

ADVISORY OPINION NO. 90-109

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JULY 12, 1990

GOVERNMENTAL BODY SEEKING OPINION

A Public Employee

OPINION SOUGHT

Whether it is a violation of the Act for a University professor to require students to purchase textbooks for his classes which are collections of readings, edited by him and designed specifically for the students in his classes?

OTHER FACTS RELIED UPON BY THE COMMISSION

The requestor is a teacher at a University. Currently the teacher uses two textbooks in his classes which are collections of readings, edited by him and designed specifically for the students in his class. The teacher does not receive royalties by virtue of his use of these texts.

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...of a public institution of higher education and who is engaged in teaching...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 employees' 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...office or the prestige of his...office for his...own private gain...

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...may have control.

ADVISORY OPINION

It is the Commission's opinion that requiring students to purchase and use textbooks edited by the professor does not constitute a violation of the Act, pursuant to subsection 6B-2-5(L). Subsection 6B-2-5(L) is known as the higher education exemption and is applicable since the requestor is employed by a higher education institution and may derive some private benefit from teaching and publication activities. It is not clear from the facts presented what, if any private benefit the professor actually receives from requiring the students to use these two textbooks. He states that he does not receive any royalties.

However, assuming the professor does derive some private benefit he should be aware that such exemption is available only when the activity has been approved as part of the employment contract or has been approved by the department supervisor or president of the institution.

The Commission would also refer the requester to Article 12, Section 9 of the West Virginia Constitution which states in pertinent part that...No person connected with the free school system of the State, or 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