

WEST VIRGINIA STATE UNIVERSITY BOARD OF GOVERNORS

West Virginia State University and the West Virginia State Community & Technical College

BOG Policy #22

Title: Ethics

Section 1. General

1.1 Scope: This policy implements guidelines in accordance with the West Virginia Governmental Ethics Act which apply to West Virginia State University (WVSU) and West Virginia State Community & Technical College (WVSCTC)

1.2 Authority: West Virginia Codes §18B-1-6 and 6B-2-5(1)

1.3 Preamble: In 1989, the West Virginia Legislature enacted the West Virginia Governmental Ethics Act, set out in Chapter 6B of the West Virginia State Code, declaring unlawful certain activities by public employees. Section 5(a), Article 2 of the Act prohibits a public employee from using his or her office or the prestige of that office for private gain. Section 5(c), Article 2 prohibits solicitation of gifts that may confer pecuniary benefits upon the employee. Section 5(d), Article 2 prohibits an interest in the profits or benefits of a public contract which an employee has direct authority to enter into or over which he or she may have control.

1.3.1 The original version of the Ethics Act subjected all public employees, including higher education employees, to fines, sanction, and criminal prosecution for violation of the Ethics Act unless they obtained prior approval for the proposed activity from the West Virginia Ethics Commission.

1.3.2 Many of the teaching, research, consulting and publication activities of higher education faculty and staff necessarily result in known and appropriate private benefits or gain which are customary and normal in higher education, but which were identified as potential violations of these provisions of the Ethics Act after its enactment.

1.3.3 In 1990, the Ethics Act was amended at Section 5(1), Article 2 to allow higher education employees who derive private benefits from teaching, research, consulting, or publication activities the option of seeking exemption from the above prohibitions from their employing institution instead of through the Ethics Commission.

1.3.4 Therefore, this policy is adopted to set forth an expeditious procedure for granting such approval of exemptions at the institutional level to faculty and staff members who seek to be relieved of certain statutorily imposed prohibitions of the West Virginia Governmental Ethics Act. Nothing in this policy shall be interpreted as restricting or prohibiting the otherwise lawful institutional or outside activities of faculty or staff consistent with their institutional duties and responsibilities or employment contracts, or as requiring the prior approval of such activities by the institution. Nor shall this policy be interpreted as restricting academic freedom as defined by other policies of the West Virginia State University Board of Governors, nor the constitutional rights of employees to free speech and association. However, this policy shall not be interpreted to require or

grant institutional approval or sanction of faculty or staff activities that violate or conflict with their institutional duties or responsibilities, employment contract, federal or state law, the policies of this Board of Governors, or the ethical standards imposed by the West Virginia Governmental Ethics Act.

1.4 Effective: May 8, 2006

Section 2. Approval of Activity

2.1 Approval by either Institutional of any activity pursuant to this policy shall be deemed to be a part of the employee's notice of employment agreement with that institution;

2.2 Any institutional approval granted pursuant to this policy may be revoked upon reasonable notice to the employee;

2.3 Approval for any activity under this policy may only be given by either President, or his/her designee.

2.3.1 Such possible delegation of authority by either President shall be in accordance with the needs of the relevant institution, but in no case shall such delegation be at an authority level lower than a vice president (WVSU) or dean (WVSCTC);

2.4 Approval for any activity may be granted on a case-by-case basis or, if such activities become common within either institution, to a department or other unit or grouping of employees;

2.5 WVSU and WVSCTC shall establish appropriate procedures for the review and approval of those employee activities covered by this policy;

2.6 Disclosures required by this policy are personal in nature and shall be kept confidential, as permitted by law.

Section 3. Solicitation of Gifts

3.1 Unless otherwise restricted by one's supervisor, employees shall be permitted to solicit gifts which directly benefit either institution;

3.1.1 Solicitations on behalf of a particular department, on behalf of the University Foundation or on behalf of an affiliated corporation or center shall, for the purposes of this policy, be deemed to be a solicitation on behalf of or for the benefit of the relevant institution;

3.2 Permissible solicitations shall include but not be limited to the following, even though the soliciting employee may work in a position which will be directly or indirectly supported thereby:

3.2.1 Grants from governmental agencies, foundations, corporations, or individuals to support teaching, research, publication or service activities of either institution;

3.2.2 Contracts with governmental agencies, foundations, corporations, or individuals to an institution to support teaching, research, publication or service activities of either institution;

3.2.3 Donations from foundations, corporations, or individuals to an institution to support teaching, research, publication or service activities of either institution.

