

OPINION NO. 357

An employee of a state department requested an opinion concerning an outside business in which he had become involved. He stated that in addition to his duties as an instructor, he was engaged in distributing a certain product. He asked us if he might sell these products to the persons he instructed if he did not solicit the business. The product he sold in his business was not related to his duties and played no part in his instruction program.

HRS §84-13, the fair treatment section of the ethics code, was applicable to the question he had raised. It prohibits an employee from using his position to gain an unwarranted advantage or treatment for himself. We had noted in certain past opinions that an employee's relationship to the persons he dealt with might be of such a nature that the employee should not engage in business transactions with such persons. These were situations in which a dependent relationship existed between the employee and the citizen he worked with. Such a relationship was found to exist, for example, between doctor and clients, hospital personnel and patients, and, we believed, between instructors and students. Where such a dependency existed, it had been our view that no business dealings should coexist with it. The citizen could not be expected to deal objectively and effectively in a business relationship with an employee upon whom he or she was dependent. Accordingly, our conclusion was that he should not sell products to his students.

By refraining from engaging in such sales we felt that he would maintain an essential element in the maintenance of public trust in public employees, the appearance as well as the fact of objectivity.

We also advised him that he should be aware of HRS §84-13(3) which prohibits an employee from using state time, equipment, and facilities for private business purposes. As examples, this meant that he should not sell products during normal workday hours, including sales to or solicitations of fellow employees, nor should he list the state phone number for business purposes.

We commended him for his sensitivity to the ethics questions involved in a state employee's business relationship with the persons he served in a state capacity.

Dated: Honolulu, Hawaii, November 3, 1978.

STATE ETHICS COMMISSION
Paul C.T. Loo, Chairman
Audrey P. Bliss, Commissioner
Gary B.K.T. Lee, Commissioner

Note: Vice Chairman I.B. Peterson and Commissioner Dorothy K. Ching were excused from the meeting at which this opinion was considered.