

OPINION NO. 13

A state librarian from a neighbor island has asked the Commission whether she is in violation of Act 263 because her husband owns and runs a printing press and a bookstore.

Under section 6 of the Act, an employee's interests include those of the employee's spouse. Thus, the bookstore and press are considered financial interests of this employee.

Under the present state book purchasing system, this librarian can take no "official action" directly affecting her husband's bookstore. All purchasing of books for state libraries is done in Honolulu through the centralized processing center of the library, upon order of the branch agencies. Neither this librarian nor the library for which she works can affect or influence from whom the State purchases volumes for its libraries.

This employee has, however, two official duties which could possibly directly affect her husband's printing press: (1) at monthly meetings in Honolulu she, along with other librarians, reviews newly published volumes submitted by publishers for inclusion on the state library order list, from which list state libraries may choose volumes; (2) as area coordinator, she processes and coordinates the orders of the agencies under the jurisdiction of the library for which she works, and she can recommend or advise against their volume selections.

In her job of participating in the selection of volumes for the state order list, this employee may be called upon to take part in decisions on volumes submitted by her husband or his press. Such participation would be action directly affecting a business in which she had a substantial financial interest, in violation of section 8 of the Act. However, by disqualifying herself from all action on volumes submitted for review by her husband, she can avoid violation of this section without precluding his volumes from review for possible inclusion on the state library lists.

Coordinating and passing on the orders of the agencies under her may involve official action in violation of the Act, even if she merely channels the order to central purchasing. However, violation of section 8 of the Act can also be avoided by an employee who is able to disqualify himself whenever his interests may be affected, and permit some disinterested employee to act temporarily in his stead. If such disqualification became so constant and recurring as to interfere with the employee's proper performance of his duties, the employee's superiors would have to consider the usefulness to the public of continued service on the part of the employee. However, looking at the two years immediately preceding the passage of Act 263 as an indicator of incidence of disqualification, there were only two orders passed on, involving a total of 30 volumes of two different titles. If the incidence does not change substantially, there is no reason that this employee cannot continue to serve the public by selective disqualification, and avoid any violation of the conflict of interests section of the Ethics Act.

Dated: Honolulu, Hawaii, October 16, 1968.

STATE ETHICS COMMISSION
Vernon F.L. Char, Chairman
Mary George, Vice Chairman
James F. Morgan, Jr., Commissioner
S. Don Shimazu, Commissioner

Note: Commissioner July Simeona was excused from the meeting at which this opinion was considered and adopted.