

Op. Ltr. 91-31 University of Hawaii Coaches Contracts
This opinion was partially overruled by OIP Op. Ltr. 03-16.

December 30, 1991

The Honorable Albert J. Simone
President
University of Hawaii
2444 Dole Street
Honolulu, Hawaii 96822-2370

Attention: Hugh Yoshida
Associate Athletic Director

Dear President Simone:

Re:Salaries of Athletic Director and Intercollegiate
Athletic Coaches

This is in reply to a letter from Associate Athletic Director Hugh Yoshida to the Office of Information Practices ("OIP") requesting an advisory opinion regarding the above-referenced matter.

ISSUE PRESENTED

Whether, under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"), the exact salaries of the University of Hawaii at Manoa ("UH") Athletic Director, Head Football Coach, and Head Men's Basketball Coach must be made available for public inspection and copying.

BRIEF ANSWER

Under the UIPA, the exact salaries of all "contract hires" employed by agencies must be disclosed upon request by any person. Haw. Rev. Stat. 92F-12(a) (10) (Supp. 1991). With respect to all "exempt" and "non-included" agency employees, their exact compensation must be publicly accessible upon request. Haw. Rev. Stat. 92F-12(a) (14) (Supp. 1991). On the

contrary, as to employees covered by chapters 76, 77, 297, or 304, Hawaii Revised Statutes, only their salary ranges must be made available for public inspection and copying. Haw. Rev. Stat. § 92F-12(a) (14) (Supp. 1991).

Based upon the legislative history of section 92F-12(a) (10), Hawaii Revised Statutes, we conclude that the term "contract hire" encompasses only those agency employees who are certified by the director of personnel services as rendering special or unique services and who, therefore, are exempt from the civil service recruitment procedures under the exemption set forth by section 76-16(2), Hawaii Revised Statutes. Accordingly, while UH intercollegiate athletic coaches do have employment contracts, it is our opinion that they are not "contract hires" within the meaning of section 92F-12(a) (10), Hawaii Revised Statutes.

On the contrary, based upon our examination of sections 304-11 and 304-13, Hawaii Revised Statutes, and the Board of Regents Bylaws and Policies, we conclude that the UH Athletic Director and intercollegiate athletic coaches are employees "covered by" chapter 304, Hawaii Revised Statutes, such that only their salary ranges should be publicly disclosed upon request. Thus, the UH should segregate or delete the exact salary of intercollegiate athletic coaches from their employment contracts before making the remaining portions of their contracts available for public inspection and copying.

FACTS

By letter dated August 30, 1991, the Senior Editor of The Chronicle of Higher Education ("The Chronicle") notified the UH that it was conducting a survey of National Collegiate Athletic Association Division I-A athletic programs. As a part of its survey, The Chronicle requested the UH to provide it with, among other things, the employment contracts of the UH Athletic Director, head football coach, and men's basketball coaches.

In his letter to the OIP requesting an advisory opinion, Associate Athletic Director Hugh Yoshida indicated that the Athletic Director does not have an employment contract, but that all intercollegiate athletic coaches do have employment contracts, and those contracts set forth the exact compensation paid to the coaches by the UH. Accordingly, Mr. Yoshida requested the OIP to advise the UH whether the exact salaries of

the Athletic Director and of the UH athletic coaches, or copies of their employment contracts, must be disclosed to the public upon request.

DISCUSSION

The UIPA, the State's new open records law, generally provides that "[a] ll government records are available for public inspection unless access is restricted or closed by law." Haw. Rev. Stat.

□ 92F-11 (a) (Supp. 1991) . Thus, "[e] xcept as provided in section 92F-13, each agency upon request by any person shall make government records available for inspection and copying during regular business hours." Haw. Rev. Stat.

□ 92F-11(b) (Supp. 1991).

Additionally, however, in section 92F-12, Hawaii Revised Statutes, the Legislature set forth a list of government records, or information contained therein, that must be made available for public inspection and copying "[a] ny provision to the contrary notwithstanding." Subsection (a) of section 92F-12, Hawaii Revised Statutes, provides in pertinent part:

□ 92F-12 Disclosure required. (a) Any provision to the contrary notwithstanding, each agency shall make available for public inspection and copying during regular business hours:

. . . .

