

ADVISORY OPINION NO. 90-60

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JUNE 6, 1990

GOVERNMENTAL BODY SEEKING OPINION

Professor of Law at a State University

OPINION SOUGHT

Whether an exemption pursuant to subsection 6B-2-5(b)(2) of the Act is necessary to allow a University professor to use his personal prestige for private gain as a seminar speaker and expert witness?

OTHER FACTS RELIED UPON BY THE COMMISSION

The requestor is a Professor of Law at a State University. Before joining the faculty several years ago he served as Administrative Director of the State Supreme Court of Appeals (where he drafted the first set of rules governing the discipline of the State's Judges, Justices, and Magistrates).

Prior to that time he served as the first full-time Executive Director of the State Bar (where one of his primary responsibilities was to process all ethics complaints filed against State lawyers). His expertise in legal ethics was recognized when he joined the faculty. He was assigned to teach Legal Ethics and has done so during most of his tenure at the University.

The Professor has spoken without compensation at many seminars on legal ethics for several legal associations. The success of those seminars has led to invitations to conduct paid seminars in this State and others on the topic of Malpractice Avoidance. He also has served as an expert witness on occasion in cases involving matters of legal ethics or alleged lawyer malpractice.

The requestor was selected as "Professor of the Year" by three of the past seven graduating classes and as Higher Education "Professor of the Year" by the Faculty Merit Foundation of West Virginia. He has written four Law Review articles and four books during his tenure on the faculty.

The requestor also performs free work for various organizations including the Salvation Army, where he serves as a member of the Board of Advisors. In fact, his work output in terms of successful class performance while writing extensively, conducting seminars, serving as an expert witness and being involved in charitable activities was directly responsible for his being asked to conduct seminars on effective time management, which he has done for the past two years.

The requestor does not charge for seminars or other speaking engagements conducted at the University, the State Bar Association, or the Salvation Army and does not intend to do so in the future.

The Commission has received a letter from the Dean of the Law School stating that the professor's extracurricular activities have been approved for two reasons. First, such public service to the practicing bar is one way of fulfilling a faculty member's contractual obligation in the public service area. Also, the requestor's participation as an expert witness or seminar speaker enhances the reputation of the College of Law and keeps the speaker abreast of all current developments in his field.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-5(L) states in pertinent part that...Any person who is employed as a member of the faculty...of a public institution of higher education and who is engaged in teaching, research, consulting or publication activities in his or her field of expertise with public or private entities and thereby derives private benefits from such activities shall be exempt from the prohibitions contained in subsection (b) of this section when the activity is approved as a part of an employment contract with the governing board of such institution or has been approved by the employee's department supervisor or the president of the institution by which the faculty or staff member is employed.

West Virginia Code Section 6B-2-5(b)(1) states in pertinent part that...A public employee may not intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person...

ADVISORY OPINION

Subsection 6B-2-5(b)(1) of the Act prohibits a public employee from using his personal prestige or office for his private gain.

However, West Virginia Code Section 6B-2-5(L) specifically recognizes and provides an exemption to any person who is employed as a faculty member of a public institution of higher education, and who derives private benefits from teaching, research, consulting or publication activities in his field of expertise.

It is the Commission's opinion that the requestor's work as an expert witness and seminar speaker falls within the statutorily approved categories of teaching and consulting.

The only other requirement needed for the public employee to obtain the exemption provided in subsection 6B-2-5(L) is that either the employee's contract must provide for these activities or they must be approved by a department supervisor or the president of the institution. According to the facts provided the requestor meets this requirement since the dean of the College of Law has approved these activities in writing.

Therefore, the Commission finds that it is not necessary to grant the requested exemption pursuant to subsection 6B-2-5(b)(2) since, subsection 6B-2-5(L) anticipates and allows the professor to derive private benefit from speaking at seminars and acting as a compensated expert witness.


CHAIRMAN