regularly, such as retirement benefits or per diem, do not seem to fall within the definition of salary.

Courts of other jurisdictions have also recognized that although fringe benefits may be considered compensation, they are not considered salary in the

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strictest sense of the word. See State ex rel. Parsons v. Ferguson, 46 Ohio St. 2d 389, 348 N.E.2d 692 (1976).

Our office previously opined that the term “salary” does not mean “compensation” and while fringe benefits constitute “compensation”, they are not considered “salary.” (Attorney General Opinion 85-1, page 4, attached).

Finally, other sections of the Hawaii Revised Statutes specifically provide for other allowances or per diem type benefits. For example, Hawaii Revised Statutes §24-2, §24-3, §24-4, and §24-5 provide allowance for expenses for members of the legislature. The fact that the legislature has specifically addressed these types of benefits in other sections of the Hawaii Revised Statutes further indicates that these benefits are not contemplated within the definition of salary in section 26-56(b). The fringe benefits, therefore, are not within the scope of what the Commission on Salaries may make a recommendation on.

Conclusion

Based upon the foregoing, the Commission on Salaries is charged with making a recommendation to the Legislature on salaries. The term salary does not include other types of compensation, such as fringe benefits.

We hope this adequately responds to your request. Please let me know if you would prefer an oral briefing at the next meeting of the Commission on Salaries scheduled for Friday, December 6, 2024.

Sincerely,



Elise A. Amemiya
Deputy Attorney General

APPROVED:



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Attachment



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January 25, 1985

The Honorable Milton Holt
Senator, Eighteenth District
Thirteenth Legislature
State of Hawaii
State Capitol, Room 232
Honolulu, Hawaii 96813

Dear Senator Holt:

Re: Compensation of the UH President

This is in response to your oral request for our opinion as to whether a State employee may accept supplemental compensation paid with private donations for performing said employee's official public duties.

Briefly, we understand the facts to be as follows: The Board of Regents of the University of Hawaii (sometimes referred to herein as UH) is proposing a compensation package for the Board's candidate for the office of UH President consisting of, among other things, the following: an annual salary of \$80,000 and an array of fringe benefits such as life insurance, health and dental insurance, disability insurance, and an annuity for retirement benefits. While the annual \$80,000 salary will be paid out of public funds appropriated to the UH by the Hawaii State Legislature, the aforesaid fringe benefits will be paid by The University of Hawaii Foundation (Foundation)^{1/}, on behalf of

^{1/} The University of Hawaii Foundation is a Hawaii non-profit corporation established in 1955 to further the following objects and purposes, as set forth in art. 3 of its Charter of Incorporation:

[T]o benefit the University of Hawaii, its faculty and students; to improve its standards and potentialities as an institution of higher learning and its usefulness in Hawaii; to grant scholarships, loans, and other assistance to young men and women of promise; to encourage and provide funds for research; to provide funds for the expenditure by the

the Board, with private donations. You have asked whether it is legal and proper for the UH President to receive such a compensation package.

We believe that the annual salary of \$80,000 offered to the candidate for the office of UH President is clearly within the authority of the Board of Regents under section 26-52, Hawaii Revised Statutes. The legality of the fringe benefits paid with private donations, however, is unclear.

The only statutory provision which specifically addresses the compensation of the UH President is section 26-52, Hawaii Revised Statutes, which establishes a statutory ceiling on the salary of the UH President.

Section 26-52 provides in pertinent part:

The salaries of the following state officers shall be as follows:

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- (2) The salary of the president of the University of Hawaii shall be set by the board of regents, but shall not exceed \$95,000 a year.

Section 26-52 was amended by Act 282, 1984 Hawaii Session Laws 668, to authorize the Board of Regents to set the salary of the UH President within the specified \$95,000 ceiling. Prior thereto, section 26-52 established a limit on the salary of the UH President at \$53,460 a year.

In the subject compensation package, the salary proposed to be offered to the Board's candidate is \$80,000, which is well below the statutory \$95,000 ceiling. We have considered whether the term "salary" as used in section 26-52 means "compensation"

Ftn. 1 cont'd.

trustees in their discretion for the university purposes such as (without limiting the generality of the foregoing) securing lecturers, writers, and other persons of standing, competence, and ability in the general field of the humanities, the arts, social sciences, and natural sciences; and to promote the general welfare of the University of Hawaii.

To further the foregoing objects and purposes, the foundation solicits, accepts, and receives donations and utilizes those donations to, among other things, supplement the public funded salaries of certain University faculty members and to provide expense allowances to faculty members to enable them to further their research and professional development. See, Annual Report of The University of Hawaii Foundation.

in general and, if so, whether a statutory ceiling on the UH President's compensation is provided thereby.

