

ADVISORY OPINION NO. 90-59

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JUNE 6, 1990

GOVERNMENTAL BODY SEEKING OPINION

Vice-President of a Center at a State University

OPINION SOUGHT

Whether subsection 6B-2-5(L) of the Act allows a University Vice President to receive private benefits for participating in clinical practice plans, acting as a consultant and trustee for a Hospital Board?

OTHER FACTS RELIED UPON BY THE COMMISSION

The mission of a State University and the responsibilities of its administration, faculty and staff revolve around the cornerstones of higher education: (1) teaching, (2) research, and (3) service. Faculty members obtain grants and funding for research from sources other than the State. In fact, the majority of the faculty members at the State Center are expected to obtain external funding for their research as a condition of their continued employment; honorariums, royalties and other compensation from publishing and presenting the results of their research.

Clinical Practice Plans

Services at the Center include medical and dental health care to patients and major educational activities centered around patients. Much of the budget for the Schools of Medicine and Dentistry are provided from the clinical practice plans of these schools. The practice plans have been incorporated as the University's Medical Corporation and the University's Dental Corporation both doing business as University Health Associates. Physician and dental faculty are members and employees of one of those two corporations, in addition to being faculty employees of the State University Board of Trustees.

As a physician faculty member he is also an employee of the University Medical Corporation and receives more than half of his compensation and annual income from this faculty practice plan. The Vice President is a member of State and County Medical Societies and the American Medical Association. However, he does not receive any compensation from these associations.

Hospital Board of Trustees

The Vice-President of the Center serves as a member of the Board of Trustees of the Hospital. He also serves on its Executive Committee. He is only compensated by the Hospital for his travel related expenses for Board out-of-town meetings. The Vice-President is also a representative of "HealthNet" but not receive compensation for this position. He is a non-voting member of the Board of Directors of that organization.

The Vice President serves on the Board of the State Biomedical Research Corporation, a not-for-profit corporation, organized to support the humane use of animals in biomedical research. He does not receive compensation from this Corporation either.

Consultant

The Vice President also receives requests to act as a consultant to other medical schools. If he accepts these invitations, he takes vacation time from his public employment and is reimbursed for expenses and may be compensated.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-5(L) states in pertinent part that...Any person who is employed as a member of the faculty or staff of a public institution of higher education and who is engaged in teaching, research, consulting or publication activities in his or her field of expertise with public or private entities and thereby derives private benefits from such activities shall be exempt for the prohibitions contained in subsections (b), (c) and (d) of this section when the activity is approved as a part of an employment contract with the governing board of such institution or has been approved by the employee's department supervisor or the president of the institution by which the faculty or staff member is employed.

West Virginia Code Section 6B-2-5(b)(1) states in pertinent part that...a 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 Section 6B-2-5(c)(1) states in pertinent part that...a public employee may not solicit any gift unless the solicitation is for a charitable purpose with no resulting direct pecuniary benefit conferred upon the official or employee or his or her immediate family...

West Virginia Code Section 6B-2-5(d)(1) states in pertinent part that...no public employee...may be a party to or have an interest in the profits or benefits of a contract which such employee may have direct authority to enter into, or over which he or she may have control...

ADVISORY OPINION

Subsection 6B-2-5(b)(1) of the Act prohibits a public employee from using his personal prestige or office for his private gain.

However, the Commission finds that in accordance with subsection 6B-2-5(L), it is not a violation of the Act for the University Vice-President to participate in teaching, research, consulting or publication activities in his field of expertise with public or private entities for which he receives private benefit.

The Commission considers the Vice-President's participation in the **clinical practice plan** and work as a **consultant** to fall within the scope of teaching and consulting activities. The requestor should note that this activity must be approved as a part of an employment contract with the institution or by the president of the institution (or his department supervisor if one exists).

Since the Vice President's participation in or representation of the University as a Board of Director and otherwise in other medical related organizations does not result in any private gain to the public employee (except reimbursement of expenses incurred) it would not constitute a violation of subsection 6B-2-5(b)(1) of the Act and does not require exemption under subsection 6B-2-5(L).



CHAIRMAN