

WEST VIRGINIA  
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #2

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

UNIVERSITY SYSTEM OF WEST VIRGINIA  
AGENCY: BOARD OF TRUSTEES TITLE NUMBER: 122

RULE TYPE: PROCEDURAL; CITE AUTHORITY WV Code 18B-1-6, 29A-3A-6B-5A-2

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 43

TITLE OF RULE BEING PROPOSED: Ethics

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON April 30, 1992 AT 5:00 p.m.

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

State College & University System  
Central Office  
1018 Kanawha Blvd., E.  
Suite 700  
Charleston, WV 25301

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL

3-40

## POLICY BULLETIN NUMBER 43

Policy Bulletin Number 43 broadly interprets the West Virginia Governmental Ethics Act to permit institutions to maintain knowledge and appropriate supervision to those employee activities which may involve or appear to involve a conflict of interest because of (1) the use of public office for private gain, (2) the solicitation or receipt of a gift, or (3) an interest in public contract.

TITLE 128  
PROCEDURAL RULE  
UNIVERSITY SYSTEM  
OF WEST VIRGINIA  
BOARD OF TRUSTEES

TITLE: ETHICS

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TITLE 128  
PROCEDURAL RULE  
UNIVERSITY SYSTEM  
OF WEST VIRGINIA  
BOARD OF TRUSTEES  
SERIES 43

TITLE: ETHICS

SECTION 1. GENERAL

- 1.1 Scope - Rule implements guidelines in accordance with the West Virginia Governmental Ethics Act.
- 1.2 Authority - WV Code 18B-1-6, 29A-3A-4, 6B-5A-2
- 1.3 Filing Date -
- 1.4 Effective Date -
- 1.5 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.

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. 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.

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.

Therefore, this rule 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 rule 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 rule be interpreted as restricting academic freedom, as defined by this board in Series 36, or the constitutional rights of employees to free speech and association. However, this rule 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 rules of this board, or the ethical standards imposed by the West Virginia Governmental Ethics Act.

## **SECTION 2. APPROVAL OF ACTIVITY**

- 2.1 Institutional approval of any activity pursuant to this rule shall be deemed to be a part of the employee's employment contract with the board.

- 2.2 Any institutional approval granted pursuant to this rule may be revoked upon reasonable notice to the employee.
- 2.3 Approval for any activity under this rule may only be given by an institution's president or the president's designee or designees. Such delegation of authority by a president shall be in accordance with the needs of the institution but in no case shall such delegation be at an authority level lower than a departmental chair, director or other similar department supervisor.
- 2.4 Approval for any activity may be granted on a case-by-case basis or, when such activities are common within an institution, a department or other category or grouping of employees, to all of an institution's employees or any subgrouping thereof.
- 2.5 Each institution shall establish appropriate procedures for the review and approval of those employee activities covered by this rule.
- 2.6 Disclosures required by this rule 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 the board or the employing institution. Solicitations on behalf of a particular department, on behalf of an institution's supporting foundation or on behalf of an affiliated corporation or center shall, for the purposes of this rule, be deemed to be a solicitation on behalf of or for the benefit of the employing 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 an institution to support teaching, research, publication or service activities of the institution;
  - 3.2.2 Contracts with governmental agencies, foundations, corporations, or individuals to an institution to support teaching, research, publication or service activities of the institution;
  - 3.2.3 Donations from foundations, corporations, or individuals to an institution to support teaching, research, publication or service activities of the 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 and supplies.

#### SECTION 4. USE OF PUBLIC OFFICE FOR PRIVATE GAIN

- 4.1 No solicitation or other activity permitted by this rule shall be deemed to be the inappropriate use of an employee's public office (position) or the prestige of that office for one's own private gain or that of another person.
- 4.2 When an employee in a member institution of the University System of West Virginia uses his or her knowledge and personal prestige for private gain without the use of the employee's public office or the prestige of the employee's public office then there is no requirement to obtain an exemption under this ethics rule.
- 4.3 West Virginia Code Chapter 6B, Article 2, Section 5(1) gives institutions of public higher education limited authority to grant exemptions to their employees from the prohibitions in the State Ethics Act relating to the use of public office or

the prestige of public office 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. Therefore, when an employee in an institution of the University System of West Virginia seeks to use his or her public office or the prestige of their public office for the employee's private gain or for the private gain of another person, the employee may seek from an appropriate institutional authority an exemption (as limited by the Ethics Act) from the prohibition against the use of public office or the prestige of public office for private gain.