(10) Regarding contract hires and consultants employed by agencies; the contract itself, the amount of compensation, the duration of the contract, and the objectives of the contract;

. . . .

(14) The name, compensation (but only the salary range for employees covered by chapters 76, 77, 297, or 304) . . . of present or former officers or employees of the agency. . . ;

Haw. Rev. Stat. □ 92F-12(a) (10) and (14) (Supp. 1991)
(emphases added).

Thus, under the UIPA, if the UH Athletic Director or the athletic coaches are "contract hires," their employment

contracts and exact salaries must be disclosed to the public upon request. On the contrary, under the UIPA, if the UH Athletic Director and athletic coaches are employees "covered by" chapter 304, Hawaii Revised Statutes, the UH will have to segregate, or remove, the exact salaries of these employees from their employment contracts before making those contracts available for public inspection and copying. See OIP Op. Ltr. No. 91-26 (Dec. 13, 1991) (based upon UIPA's legislative history, only the salary ranges of employees covered by chapters 76, 77, 297 or 304, Hawaii Revised Statutes, should be disclosed by agencies).

Because UH athletic coaches are employed under contracts, it would appear at first that they are "contract hires" under section 92F-12(a) (10), Hawaii Revised Statutes. However, the term "contract hire" was not defined by the Legislature as part of the UIPA. Additionally, we believe that the term "contract hire" is ambiguous, especially when section 92F-12(a) (10), Hawaii Revised Statutes, is read together with section 92F-12(a) (14), Hawaii Revised Statutes. A statute is ambiguous when there is doubt, doubleness of meaning, or indistinctiveness or uncertainty of an expression used in a statute. State v. Sylva, 61 Haw. 385, 605 P.2d 496 (1980). Accordingly, an exploration of the UIPA's legislative history would be appropriate in determining the Legislature's intended meaning of the term "contract hire" for purpose of section 92F-12(a) (10), Hawaii Revised Statutes. See Educators Ventures, Inc. v. Bundy, 3 Haw. App. 435, 652 P.2d 637 (1982); Haw. Rev. Stat. § 1-15(1), (2) (Supp. 1991).

As we have stated in previous advisory opinions, many of the examples of government records set forth by section 92F-12, Hawaii Revised Statutes, were included by the Legislature in response to the recommendations of the Governor's Committee on Public Records and Privacy. Thus, the Report of the Governor's Committee on Public Records and Privacy (1987) provides guidance in determining what constitutes a "contract hire" for purposes of section 92F-12(a) (10), Hawaii Revised Statutes:

There was also interest in ensuring that information on **state and county contract hires** is available to the public. This information is generally assumed to be public. James Wallace (I(H) at 16-17), who raised this issue, said that he just wanted to be sure that it was public.

This is an area of potential concern since contract hires avoid the normal civil service hiring mechanisms or bidding processes and thus there is justification for monitoring the actions of public officials. At a minimum, the names, salaries, and scope of services should be available in all cases, though a strong argument can be made that these contracts should be completely open.

Many of these same concerns apply to **temporary hires** and again the public has a right to know how much they are making, what they are doing, and at some point why the positions are being filled on that basis.

Vol I. Report of the Governor's Committee on Public Records and Privacy 110 (1987) (boldface in original, emphasis added).

When the legislative history of section 92F-12(a) (10), Hawaii Revised Statutes, quoted above, is compared with the State's civil service exemptions, it becomes apparent that the term "contract hire" was intended to be a reference to those persons who are exempt from the civil service recruitment procedures imposed by chapter 76, Hawaii Revised Statutes. Specifically, section 76-16, Hawaii Revised Statutes, provides in pertinent part:

76-16 Civil Service and exemptions. The civil service to which this part applies comprises all positions in the State now existing or hereafter established and embraces all personal services performed for the State, except the following:

. . . .

(2) Positions filled by persons employed by contract where the director of personal services has certified that the service is special or unique, is essential to the public interest and that, because of circumstances surrounding its fulfillment, personnel to perform such service cannot be obtained through normal civil service recruitment procedures. Any such contract may be for any period not exceeding one year;

(3) Positions of a temporary nature needed in the public interest where the need for the same does not exceed one year, but before any person may be employed to render such temporary service the director shall certify that the service is of a temporary nature and that recruitment through normal civil service recruitment procedures is not practicable . . . ;

Haw. Rev. Stat. § 76-16(2) and (3) (1985) (emphases added).

