

## OPINION NO. 36

An English teacher at a state public school owns a bookshop in the town where he teaches. This coming school year, in addition to teaching, he will serve as English Department head at that school. He asks whether this situation presents a violation of the state ethics code, chapter 84, HRS.

The state Department of Education's book purchasing system requires that textbooks, which are on the approved book list, be purchased directly from the publisher because of the greater purchase discount.

Trade books (those other than textbooks) must be purchased through school libraries. While most trade books must be purchased through the State Centralized Processing Center, under a new policy, volumes costing up to 20 per cent of the school's library budget may be purchased from other sources.

English teachers may recommend that their students purchase supplemental paperback material for their courses. However, they may not require such purchases. The teacher states that he has never requested that his students purchase additional volumes for his class, although he has mentioned that there is a bookstore in that town which sells certain books.

During the last school year, gross sales in this bookshop were approximately \$13,000. Of this amount, the teacher's school purchased approximately 250 books for approximately \$342, or roughly 2.6 per cent of the bookshop's sales.

There is no general prohibition against state public school teachers having outside businesses. However, sections 13 and 14 of the ethics code do regulate a public servant's actions vis-a-vis his private interests.

Section 13 prohibits the use or attempt to use official position to obtain unwarranted treatment. In this situation, a suggestion to purchase a book made to his students or to the teachers within his department and mention that it could be purchased at the bookstore which he owned, could well be interpreted as a use or attempt to use his position, a considerable one in this context, to obtain unwarranted privileges, that is, increased trade.

However, the mere mentioning of his store, as one of several sources of books in the area, without mention that it is his bookstore, would not violate this section. Because of his dual positions, this teacher must exercise great discretion before his classes and members of his department to avoid using, or the appearance of using, his position to obtain increased trade from these sources.

Section 14 prohibits employee participation in official action directly affecting a business in which the employee has a substantial financial interest.

Official action is defined by the code as action involving the use of discretionary authority. The decision on from what source to purchase volumes is discretionary action.

Any decision he should make in his high school position on the source from which the school should purchase books, in instances when the book could have been purchased from his bookstore, is official action directly affecting a business in which he has a substantial financial interest. Similarly, signing purchase orders and approving purchases from his shop would be official action in violation of section 14. It is suggested that in instances where the teacher is asked to approve or sign purchase orders for books from his store, he disclose the interest to his supervisor and disqualify himself in favor of a vice principal or other disinterested person.

Dated: Honolulu, Hawaii, July 22, 1969.

STATE ETHICS COMMISSION  
Vernon F.L. Char, Chairman  
James F. Morgan, Jr., Vice Chairman  
July Simeona, Commissioner  
Margaret W. Smalley, Commissioner

Note: Commissioner S. Don Shimazu was excused from the meeting at which this opinion was considered and adopted.