

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

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OFFICE OF THE SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: STATE COLLEGE SYSTEM BOARD OF DIRECTORS TITLE NUMBER: 131

RULE TYPE: Procedural; CITE AUTHORITY 18B-1-6

AMENDMENT TO AN EXISTING RULE: YES x NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 43

TITLE OF RULE BEING AMENDED: Ethics

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

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 June 19, 1992 AT 4:30 p.m.

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

Jo Ann Raines

Public Information Officer

1018 Kan. Blvd., E.

Charleston, WV 25301

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

Jo Ann Raines

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

3.30

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Ethics

Type of Rule: Legislative Interpretive Procedural

Agency: State College System
Board of Directors Address 1018 Kan. Blvd., E.,
Charleston, WV 25301

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

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 Government.

N/A

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

N/A

C. Economic Impact on Citizens/Public at Large.

Date: _____

May 7, 1998

Signature of Agency Head or Authorized Representative

JA Raines

**TITLE 131
PROCEDURAL RULE
STATE COLLEGE SYSTEM OF WEST VIRGINIA
BOARD OF DIRECTORS
SERIES 43**

Series 43 implements guidelines in accordance with the West Virginia Governmental Ethics Act.

Revisions to the existing rule clarify the fact that faculty members may engage in outside activities that do not conflict with the requirements of the Ethics Act.

TITLE 131
PROCEDURAL RULE
STATE COLLEGE SYSTEM OF WEST VIRGINIA
BOARD OF DIRECTORS
SERIES 43

TITLE : ETHICS

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TITLE 131
PROCEDURAL RULE
STATE COLLEGE SYSTEM OF WEST VIRGINIA
BOARD OF DIRECTORS
SERIES 43

TITLE: ETHICS

SECTION 1. GENERAL

1.1 Scope - This rule implements guidelines in accordance with the West Virginia Governmental Ethics Act.

1.2 Authority - West Virginia Code § 18B-1-6, 6B-2-5(L)

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 of the State College System Rules 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.

- 1.6 Repeal of Former Rule - Repeals and replaces Series 43 effective June 30, 1991.

SECTION 2. APPROVAL of ACTIVITY

- 2.1 Institutional approval of any activity pursuant to this policyrule 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 policyrule may be revoked upon reasonable notice to the employee.
- 2.3 Approval for any activity under this policyrule 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 policyrule.
- 2.6 Disclosures required by this policyrule 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 ~~policy~~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 supplies.

SECTION 4. USE of PUBLIC OFFICE for PRIVATE GAIN

- 4.1 No solicitation or other activity permitted by this ~~policy~~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 With the appropriate institutional approval, an employee may derive private benefits from the use of one's field of expertise as an author, speaker, consultant or board member for outside agencies or businesses, or through other approved activities.~~
- 4.2 When an employee in a member institution of the State College System of West Virginia uses his or her knowledge and personal prestige for private gain without the use of the employees 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 State College 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 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.
- 4.35 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:
- 4.35.1 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.
- 4.35.2 Whether such activity is customary and usual within the field;
- 4.35.3 Whether the institution derives any benefit through prestige or otherwise from the activity;
- 4.35.4 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;
- 4.35.5 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;

4.8 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 State College 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 governing board of the employing institution, no activity permitted under the West Virginia Ethics Act shall be deemed to be a violation of this policyrule.

- ~~4.3.6 Whether the outside activity will interfere with or create an overriding conflict with the employee's loyalty or commitment to the institution; responsibility to the institution or will interfere with the satisfactory performance of the employee's institutional duties.~~
- ~~4.3.7 Whether the outside activity will interfere with the satisfactory performance of the employee's institutional duties.~~
- ~~4.4 An institution may limit, restrict or focus the outside professional, consulting or other similar employment activities within the field of a full-time employee when such limitations are in the interest of the institution or the department in which the employee works.~~
- ~~4.5 Without limitation, the following are examples of how positions may be limited, restricted and focused for the benefit of the institution.~~
- ~~4.5.1 Physicians and dentists teaching in the health sciences may be required to practice their profession for the benefit of the institution through a faculty practice plan and may be prohibited from practicing their profession outside the practice plan while they remain full-time employees;~~
- ~~4.5.2 Athletic coaches may be expected to engage in outside activities which produce private income at levels sufficient, when combined with the coach's institutional salary, to keep the employee's total income package nationally competitive in consideration of the employee's skills, expertise, and prestige.~~
- 4.6 The disclosure by an employee of an employee's position, title, and work history with the State College 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. 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 State College 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 State College 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.

- 6.2 Unless otherwise prohibited or restricted by the governing 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 policyrule.

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.