The Hawaii Supreme Court has repeatedly instructed us that the primary objective in construing a statute is to ascertain and give effect to the intention of the Legislature as gleaned primarily from the language contained in the statute itself. State v. Ui, 66 Hawaii 366, 663 P.2d 630 (1983); Hawaii Public Employment Relations Board v. United Public Workers, Local 6464, 66 Hawaii 461, 667 P.2d 783 (1983); Survivors of Medeiros, v. Maui Land and Pineapple Co., 66 Hawaii 290, 660 P.2d 1316 (1983); Matter of Hawaiian Telephone Co., 61 Hawaii 572, 608 P.2d 383 (1980). In the case of Castle & Cooke Terminals v. Local 137 of International Longshoremen's and Warehousemen's Union, 110 F. Supp. 247 (D. Hawaii 1953), the United States District Court for Hawaii agreed that the primary rule of construction of a statute is that legislative intent is the controlling factor, and where statutory language is ambiguous, legislative committee reports may be considered. In In re Spencer, 60 Hawaii 497, 591 P.2d 611 (1979), the Hawaii Supreme Court gave effect to the intent of the Legislature as shown by its reports to the respective houses of the Legislature. With these principles of statutory construction in mind, we examined the language used by the Legislature in section 26-52 and the 1984 amendment thereto, effected by Act 282, and also examined the legislative history of Act 282.

Act 282 originated as Senate Bill No. 1918-84. The legislative committee reports on Senate Bill No. 1918-84 uniformly state that the purpose of the bill was to provide for a statutory ceiling on the salary of the UH President. There is no express statement therein which indicates that this statutory ceiling was intended to apply to any and all forms of compensation.

Courts of other jurisdictions have considered the distinction between "salary" and "compensation" in the context of an examination of fringe benefits. In State ex rel. Parsons v. Ferguson, 46 Ohio St. 2d 389, 348 N.E.2d 692 (1976), involving the payment of health insurance premium payments for two county officers, the Supreme Court of Ohio noted as follows:

Fringe benefits, such as the payments made here, are valuable perquisites of an office, and are as much a part of the compensations of office as a weekly pay check. It is obvious that an office holder is benefitted and enriched by having his insurance bill paid out of public funds, just as he would be if the payment were made directly to him, and only then transmitted to the insurance company. Such payments for fringe benefits may not constitute "salary," in the strictest sense of that word, but they are compensation. [Emphasis added.]

348 N.E.2d at 694.

Moreover, we note that section 26-52 establishes salaries of various state department heads and executive officers. The salaries of department heads of various state departments are established at \$50,490 a year. In addition to this statutorily established salary, the department heads, like other public employees, receive a number of fringe benefits which are provided by law, in addition to and as a supplement to the salary prescribed in section 26-52. These include employer contributions on behalf of the employee to the Employees' Retirement System of the State of Hawaii (sections 88-122 to 88-125), employer contribution on behalf of the employee to the Hawaii Public Employees Health Fund for the partial cost of a health benefits plan (section 87-4), employer contribution on behalf of certain children of the employee to the Health Fund for those children's dental benefit (section 87-4), and employer contribution to the Health Fund for life insurance benefits (section 87-4). Section 87-4(f) expressly states that "[c]ontributions made by the State . . . shall not be considered as wages or salary of an employee-beneficiary."

Based upon the foregoing, it is our opinion that the term "salary" as used in section 26-52 does not mean "compensation" and, further, that while fringe benefits constitute "compensation" they are not "salary" within the meaning of and for purposes of section 26-52.

Thus, while we believe that it is only the salary component of the UH presidential candidate's compensation package which must pass muster under section 26-52, and that indeed, in this instance, it does, a further question exists as to the fringe benefit component of the package.

Section 6 of article X of the Constitution of the State of Hawaii provides as follows:

Section 6. There shall be a board of regents of the University of Hawaii, the members of which shall be nominated and, by and with the advice and consent of the senate, appointed by the governor. At least part of the membership of the board shall represent geographic subdivisions of the State. The board shall have the power, as provided by law, to formulate policy, and to exercise control over the university through its executive officer, the president of the university, who shall be appointed by the board; except that the board shall have exclusive jurisdiction over the internal organization and management of the university. This section shall not limit the power of the legislature to enact laws of statewide concern.
[Emphasis added.]

Furthermore, "as provided by law," the Board of Regents may receive gifts from sources such as the Foundation, and expend or use such gifts for the purposes of the University. Section 304-7, Hawaii Revised Statutes, provides as follows:

§304-7 Gifts. The board of regents may receive, manage, and invest moneys or other property, real, personal, or mixed, which may be given, bequeathed, devised, or in any manner received from sources other than the legislature or any federal appropriation for the purpose of the university, its improvement or adornment, or the aid or advantage of students or faculty, and in general act as trustee on behalf of the university for any of such purposes or objects.

The board shall cause to be kept suitable books of account wherein shall be recorded each gift, the essential facts of the management thereof, and the expenditure of the income, and a statement of all trust funds shall be included in the annual report to the governor.

The broad powers conferred upon the board by section 304-7 coupled with the "internal management" provision of section 6 of article X of the State Constitution may seem, at first blush, to answer the present inquiry. That is, they appear to support the conclusion that, with respect to the control of the internal management of the University, and especially with regard to the receipt and use of gifts for university purposes, the Board of Regents has great and wide powers, including the power to establish a compensation package for the UH President, which, so long as it does not violate section 26-52, would be legal.

