

**ADVISORY OPINION NO. 90-117**

**ISSUED BY THE**

**WEST VIRGINIA ETHICS COMMISSION**

**ON JULY 12, 1990**

**GOVERNMENTAL BODY SEEKING OPINION**

A State College Professor

**OPINION SOUGHT**

Whether it is a violation of the Act for a State College Professor to receive royalties from copyrights for data cards and software which he developed and are now sold through the College's bookstore?

**OTHER FACTS RELIED UPON BY THE COMMISSION**

The requestor is a professor at a State College and has spent several years developing software and data entry cards. He donated this work to the College but anticipates that he will receive royalties gained from sales to other markets.

The professor has no authority to arbitrarily specify or control purchases made by the College but is expected to participate in the selection of textbooks and teaching or learning aids.

The software and data entry cards allow a very thorough, rapid and precise grading system. For several years these cards were provided to the students by the College. This is now economically unfeasible and the College has developed a plan where each student will purchase this software and data entry cards package from the bookstore.

Upon the implementation of this program the professor will begin to receive a 12.5% royalty (which will be approximately \$500 paid this year, but the cards will last 4 years) from the printer of these cards for the use of his copyright. The professor has the approval of the head of his Department and the Acting Academic Dean for the development of this project and the receipt of the resulting royalty payments.

**PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION**

West Virginia Code Section 6B-2-5(b)(1) states in pertinent part that...a public employee may not knowingly and intentionally use his office or the prestige of his office for his own private gain...

West Virginia Code Section 6B-2-5(L) states in pertinent part that...Any person who is employed as a member of the faculty of a public institution of higher education and who is engaged in teaching...or publication activities in his field of expertise with public or private entities and thereby derives private benefits from such activities shall be exempt from 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 employees' department supervisor or the president of the institution by which the faculty is employed.

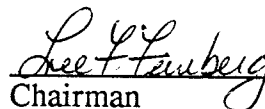
**ADVISORY OPINION**

Subsection 6B-2-5(L) is known as the higher education exemption and is applicable in this instance since the requestor is employed by a higher education institution and will derive some private benefit from teaching and publication activities,(i.e. publishing data entry cards and software for use in grading freshman chemistry laboratory experiments).

The professor stated that this activity has been approved by the head of his Department.

Therefore, it is the Commission's opinion that requiring students to use the software and data entry cards developed by the professor does not constitute a violation of the Ethics Act, pursuant to subsection 6B-2-5(L).

The Commission would also refer the requestor to Article 12, Section 9 of the West Virginia Constitution which states in pertinent part that...No person connected with...any educational institution of any name or grade under state control, shall be interested in the sale, proceeds or profits of any book or other thing used or to be used thereon, under such penalties as may be prescribed by law: Provided, that nothing herein shall be construed to apply to work written...by such person.

  
Chairman