

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #2

FILED

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OFFICE OF WEST VIRGINIA
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 ___ NO x

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 May 30 AT 5:00 p.m.

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

Jo Ann Raines

Public Information Officer

Central Office, State College & Univ. Systems

1018 Kanawha Blvd., East Suite 700

Charleston, WV 25301

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

Paul Morris

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

POLICY BULLETIN NUMBER 43

As filed, Policy Bulletin Number 43 appears to have no fiscal impact upon the State College System.

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 131
PROCEDURAL RULE
STATE COLLEGE SYSTEM OF WEST VIRGINIA
BOARD OF DIRECTORS
SERIES 43
POLICY BULLETIN NUMBER 43

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TITLE 131
PROCEDURAL RULE
STATE COLLEGE SYSTEM OF
WEST VIRGINIA BOARD OF DIRECTORS
SERIES 43
POLICY BULLETIN NO. 43

TITLE: ETHICS

Section 1. General

- 1.1 Scope - Procedural policy implementing guidelines in accordance with the West Virginia Governmental Ethics Act.
- 1.2 Authority - WV Code 18B-1-6
- 1.3 Filing Date - To be assigned
- 1.4 Effective Date - To be assigned
- 1.5 Recognition of Ethics Requirements - The State College System Board of Directors recognizes that its employees hold their employment as a matter of public trust and that the legislature has established certain ethical standards for public employees which are designed to maintain public confidence in the operation of governmental affairs.

The board recognizes that because the normal requirements and expectations of certain higher education employees in teaching, research, consulting and publication activities often necessarily result in known and appropriate private benefits or conflicts of interest, the legislature has provided certain exemptions for such employees from the general prohibitions of the West Virginia Governmental Ethics Act.

The following sections shall be interpreted broadly so as 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 a public contract.

Section 2. Approval of Activity

- 2.1 Institutional approval of any activity pursuant to this policy 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 policy may be revoked upon reasonable notice to the employee.
- 2.3 Approval for any activity under this policy 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 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 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, 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 policy 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.
- 4.3 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:
 - 4.3.1 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.
 - 4.3.2 Whether such activity is customary and usual within the field;
 - 4.3.3 Whether the institution derives any benefit through prestige or otherwise from the activity;
 - 4.3.4 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;
 - 4.3.5 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;

- 4.3.6 Whether the outside activity will interfere with or create an overriding conflict with the employee's loyalty or commitment to the institution;
- 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.

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 policy.
- 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 policy.

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 policy.
- 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 policy.