The problem we have encountered with this analysis, however, is that arguably other statutes that have been considered to be "laws of statewide concern," in addition to section 26-52, may also be interpreted as limiting the authority of the Board of Regents with respect to compensation of UH employees. For example, section 88-41, Hawaii Revised Statutes, states:

No other provision in any other statute which provides wholly or partly at the expense of the State or any county for pensions or retirement benefits for employees of the State or of any county, their surviving spouses or other dependents shall apply to members, retirants or beneficiaries of the system established by this part and part VII of this chapter, their surviving spouses or other dependents, except such benefits as may be provided under Title II of the Social Security Act. [Emphasis added.]

While we appreciate that those parts of the subject compensation package which provide retirement benefits are not expressly set forth in a statute, it seems reasonable to read section 88-41 as expressing a legislative intent that public moneys shall not be used to provide retirement benefits in excess of those provided for in chapter 88. In this regard, if one were to view the gift from the Foundation as constituting public funds, when used by or at the direction of the Board of Regents, then the compensation

package appears to be contrary to the legislative intent expressed in section 88-41.

Moreover, section 89C-2, Hawaii Revised Statutes, appears to indicate the Legislature's intent to legislatively control other benefits, such as the insurance benefits in the subject compensation package. Section 89C-2, in pertinent part, provides as follows:

§89C-2 Adjustments authorized; limitations, restrictions. Any provision of law to the contrary notwithstanding, the compensation, hours, terms, and conditions of employment, amounts of contributions by the State and respective counties to the Hawaii public employees health fund, and other benefits for public officers and employees who are excluded from collective bargaining shall be adjusted by the chief executives of the State or counties, the board of education, the board of regents, the auditor, the director of the legislative reference bureau, the ombudsman, or the chief justice, as applicable. The chief executives, the board of education, the board of regents, the auditor, the director of the legislative reference bureau, the ombudsman, and the chief justice, or their designated representatives, shall determine the adjustments to be made and which excluded officers or employees are to be granted adjustments under this chapter, in accordance with the following guidelines and limitations:

. . . .

- (2) No adjustment in compensation, hours, terms, and conditions of employment, amounts of contributions by the State and respective counties to the Hawaii public employees health fund, or other benefits shall be established which is in conflict with the system of personnel administration based on merit principles and scientific methods governing the classification of positions and the employment conduct, movement, and separation of public officers and employees.
- (3) The compensation of officers or employees whose salaries presently are limited or fixed by legislative enactment shall not be adjusted under this chapter, but shall continue to be adjusted by the appointing authority within limits established by law or by legislative enactment.

. . . .

- (5) Adjustments to the amounts of contributions by the State and respective counties to the Hawaii public employees health fund on behalf of officers or employees

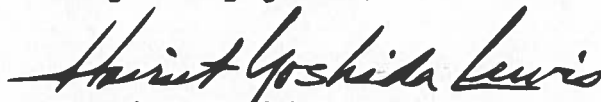
who are not covered by adjustments made under this chapter shall be made by legislative enactment.
[Emphases added.]

It is commonly understood that Hawaii's governmental personnel matters are deemed to be matters of statewide concern which typically are dealt with by the Legislature in comprehensive statutes providing for a large measure of uniformity in the treatment of employees. See, e.g., chapters 76 and 77, Hawaii Revised Statutes; City and County of Honolulu v. Ariyoshi, 67 Hawaii ___, 689 P.2d 757, 764 (1984); HGEA v. County of Maui, 59 Hawaii 65, 576 P.2d 1029 (1978). The compensation package being offered to the UH presidential candidate constitutes a significant departure from this norm.

On the other hand, the amendment made to section 26-52(2) by Act 282 of 1984, which increased the maximum salary of the UH President to an amount over one hundred eight-eight percent of the salaries of the other department heads and executive officers of the State, does indicate a legislative intent to treat the UH President as an exception to the norm. Since, however, the Legislature did not expressly address the fringe benefit component in 1984 and because said component represents a significant departure from the pattern of compensation established by the Legislature for public employees generally, we are not able to establish clearly and convincingly the legality or illegality of said component. Under the circumstances, we believe that the most satisfactory means of resolving this matter would be for the Legislature to address it.

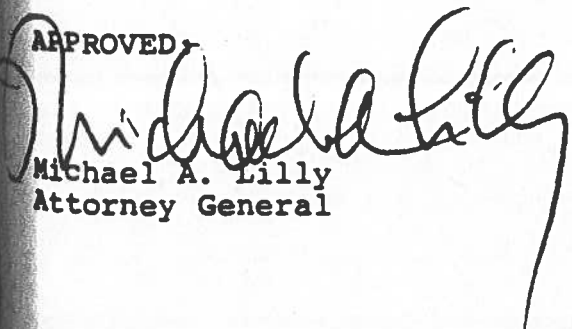
If we can be of further assistance, please do not hesitate to contact us.

Very truly yours,



Harriet Yoshida Lewis
Deputy Attorney General

APPROVED



Michael A. Lilly
Attorney General