

ADVISORY OPINION NO. 94-34

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION ON

DECEMBER 1, 1994

PUBLIC SERVANT SEEKING OPINION

A Director

OPINION SOUGHT

Is it a violation of the Ethics Act for the faculty, staff and students at a State University to purchase computers through the campus bookstore for their personal use?

FACTS RELIED UPON BY THE COMMISSION

Pursuant to State law, University campus bookstores may sell to the campus community (faculty, staff, and students) but not to the general public. The bookstores may also purchase items for resale from various sources. The University bookstore would like to purchase computers for resale from state open-end contracts. These computers would be available for sale to the faculty, staff and students of the University. A markup is added to the cost of each computer to cover handling charges and all purchasers pay State sales tax. The ultimate sale prices are comparable to those offered by discount retailers of identical products.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code §6B-2-5(b)(1) states in pertinent part that...a public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

West Virginia Code §18B-10-14 states in pertinent part that...the appropriate governing board of each state institution of higher education shall have the authority to establish and operate a bookstore at the institution. The bookstore shall be operated for the use of the institution itself...in making purchases of books, stationery and other school and office supplies generally carried in college stores, and for the benefit of students and faculty members in purchasing such products for their own use, but no sales shall be made to the general public. The prices to be charged the institution, the students and the faculty for such products shall be fixed by the governing board, shall not be less than the prices fixed by any fair trade agreements, and shall

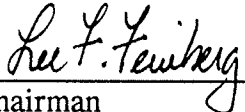
in all cases include in addition to the purchase price paid by the bookstore a sufficient handling charge to cover all expenses incurred for personal and other services, supplies and equipment, storage, and other operating expenses, to the end that the prices charged shall be commensurate with the total cost to the state of operating the bookstore.

ADVISORY OPINION

Pursuant to WV Code §18B-10-14 each state institution of higher education has the authority to establish and operate a bookstore. The bookstore is operated for the use of the institution itself and for the benefit of students and faculty members. The purpose of the bookstore is to purchase books, stationery and other school and office supplies and make such products available to the faculty, staff and students of the University for their own personal use.

Clearly, computer systems are an integral part of the educational system and as such may be made available to the faculty, staff and students of the University through the bookstore. The Commission notes that the institution is required by statute to establish prices which include a sufficient handling charge to cover all expenses incurred for personal and other services, supplies and equipment, storage, and other operating expenses.

Under the facts provided, bookstore officials are negotiating and establishing prices so that the bookstore can meet its overhead. Consequently there is no misuse of office for private gain in violation of WV Code §6B-2-5(b)(1). However, the Faculty and Staff should be cautioned that a subsequent resale of a computer to a member of the general public not authorized to make such purchases from the bookstore may constitute a misuse of their public office for the private gain of another and would be a violation of WV Code §6B-2-5(b)(1).


Chairman