

## OPINION NO. 21

An officer of the State of Hawaii wishes to sign a contract with a mainland publishing house for publication of a report on a study made of certain aspects of the department with which he serves.

Approximately 80 per cent of the monies funding the study and report came from the State, and 20 per cent was contributed by the federal government. The money was used largely to compensate a private consultant firm which produced the study as independent contractors under contract to the department for which the officer works. The officer and members of his staff worked closely with the consultants in preparing the study as part of their normal duties. The officer's part in actual authorship was limited to writing an introduction to the report.

When it was finished, the State published sufficient copies of the report for distribution for public use. The officer has stated that because federal money was involved, the report is not subject to copyright, but is part of the public domain and could be published by anyone. Thus, there is no author-proprietor in the usual sense.

He further states that the publisher wishes to enter into a contract with and compensate him for this report's publication by it as a courtesy to him for being instrumental in bringing it to the publisher's attention and for negotiating the contract with the publisher on his own time. His departmental superiors have approved the signing of the contract by him and his receipt of royalties under the contract. The compensation, however, would not be for subsequent or additional consultation, so far as he knows.

The initial publication under the contract would be a limited one of 2,000 copies, the report being of a technical nature of interest to a limited audience. The officer would receive royalties of 10 per cent on the first 5,000 books sold, 12½ per cent on the next 5,000 and 15 per cent thereafter, and would receive an advance against royalties of \$1,000 on signing the contract.

Under the contract the State of Hawaii could purchase any copies it required at cost, no royalty accruing to the officer therefor.

The State Ethics Commission is limited in its powers to acting on questions of ethics under the Ethics Act, Act 263, SLH 1967, *as amended*. We make no decision regarding: (1) the legal ramifications or the appropriateness of the proposed contract, (2) whether or not the study is indeed in the public domain, or (3) the legality of this transaction under other provisions of state law. These decisions are within the province of the State Attorney General or private legal counsel.

If, indeed, the report is part of the public domain, and therefore any member of the public could at any time publish it, we find no ethical objection in light of the circumstances enumerated above to this officer's signing a contract to receive compensation for publication of this study.

However, the officer's contribution should be accurately reflected in any listings or publication of the report. Any erroneous representation of the extent of his participation could place him in violation of section 7 of the Act, which section prohibits the use by an employee of his official position to obtain unwarranted privileges. Accepting credit for complete authorship of a work produced by a consulting firm under contract to the State and compensated by state and federal money would be an example of obtaining such unwarranted treatment.

Dated: Honolulu, Hawaii, February 25, 1969.

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

Note: All members of the Commission concur in this opinion. The vacancy left by Commissioner George's resignation in favor of public office has not been filled.