Accordingly, we conclude that the term "contract hire" as used in section 92F-12(a) (10), Hawaii Revised Statutes, means those employees filling positions that are excluded from the civil service under the exemption set forth by section 76-16(2), Hawaii Revised Statutes.

While the intercollegiate athletic coaches at the UH do have employment contracts, we are informed by the UH Personnel Management Office that they are not hired or appointed under section 76-16(2), Hawaii Revised Statutes, and, therefore, could not be considered "contract hires." Accordingly, it is our opinion that the UH's intercollegiate athletic coaches are not "contract hires" within the meaning of section 92F-12(a) (10), Hawaii Revised Statutes.

We now turn to a consideration of whether the UH Athletic Director and UH athletic coaches are employees "covered by" chapter 304, Hawaii Revised Statutes, such that only their salary ranges must be publicly disclosed under section 92F-12(a) (14), Hawaii Revised Statutes.

Section 304-11, Hawaii Revised Statutes, provides:

§304-11 Faculty. The faculty of the university shall be under the direction of a president who shall be appointed by the board of regents. The board shall appoint such deans, directors, other members of the faculty, and employees as may be required to carry out the purposes of the institution, prescribe their salaries and terms of service, where such salaries and terms of service are not specifically fixed by legislative enactment, make and enforce rules governing sabbatical leaves with or without pay, consistent with the practice of similar

institutions on the mainland, and notwithstanding the laws of the State relating to vacations of the officers and employees of the State.

Haw. Rev. Stat. § 304-11 (1985) (emphasis added).

Additionally, section 304-13, Hawaii Revised Statutes, provides that the Board of Regents shall classify all members of the faculty and adopt a classification schedule conforming, as nearly as may be practical, to the schedules set forth in chapter 77, Hawaii Revised Statutes. Chapter 77, Hawaii Revised Statutes, establishes employment classifications and salary ranges for those classifications. Pursuant to sections 304-11 and 304-13, Hawaii Revised Statutes, the Board of Regents Bylaws and Policies establish salary ranges for coaches in the major intercollegiate sports. Specifically, section 9-2(d) of the Board of Regents Bylaws and Policies provides that intercollegiate athletic coach positions are exempted from the UH's administrative, professional and technical classifications system, and also establishes salary ranges for these positions. Additionally, University of Hawaii Executive Policy No. E9.207 provides that the coaches' individual salaries shall be negotiated separately, and shall not exceed the established maximum salary range without the approval of the Board of Regents. Under Board of Regents policies, the salary range of the head football coach is \$66,000 to \$96,000. The salary range of the head men's basketball coach is established as \$60,000 to \$90,000.

Based upon the above authorities, we conclude that UH Athletic Director and athletic coaches are employees covered by chapter 304, Hawaii Revised Statutes, such that only their salary ranges must be made publicly available under the UIPA, Hawaii Revised Statutes.

Accordingly, it is our opinion that in response to the request of The Chronicle, the UH should provide copies of the requested employment contracts after segregating or removing the exact salaries of the athletic coaches. In place of this information, the UH should provide The Chronicle with the salary ranges of these UH employees. With respect to the Athletic Director, the UH should provide The Chronicle with the information described by section 92F-12(a) (14), Hawaii Revised Statutes, including the salary range of the Athletic Director.

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CONCLUSION

We conclude that the UH Athletic Director and athletic coaches are not "contract hires" within the meaning of section 92F-12(a) (10), Hawaii Revised Statutes, such that their exact salaries must be publicly disclosed upon request. On the contrary, we conclude that these UH employees are employees "covered by" chapter 304, Hawaii Revised Statutes, such that only their salary ranges must be made publicly available upon request as provided by section 92F-12(a) (14), Hawaii Revised Statutes.

Very truly yours,

Hugh R. Jones
Staff Attorney

APPROVED:

Kathleen A. Callaghan
Director

HRJ: sc
c: Mr. James Takushi
Director of Personnel
University of Hawaii