3.3 Support for teaching, research, publication and service activities shall include but not be limited to such normal and regular institutional needs as support for salaries, scholarships, capital improvements or repairs, and classroom, laboratory, athletic, medical, scientific and other similar equipment or supplies.

Section 4. Use of Public Office for Private Gain

4.1 No solicitation or other activity permitted by this policy shall be deemed to be the inappropriate use of an employee's public position or the prestige of that position for one's own private gain or that of another person;

4.2 When an employee of either institution uses his/her knowledge and/or personal prestige for private gain without the use of the employee's institutional office or position, then there is no requirement to obtain an exemption under this ethics policy;

4.3 West Virginia Code §6B-2-5(1) gives either institution limited authority to grant exemptions to its employees from the prohibitions in the State Ethics Act relating to the use of their position at the institution, or the use of the prestige of their position at the institution for private gain when the employee is using his or her field of expertise as an author, speaker, consultant or through other approved activities such as service as a board member for outside agencies or businesses.

4.3.1 Therefore, when an employee of either institution seeks to use his/her position at the institution, or the prestige of that position, for the employee's private gain or for the private gain of another person, the employee may seek from the President of the relevant institution, or his/her designee, an exemption (as limited by the Ethics Act) from the prohibition against the use of their institutional position or the prestige of that position for private gain.

4.4 Either President, or his/her designee, may grant the employee an exemption to permit the employee to use the employee's position at the institution to derive private benefit from the employee's field of expertise as an author, speaker, consultant, or through other approved activities such as service on the board of an outside agency or business.

4.5 In granting permission for an employee to engage in such outside activities which may be directly or indirectly associated with the employee's position at either institution, consideration should be given to the following:

4.5.1 Whether the employee brings to his/her position his/her own unique personal prestige which is based upon his/her own intelligence, education, experience, skills and abilities, or other personal gifts or traits;

4.5.2 Whether such activity is customary and usual within that field;

4.5.3 Whether that institution derives any benefit through that prestige or in any other manner from that activity;

4.5.4 Whether that institution expects or anticipates that the employee will gain financially from the activities which are not a part of the employee's required employment activities;

4.5.5 Whether the employee's activity will increase his/her personal or professional development, or will lend service or benefit to the nation, state or community;

4.5.6 Whether the outside activity will interfere with or create an overriding conflict with the employee's responsibility to that institution or will interfere with the satisfactory performance of the employee's institutional duties.

4.6 The disclosure by an employee of an employee's position, title, and work history with the Higher Education System of West Virginia in the promotion of an employee's private activities shall be exempt from the prohibition against the use of prestige of public office for a private gain;

4.6.1 However, in these cases the employee has the responsibility to make clear the fact that he/she is not representing either institution nor the Higher Education System of West Virginia, but is speaking as a private citizen.

4.7 An employee who obtains an exemption from the Ethics Act prohibitions under the procedure authorized in this policy shall not be deemed an agent of either institution nor the Higher Education System of West Virginia when the employee is acting outside the scope of his or her institutional employment for his or her private benefit;

4.8 No exemption granted under this ethics policy shall be deemed to constitute a waiver by either institution of any lawful contractual provision in the employment agreement of a full or part-time employee of that institution.

Section 5. Interests in Public Contracts

5.1 Each employee shall be required to disclose any interest the employee or any member of the employee's immediate family may have in the profits or benefits of a contract which the employee may have direct authority to enter into or over which the employee may have control unless such interest is limited within the meaning of West Virginia Code §6B-2-5(d)(2);

5.2 Either institution may review any interest an employee or any member of the employee's family may have and determine what, if any, restrictions or limitations should be placed on the employee's activities in that regard;

5.3 Without limitation, the following represent examples of interests in public contracts which may be permitted:

5.3.1 The employee is the author and copyright owner of a leading textbook in the employee's teaching field and may wish to require the use of the textbook by his/her students;

5.3.2 The employee is the inventor and patent owner of a scientific tool necessary for research in the employee's field;

5.3.3 The employee is an expert in the region in a particular field and such consulting expertise is being sought by the institution or another governmental agency, and the providing of such consulting services is not a part of the employee's duties to either institution.

Section 6. Additional Permissible Activity

6.1 Unless otherwise prohibited by the West Virginia State University Board of Governors, no activity permitted under the West Virginia Ethics Act shall be deemed to be a violation of this policy;

6.2 Unless otherwise prohibited or restricted by the West Virginia State University Board of Governors, no activity approved, permitted or exempted by the West Virginia Ethics Commission shall be deemed to be a violation of this policy;

Section 7. Presidents and Chair

7.1 The Chair of the West Virginia State University Board of Governors shall have the authority to review and consider approval for those activities of either President which may involve a conflict of interest pursuant to this policy.