

ADVISORY OPINION NO. 90-140
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION
ON AUGUST 2, 1990

GOVERNMENTAL BODY SEEKING OPINION

A Professor at a State College

OPINION SOUGHT

Whether it is a violation of the Act for a State College Professor to require students in his classes to purchase textbooks which he prepared and submitted to a publisher?

OTHER FACTS RELIED UPON BY THE COMMISSION

A Professor at a State College created a textbook for students in his classes. This textbook has been used for the past three semesters and was specifically designed to fit the criteria of the courses which he teaches.

This book contains textual materials, course objectives based on State standards, specific map exercises, sample questions and a glossary for each unit of study. The Professor has not received any royalty payments for this textbook.

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.

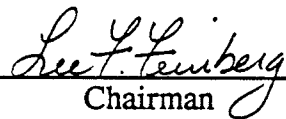
West Virginia Code Section 6B-2-5(b)(1) states in pertinent part that...a public employee may not knowingly and intentionally use his...office or the prestige of his...office for his...own private gain...

ADVISORY OPINION

It is the Commission's opinion that requiring students to purchase and use textbooks created 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 the textbook. In fact, he states that he does not receive any royalties.

However, assuming the professor does derive some private benefit at some point 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 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