

## OPINION NO. 136

A state inspector indicated that he was purchasing a home and acreage which produced taro which he wished to sell to an agent for a poi firm. The agent was the spouse of a businessman who performed state projects which he inspected and accepted for the State. He inquired as to whether there would be a violation of the State ethics law if he sold the taro to the agent.

In response to our questions, he further indicated that his taro sales would amount to about \$2,430 annually if he sold to the businessman's spouse, the exclusive agent for the poi firm in his immediate area. If he could not sell to the agent, he would derive only about \$2,025; and selling to another poi firm would be more difficult. He indicated that the spouse participated in the operation of the businessman's firm; and that even though the firm had no state contracts with his division at that time, future contracts were likely because the businessman was the sole source of such services in his area.

HRS, §84-13, provides that "No ... employee shall use or attempt to use his official position to secure or grant unwarranted privileges, exemptions, advantages, contracts or treatment, for himself or others." The Commission has previously interpreted this provision to mean that an employee should not attempt to sell real estate or insurance to persons connected with firms he inspects in his capacity as a state employee because such action would be use of official position to obtain unwarranted treatment. (See Opinions Nos. 63, 132, and 133.)

The facts and circumstances he presented did not appear to constitute use of, or an attempt to use, his official position to secure unwarranted treatment. Since he was selling a product the demand for which exceeded the supply, its sale required no affirmative action on his part. All that was required was that the buyer learn that he had it available for sale. It seemed to us that this situation was quite different from that of the real estate or insurance salesman where normally supply exceeds the demand and active solicitation of sales is usually required.

Under these circumstances, we found no violation of the State ethics law in selling his taro to the businessman's spouse.

Although we found that the facts and circumstances presented did not, in and of themselves, raise a violation of §84-13, we advised that he should be extremely wary of placing himself in a position of violation by attempting to obtain, or obtaining, treatment not generally available to other taro sellers in his area. We further advised that he should inform his supervisor of the situation.

Dated: Honolulu, Hawaii, April 20, 1972.

STATE ETHICS COMMISSION  
Vernon F.L. Char, Chairman  
Walters K. Eli, Vice Chairman  
Gwendolyn B. Bailey, Commissioner  
Audrey P. Bliss, Commissioner  
Fred S. Ida, Commissioner