

ADVISORY OPINION NO. 90-131

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON AUGUST 20, 1990

GOVERNMENTAL BODY SEEKING OPINION

A State University Professor

OPINION SOUGHT

Whether it is a violation of the Act for a teacher at a State University to use a workbook that she will author for her classes?

OTHER FACTS RELIED UPON BY THE COMMISSION

A University teacher co-authored a workbook for a class she taught. It was necessary for this workbook to be created because of the unavailability of any other resource or information. The one-hour class was introduced in 1978 and no one book existed that covered the content of the class. Since the teacher's co-author on the project is now retired and is not interested in updating the book, the requestor is in the process of rewriting it to include new material and deleting outdated information.

The requestor would like advance permission from the Ethics Commission to continue using and receiving private gain from the future updated version of the book before much time is spent on the project. The workbook will cost approximately \$10.00 at the most.

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 her office or the prestige or her office for her own private gain or that of another person...

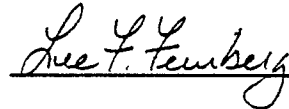
West Virginia Code Section 6B-2-5(L) states in pertinent part that...Any person who is employed as a member of the faculty or staff of a public institution of higher education and who is engaged in teaching, research, consulting or publication activities in his or her field of expertise with public or private entities and thereby derives private benefits from such activities shall be exempt from the prohibitions contained in 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.

ADVISORY OPINION

It is the Commission's opinion that requiring students to purchase and use a workbook authored by the teacher 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 will derive some private benefit from the publication activities.

However, the teacher 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...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