

BLUE RIDGE COMMUNITY AND TECHNICAL COLLEGE BOARD OF GOVERNORS

SERIES: 1 | **General**
RULE: 16.1 | **Ethics**

Scope: This rule implements guidelines in accordance with the West Virginia Governmental Ethics Act.
Authority: W. Va. Code §18B-1-6, § 6B-2-5(L)
Approval Date: 7/26/06
Effective Date: 7/26/06

SECTION 1. 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. The Act prohibits a public employee from using his or her office or the prestige of that office for private gain. It prohibits solicitation of gifts that may confer pecuniary benefits upon the employee. It 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 persecution 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 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.

Therefore, this rule is adopted to set forth an expeditious procedure for granting such approval of exemptions at the institutional level to faculty and staff members who seek to be relieved of certain statutorily imposed prohibitions of the West Virginia Governmental Ethics Act. Nothing in this rule shall be interpreted as restricting or prohibiting the otherwise lawful institutional or outside activities of faculty or staff consistent with their institutional duties and responsibilities or employment contracts, or as requiring the prior approval of such activities by the institution. Nor shall this rule be interpreted as restricting academic freedom, as defined by this Board in other rule of the Board of Governors or the constitutional rights of employees to free speech and association. However, this rule shall not be interpreted to require or grant institutional approval or sanction of faculty or staff activities that violate or conflict with their institutional duties or responsibilities, employment contract, federal or state law, the rules of this Board, or the ethical standards imposed by the West Virginia Governmental Ethics Act.

SECTION 2. Definition

- 2.1 Prestige. A reputation or influence arising from success, achievement, rank, or other favorable attributes.
- 2.2 Solicitation. The act of soliciting. To make a petition or request.

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 Institution. Solicitations on behalf of a particular department or on behalf of any 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.
- 3.2. 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 the institution to support teaching, research, publications, or service activities of the institution;
 - 3.2.2 Contracts with governmental agencies, foundations, corporations, or individuals to the institution to support teaching, research, publication, or service activities of the institution;
 - 3.2.3 Donations from foundations, corporations, or individuals to the institution to support teaching, research, publication, or service activities of the institution.

SECTION 4. Use of Public Office for Private Gain

- 4.1 No solicitation or other activity is permitted by this 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.
- 4.2 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 this ethics rule.
- 4.3 West Virginia Code Chapter 6B, Article 2, 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. Therefore, when and employee seeks to use his or her public office for the employee's private gain or for the private gain of another person, the employee may seek from the President or designee 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.
- 4.4 The President or designee 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.
- 4.5 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:
 - 4.5.1 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;
 - 4.5.2 Whether such activity is customary and usual within the field;
 - 4.5.3 Whether the institution derives any benefit through prestige or otherwise from the activity;
 - 4.5.4 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;
 - 4.5.6 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;
 - 4.5.6 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.

- 4.6 The disclosure by an employee of an employee's position, title, and work history with Blue Ridge CTC 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.
- 4.7 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 Blue Ridge CTC when the employee is acting outside the scope of his or her other employment for his or her private benefit.
- 4.8 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.

SECTION 5. Interest 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-2-7(d)(1).
- 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 expressly prohibited by the rules of this Board of Governors, no activity permitted under the West Virginia Ethics Act shall be deemed to be violation of this rule.
- 6.2 Unless expressly prohibited by the rule of this Board of Governors, no activity approved, permitted or exempted by the West Virginia Ethics Commission shall be deemed to be a violation of this rule.

SECTION 7. The President

- 7.1 The Chair of the Board of Governors shall have the authority to review and grant approval of those activities of the President which may involve a conflict of interest pursuant to this rule.

SECTION 8. Approval of Activity

- 8.1 Institutional approval of any activity pursuant to this rule shall be deemed to be a part of the employee's employment contract with the Board.
- 8.2 Any institutional approval granted pursuant to this rule may be revoked upon reasonable notice to the employee.
- 8.3 Approval for any activity under this rule may only be given by the President or the President's

designee or designees. Such delegation of authority by the 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 Dean or a director of an administrative unit.

- 8.4 Approval for any activity may be granted on a case-by-case basis or, when such activities are common with the institution, a department or other category or grouping of employees, to all of the employee or any sub-grouping thereof.
- 8.5 The President shall establish appropriate procedures for the review and approval of those employees' activities covered by this Rule.
- 8.6 Disclosures required by this rule are personal in nature and shall be kept confidential, as permitted by law.

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Board of Governors Chair

Date

President

Date