

ADVISORY OPINION NO. 2008-09

Issued On October 2, 2008 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **Public University** asks whether it may provide a discount to faculty members at the University bookstore.

FACTS RELIED UPON BY THE COMMISSION

A Public University owns and operates a bookstore. It asks whether it may provide a 10% discount to faculty members on merchandise at the bookstore such as apparel with the University logo, gifts, school/office supplies and snack foods.¹ The discount would not be offered on textbooks due to their low profit margin.

The University states that it wants to provide the discount for several reasons. First, the University considers the discount an employee benefit. Second, the University Bookstore wants to encourage faculty to purchase items at the bookstore to increase revenue. Third, the University asserts that when faculty purchases apparel for themselves or family members, it promotes the University when they wear apparel with the University logo around campus and in the community. According to the Requester, having faculty wear University apparel also creates a sense of University pride.

Based upon information obtained, it appears this is a common practice for campus bookstores, both public and private, to offer faculty discounts. Nationwide campus bookstores are operated in different manners. Some institutions of higher education own and operate their own bookstores. Others contract with a third party vendor for this purpose.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code § 6B-2-5(b) reads in relevant part:

A public official or public employee may not knowingly and 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. Incidental use of equipment or resources available to a public official or public employee by virtue of his or her position for personal or business purposes resulting in de minimis private gain does not constitute use of public office for private gain....

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¹ The discount would be offered to all University employees. For sake of reference this practice is hereby referred to as "Faculty Discount" which appears to be the common term used for this type of discount.

The Ethics Commission finds that the Requester, a Public University, may offer faculty discounts at its bookstore. Its reasoning for this conclusion is set forth below.

In a recent decision, A.O. 2008-07, the Commission ruled that a municipality could provide its employees the benefit of free use of a swimming pool. The Commission stated in part, "Conferring this fringe benefit upon Town employees would only be prohibited if there is no rational basis for this management decision." In A.O. 2008-05, the Ethics Commission considered whether a Parks and Recreation Commission (PRC) could allow its employees free use of its recreational facilities. The Commission reasoned that "Allowing limited [recreational] facility use in a manner that does not detract or diminish the service PRC provides to its paying customers provides benefits to its employees and boosts morale at no additional cost to the County."

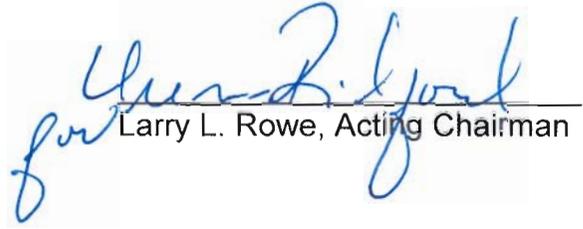
In examining the facts presented, the Commission finds that there is a rational basis for offering the discount as a fringe benefit. First, it appears that it is a commonly accepted practice at other higher education institutions. In attempting to recruit and retain qualified faculty and staff, a public university should not be restricted from offering incentives which promote employee morale, particularly when there is limited resulting cost to the University. Second, the fringe benefit may serve to generate additional revenue at the bookstore. Third, there is a resulting benefit to the University if faculty and staff wear University logo apparel on campus and in the community. This practice may serve to promote the visibility of the University in the community while promoting a sense of school spirit.

There are limits in regards to offering the discount. First, the discount should be a clearly defined employee benefit which is set forth in policy. Second, the discount should not be offered if it is determined that offering the discount will undermine the profitability and financial stability of the bookstore. Third, the discount should only be offered to faculty or University employees, not members of the University's governing body whose compensation is statutorily established. Fourth, while a third party vendor may voluntarily elect to offer a faculty discount, consistent with the Commission's ruling in A.O. 2001-21, the University may not solicit such a discount from third party vendors. To the extent that A.O. 2001-21 otherwise prohibits faculty discounts at campus bookstores, that portion of the opinion is hereby overruled.

This opinion is limited to allowing Public Universities to offer a faculty discount at University owned and operated bookstores. It should not be construed as a blanket authorization for other Public Agencies, which sell goods or services to the public, to offer discounts to their employees as a matter of course. Instead, these Public Agencies should first seek advice from the Ethics Commission in order that these cases may be evaluated on a case-by-case basis.

This advisory opinion is limited to questions arising under the Ethics Act, W. Va. Code § 6B-1-1, *et. seq.*, and does not purport to interpret other laws or rules. In accordance

with W.Va. Code § 6B-2-3, this opinion has precedential effect and may be relied upon in good faith by other public colleges and universities unless and until it is amended or revoked, or the law is changed.


for Larry L. Rowe, Acting Chairman