- 4.4 The appropriate institutional authority may grant the employee an exemption to permit the employee to use the employee's public office or the prestige of the employees' public office 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 with the 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 the field;
  - 4.5.3 Whether the institution derives any benefit through prestige or otherwise from the activity;

- 4.5.4 Whether the 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 create an overriding conflict with the employee's responsibility to the 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 University System of West Virginia in the promotion of an employee's private activities shall be exempt from the prohibition against the use of the prestige of public office for a private gain. However, in these cases the employee has the responsibility to make clear the fact that he or she is not representing the institution or the University System 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 rule shall not be deemed an agent of the University System or its member institutions when the employee is acting outside the scope of his or her other employment for his or her private benefit.
- 4.8 No exemption granted under this ethics rule shall be deemed to constitute a waiver by the institution of any lawful contractual provision in the employment contract of a full or part-time employee of the University System of West Virginia.

## 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 An institution may review any interest an employee or any member of the employee's family may have and determine what, if any, restrictions or limitation should be placed on the employee's activities.
- 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 the institution.

## SECTION 6.

## ADDITIONAL PERMISSIBLE ACTIVITY

- 6.1 Unless otherwise prohibited by the board of the employing institution, no activity permitted under the West Virginia Ethics Act shall be deemed to be a violation of this rule.

- 6.2 Unless otherwise prohibited or restricted by the board of the employing institution, no activity approved, permitted or exempted by the West Virginia Ethics Commission shall be deemed to be a violation of this rule.

**SECTION 7. PRESIDENTS AND CHANCELLOR**

- 7.1 The chancellor shall have the authority to review and grant approval of those activities of institutional presidents which may involve a conflict of interest pursuant to this rule.
- 7.2 The board shall have the authority to review and grant approval of those activities of the chancellor which may involve a conflict of interest pursuant to this rule.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: ETHICS

Type of Rule: Legislative Interpretative  Procedural

UNIVERSITY SYSTEM OF WEST  
 Agency: VIRGINIA BOARD OF TRUSTEES Address: 1018 Kanawha Blvd., E.,  
Suite 700, Charleston, WV 25301

1. Effect of Proposed Rule:	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
Personal Services	N/A	N/A	N/A	N/A	N/A
Current Expense	N/A	N/A	N/A	N/A	N/A
Repairs and Alterations	N/A	N/A	N/A	N/A	N/A
Equipment	N/A	N/A	N/A	N/A	N/A
Other	N/A	N/A	N/A	N/A	N/A

2. Explanation of above estimates:

N/A

3. Objectives of these rules:

N/A

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Governments.

N/A

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.

N/A

C. Economic Impact on Citizens/Public at Large.

N/A

Date: March 10, 1992

Signature of Agency Head or Authorized Representative

  
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STATE OF WEST VIRGINIA  
OFFICE OF THE GOVERNOR  
CHARLESTON 25305

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STATE OF WEST VIRGINIA

GASTON CAPERTON  
GOVERNOR

March 13, 1992

The Honorable Ken Hechler  
Secretary of State  
State Capitol  
Charleston, West Virginia 25305

Dear Secretary Hechler:

In the absence of a Secretary of Education and the Arts, I hereby grant consent as required pursuant to WV Code §5F-2-2 for promulgation of the following rule by the University System Board of Trustees:

Procedural Rule Title 128, Series 43, Ethics

A copy of the rule is attached.

Very truly yours,

*Thomas A. Heywood*  
Thomas A. Heywood  
Chief of Staff

TAH/lis

Attachment

cc: Charles Manning  
John Thralls  
David Mohr  
JoAnn Raines

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1992 MAR 24 PM 4:21  
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STATE OF WEST VIRGINIA