

ADVISORY OPINION NO. 96-16
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION
ON APRIL 4, 1996

GOVERNMENTAL BODY SEEKING OPINION

A State University Professor/State Board Member

OPINION SOUGHT

- a.) Is it a violation of the Ethics Act for a University professor to serve as a member of a State Board?
- b.) Is it a violation of the Ethics Act for a University professor who is also a member of a State Board to receive a per diem for attendance at the Board meetings?

FACTS RELIED UPON BY THE COMMISSION

The requester is a State University professor required to teach certain courses each semester. Professors are required to maintain office hours, but no specific number of office hours are mandated by their employment. The office hours maintained by such professors vary widely.

The requester also serves as a member of a State Board which was created by the Legislature in 1990. The purpose of this Board is to bring fiscal stability to a State Agency through the development of an annual financial plan. When creating this Board, the Legislature provided that one member of the Board shall be appointed to represent the interests of education employees. Board members receive compensation and expense reimbursement for each day engaged in the discharge of the Board's official duties.

The requester has stated that attendance at Board meetings and performance of the work associated with the Board does not interfere with the ability to fulfill the responsibilities of a University professor. The requester is not required to apply for annual leave or to seek a superior's approval to attend Board meetings. Further, University professors are permitted to engage in private consulting work for remuneration for one day per week of their work time provided such outside employment activities are consistent with the policies and guidelines of the University.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(k) provides in pertinent part that...No public official or public employee shall knowingly request or accept from any governmental entity compensation or reimbursement for any expenses actually paid by...any other person.

West Virginia Code 6B-2-5(l) provides in pertinent part that...Any person who is employed as a member of the faculty or staff of a public institution of higher education and who is engaged in teaching, research, consulting or publication activities in his... field of expertise with public or private entities and thereby derives private benefits from such activities shall be exempt from the prohibitions contained in subsections (b), (c) and (d) 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 employees' department supervisor or the president of the institution by which the faculty or staff member is employed.

ADVISORY OPINION

a.) The requester is employed as a University professor and as such is required to teach certain courses each semester and maintain office hours. No specific number of office hours are mandated by this employment.

The requester also serves as a member of a State Board which is developing an annual financial plan to bring fiscal stability to a State Agency. The professor was selected to represent the interests of all education employees. The requester has stated that attendance at Board meetings and performance of the work associated with the Board does not interfere with or impede the fulfillment of the responsibilities of a University professor.

West Virginia Code 6B-2-5(l) recognizes that any person employed as a member of the faculty of a higher education institution may also engage in teaching, research, consulting or publication activities in his or her field of expertise with public or private entities. If the activity is approved as a part of an employment contract or has been approved by the employee's department supervisor or the president of the institution then the faculty member is also exempt from certain provisions of the Ethics Act as to that activity.

The common definition of the word "consult" is to seek or provide advice or information, to exchange views, to confer or to give expert advice as a professional. As previously noted, the purpose of this State Board is to bring fiscal stability to a State Agency through the development of an annual financial plan. As mandated by the enabling legislation, the requester was appointed to the Board to represent the interests of all members of the education field.

Clearly, the creation and make-up of the Board was designed to provide a variety of input from various levels and areas of expertise. Consequently, the Commission has determined that serving as a member of this Board would be considered a consulting position.

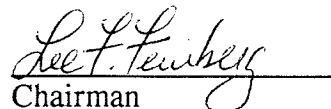
Further, the requester has stated that professors at the University are permitted to engage in private consulting work for remuneration for one day per week of their work time provided such outside employment activities are consistent with the policies and guidelines of the University.

Therefore, it would not be a violation of the WV Code 6B-2-5(l) for a University professor to serve as a member of a State Board provided the activity is approved as a part of the employment contract or has been approved by the department supervisor or the president of the institution.

b.) Pursuant to West Virginia Code 6B-2-5(k) a public employee may not receive reimbursement from any governmental entity for expenses actually paid by any other person. Simply stated, the Ethics Act prohibits public employees and public officials from "double-dipping". However, the enabling legislation of the State Board provides that these Board members shall receive compensation and expense reimbursement for each day engaged in the discharge of the official duties of the Board.

In this instance, the requester is a salaried employee with discretion in setting office hours. In fact, University policy allows faculty to engage in outside consulting up to one day per week. Further, the requester has stated that attendance at Board meetings and performance of the work associated with the Board does not interfere with or impede the fulfillment of the responsibilities of a University professor.

Therefore, it would not be a violation of WV Code 6B-2-5(k) for the University professor who is also a member of a State Board to receive a per diem for attendance at the Board meetings.


Chairman