

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #2

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WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Higher Education Policy Commission TITLE NUMBER: 133

RULE TYPE: Procedural CITE AUTHORITY: § 18B-1-6, 6B-2-5(L)

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 RULE BEING PROPOSED: Series 31

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 24, 2002 AT 10:00 AM ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Office of the Chancellor
Higher Education Policy Commission
1018 Kanawha Blvd. East
Charleston, WV 25301

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

J. Michael Muller jid
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

SCANNED

**TITLE 133
PROCEDURAL RULE
WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION**

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**SERIES 31
ETHICS**

OFFICE WEST VIRGINIA
SECRETARY OF STATE

SECTION 1. GENERAL

- 1.1 Scope - This rule establishes guidelines for institutional governing boards in adopting policies 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(b), Article 2 of the Act prohibits a public employee from using his or her office or the prestige of that office for his or her private gain or that of another person. Section 5(c), Article 2 prohibits solicitation of gifts that may confer pecuniary benefits upon the employee or his or her immediate family. 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(l), 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.

The previous Board of Trustees and Board of Directors adopted a rule to set forth an expeditious procedure for granting such approval of

exemptions at the institutional level to faculty and staff members who sought to be relieved of certain statutorily imposed prohibitions of the West Virginia Governmental Ethics Act. The Policy Commission has previously transferred that rule to the jurisdiction of the institutional governing boards. This rule shall govern any modification of that rule by a governing board.

- 1.6 Repeal of Former Rule - Repeals and replaces Series 43 of Title 128 and 131.

SECTION 2. APPROVAL OF ACTIVITY

- 2.1 Any rule governing ethics of its faculty or staff adopted by an institutional governing board shall include at least the following:
 - 2.1.1 That institutional approval of any activity pursuant to the rule shall be deemed to be a part of the employee's employment contract with the board.
 - 2.1.2 That any institutional approval granted pursuant to the rule may be revoked upon reasonable notice to the employee.
 - 2.1.3 That approval for any activity pursuant to 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.
 - 2.1.4 That 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.
 - 2.1.5 That the institution shall establish appropriate procedures for the review and approval of those employee activities covered by this rule.
 - 2.1.6 That disclosures required by the rule are personal in nature and shall be kept confidential, as permitted by law.

SECTION 3. SOLICITATION OF GIFTS

- 3.1 Any such rule shall also include provisions that state:
 - 3.1.1 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 the institution's supporting foundation or on behalf of an affiliated corporation or center shall, for the purposes of the rule, be deemed to be a solicitation on behalf of or for the benefit of the institution.
 - 3.1.2 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:
 - 3.1.2.1 Grants from governmental agencies, foundations, corporations, or individuals to the institution to support teaching, research, publication or service activities of the institution;
 - 3.1.2.2 Contracts with governmental agencies, foundations, corporations, or individuals to the institution to support teaching, research, publication or service activities of the institution;
 - 3.1.2.3 Donations from foundations, corporations, or individuals to the institution to support teaching, research, publication or service activities of the institution.
 - 3.1.3 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 Any such rule shall also provide that:
 - 4.1.1 No solicitation or other activity permitted by the 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.

- 4.1.2 When an employee uses his or her knowledge and personal prestige for private gain without the use of the employee's public office, then there is no requirement to obtain an exemption under the ethics rule.
- 4.1.3 W. Va. Code § 6B-2-5(l) 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 and when an employee of the institution 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.
- 4.1.4. 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.
- 4.1.5 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:
 - 4.1.5.1 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.
 - 4.1.5.2 Whether such activity is customary and usual within the field;
 - 4.1.5.3 Whether the institution derives any benefit through prestige or otherwise from the activity;
 - 4.1.5.4 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;

4.1.5.5 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;

4.1.5.6 Whether the outside activity will interfere with or 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.

4.1.6 The disclosure by an employee of an employee's position, title, and work history with the institution 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 but is speaking as a private citizen.

4.1.7 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 institutions when the employee is acting outside the scope of his or her other employment for his or her private benefit.

4.1.8 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 institution.

SECTION 5. INTERESTS IN PUBLIC CONTRACTS

5.1 Any such rule shall also provide that:

5.1.1 Each employee shall be required to disclose any interest the employee or any member of the employee's immediate family or a business with which he or she is associated 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).

5.1.2 The institution may review any interest an employee or any member of the employee's family or a business with which he or she is associated may have and determine what, if any, restrictions or limitation should be placed on the employee's activities.

SECTION 6. ADDITIONAL ETHICAL STANDARDS

- 6.1 A governing board may establish additional ethical standards for its employees not inconsistent with this rule or the West Virginia Governmental Ethics Act.

SECTION 7. PRESIDENTS and BOARD CHAIRS

- 7.1 The governing board shall have the authority to review and grant approval of those activities of the institution's presidents which may involve a conflict of interest pursuant to this rule or the institution's rule.
- 7.2 The governing board shall have the authority to review and grant approval of those activities of the chair of the governing board which may involve a conflict of interest pursuant to this rule.

SUMMARY

**TITLE 133
PROCEDURAL RULE
WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION
SERIES 31
ETHICS**

This rule establishes guidelines for institutional governing boards in adopting policies in accordance with the West Virginia Governmental Ethics Act.

□
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 133-31: Ethics

Type of Rule: Legislative Interpretive Procedural

Agency: Higher Education Policy Commission

Address: 1018 Kanawha Boulevard East
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					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of Above Estimates:

There is no cost to implementation of this rule. It is procedural.

3. Objectives of These Rules:

This rule establishes guidelines for institutional governing boards in adopting policies in accordance with the West Virginia Governmental Ethics Act.

Rule Title: 133-31: Ethics

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

None.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:

None

C. Economic Impact on Citizens/Public at Large.

None

Date: April 24, 2002

Signature of Agency Head or Authorized Representative:

