

**2016 LISTING OF OPINIONS
ISSUED BY THE ATTORNEY GENERAL
STATE OF HAWAII**

16-01

(Jan. 27, 2016)

Legality of daily fantasy sports contests. Daily fantasy sports contests constitute illegal gambling under Hawaii law. The Attorney General concludes that the "activity involved in daily fantasy sports betting is gambling under the plain meaning of Hawaii's gambling statute." According to the Attorney General opinion, section 712-1220, HRS, sets out three requirements to meet the definition of "gambling," stating in part:

A person engages in gambling if [1] he [or she] stakes or risks something of value [2] upon the outcome of a contest of chance or a future contingent event not under his control or influence, [3] upon an agreement or understanding that he or someone else will receive something of value in the event of a certain outcome.
(edits supplied)

Daily fantasy sports betting meets each of these requirements: (1) "the amount wagered on each daily fantasy sports contest is 'something of value' that is being 'stake[d]' despite being called an 'entry fee'; (2) they are contests of chance under state law, because "chance is a material element for the vast majority of players" or because the contests "involve future contingent events not under the control of players"; and (3) "daily fantasy sports companies lay out in detail what players will receive on the basis of certain outcomes."

16-02

(March 9, 2016)

Applicability of the Procurement Code to gifts accepted by the State. The Hawaii Public Procurement Code, chapter 103D, HRS, does not apply to the State's acceptance of gifts from private donors. The Legislature enacted the Procurement Code by Act 8, Special Session Laws of Hawaii 1993, to "ensure fiscal integrity, responsibility, and efficiency" in the expenditure of public funds for the acquisition of goods, services, or construction for the State. Section 103D-102(a), HRS, states in part (emphases added): "This chapter shall apply to all procurement contracts made by governmental bodies...; provided that nothing in this chapter or rules adopted hereunder shall prevent any governmental body from complying with the terms and conditions of any other grant, gift, bequest, or cooperative agreement." The Code's provisions requiring competitive sealed bidding and other methods for the purchase of goods, services, or construction and provisions requiring certifying the availability of funds for said purchases literally apply to the expenditure of public funds under procurement contracts, not to the acceptance of gifts by the State.

16-03

(July 15, 2016)

Governor's interim appointment to the Public Utilities Commission (PUC). The Governor is authorized by article V, section 6, of the Hawaii Constitution to appoint a successor member to the PUC when the term of the incumbent member expires, irrespective of whether the incumbent continues to serve as a holdover member under section 269-2, HRS. The relevant portion of article V, section 6, states: "When the senate is not in session and a vacancy occurs in any office, appointment to which requires the confirmation of the senate, the governor may fill the office by granting a commission which shall expire, unless such appointment is confirmed, at the end of the next session of the senate." As part of the State Constitution, this provision is superior to the statutory law governing holdover members on a state board, including the PUC.

16-04

(July 25, 2016)

Availability of veto override vote. The Senate may vote to override the Governor's veto after the first day of the forty-fifth-day special session. Article III, section 16, of the State Constitution provides in pertinent part in the paragraph relating to reconsideration of vetoed bills returned after adjournment: "The legislature may convene at or before noon on the forty-fifth day in special session, without call, for the sole purpose of acting upon any such bill returned by the governor." Article III, section 17, of the State Constitution, which provides the general procedures upon veto, "does not expressly require that the vote on a vetoed bill must occur only on the same day of receipt of the vetoed bill." Furthermore, article III, section 15, of the State Constitution provides that "[n]o bill shall pass third or final reading in either house, unless printed copies of the bill in the form to be passed shall have been made available to the members of that house for at least forty-eight hours." Accordingly, "[i]f the Legislature is considering possible amendments to the returned bill, final actions on an amended bill cannot be taken on the first day of the forty-fifth-day special session." The Attorney General opinion concluded that "[b]ased on these constitutional provisions pertaining to the Legislature's procedures upon veto and the forth-fifth-day special session, ... the Legislature either may vote to override the veto, or may amend and pass the returned bill, or may take no action on a returned bill during the special session. We believe that the option to vote to override the veto would be available during the special session and we found no constitutional provision requiring that a veto override vote must occur only on the first day of the forty-fifth-day special session."