

## OPINION NO. 147

A faculty member of a state institution inquired (1) whether he may assign his book as a recommended or required text for use in his classes at the state institution and (2) whether he may sell this book from his office to interested parties.

He stated that he arranged for the private publication of his book. Under the publication arrangement, he would be able to personally sell one hundred (100) copies at \$10 each in Hawaii. The remaining four hundred (400) copies were to be sold through another corporation. He financed the entire printing and shipping; the total cost was approximately \$1,000. It was our understanding that the copies sold from the private corporation involved a profit to him of between \$3.60 per copy to \$6 per copy, depending upon whether the book was sold at retail or wholesale and that the books sold by himself involved a profit of around \$9.60 after gross excise taxes.

He disclosed that he would like to use his book as a required or recommended text in the classroom. He additionally stated that in all academic institutions instructors often use their own textbooks in the classes in which they teach. It is not unusual for such a textbook to be the result of course materials developed and tested in the classroom over a period of time. He also supplied us with information concerning his position at the state institution, the method in which courses and subject matter were decided, the availability of textbooks, the assignment of faculty, and the selection of course material. He indicated that individual instructors are permitted discretion in the selection of textbooks, and that this decision is subject to the review of a person above the instructor such as a coordinator or department chairman.

It was his intention that if he were allowed to use his text as a recommended or required text that the students enrolled in the courses would obtain the book from the institution's book store rather than directly from him. As to sales to other individuals, he indicated that these sales would be occasional and handled from his office.

Recognizing that ethical concerns must also place in perspective the need for creativity and innovation, as well as proper recognition of the right to publish and distribute ideas within the academic setting, we believed that he would be within the parameter of the State ethics law in using his text in the classroom if he were to follow the procedure outlined in our Opinion No. 78. We stated in that opinion that an instructor may request that he use his own textbook in the classroom if he made timely disclosure of his interest to and received appropriate approval from the individual who is responsible for the final decision without being in violation of §84-14 relating to conflicts of interest. We confined this opinion, however, to the special academic circumstances.

As to the use of his state office for the private sale transactions, we called his attention to HRS, §84-13 as amended in June 1972, which prohibits the use of state time, equipment or other facilities for private business purposes. Since the purpose of the law was to discourage employees from utilizing their state position or office for their personal advantage, it was our opinion that the law is violated when state facilities or time is used for private business purposes when there is no emergency or compelling circumstance requiring the use of state time or facilities for one's personal use. We discussed this principle in Opinions Nos. 105 and 118. Under the guidelines set forth in those opinions, it was our opinion that this employee should make other arrangements for the sale of his book.

Dated: Honolulu, Hawaii, September 29, 1972.

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

Note: Commissioner Gwendolyn B. Bailey was excused from the meeting at which this opinion was considered.