

FACULTY AUTHORS: ROYALTIES & ASSIGNED TEXTBOOKS

On September 15, 2008, the Washington State Executive Ethics Board released a news item that included a written interpretation that it is a violation of the state Ethics Act for a faculty member who is a state employee to make a profit on the sale of his/her textbooks to his/her students at his/her own educational institution. This holding also extends to a faculty member who owns a publishing company that manufactures and ships textbooks. The holding can be found at page 2 of the following linked document: <http://www.ethics.wa.gov/RESOURCES/Newsletters/EEB%20News%20Sep%2008.pdf>.

The Faculty Council on Instructional Quality is currently working on a policy that would protect faculty members' ability to teach using their own textbooks while also protecting them from a violation of the Ethics Act. However, in view of the fact that a UW policy may take months to adopt, the Secretary of the Faculty has suggested that individual faculty should, in the meantime, take steps to comply with the Board's interpretation. Alternatives may include:

1. exclude any faculty member who is the author or publisher of a textbook from participating in any decision to assign the faculty member's book to his or her class
2. donate to the institution an amount of money roughly representing the "profit" that comes from the author's or publisher's own students (e.g. determine number of students in class who bought new books, determine the royalty the author would receive, then donate this money to the department or a scholarship fund, etc.)
3. contact the publisher to make arrangements not to receive royalties on textbooks purchased by students in the author's classes.

The Secretary of the Faculty is also working with the Provost and the UW Division of the Attorney General's Office to better understand the Ethics Board holding and the alternatives for complying with it. Although much more work needs to be done, and we are unable to provide solid advice at this time, the following initial draft of Frequently Asked Questions and answers may be of some value in understanding the situation.

FAQS REGARDING ROYALTIES & ASSIGNED TEXTBOOKS

Question: Does the Ethics Board's interpretation apply where the instructor is not technically part of the "faculty", is not really the "author," or the work is not really a "textbook"?

Answer: Although the Ethics Board holding uses the terms "faculty," "author," and "textbook," the fundamental principle likely applies in other analogous situations. The Ethics Act provision behind the holding says that a state employee must not participate in an official decision from which the employee receives a personal benefit. This situation would be presented whenever a faculty member – or other paid employee – helps make any decision that would produce some revenue for the employee, even if he or she is not "faculty" or is not an "author" and whether the item is a "textbook" or something else. Conversely, if the student's purchase of the item – even a textbook – produces no additional financial benefit to the faculty member, then it should not pose a problem.

Question: Since I have no way to know whether a student of mine buys a new book (which produces a royalty for me) or buys a used book (which does not produce a royalty), how can I protect myself?

Answer: While the purchase of a used copy of an assigned book probably would not create an ethics violation, the Ethics Board would likely put the burden on the faculty member to establish the number of no-royalty purchases that were made. In the absence of a reliable way to track these purchases, it might be prudent to approach the dollar amounts as if all the books purchased for a class are new.

Question: If I make my book optional for students, does the Ethics Board holding still apply?

Answer: That is unclear. The answer likely would depend on the degree to which the book is truly optional (for example, is the book simply part of a list of “other resources” or is it one of a short list of alternative required readings?) Certainly, the ethics problem is not presented by truly independent decisions by students or others to purchase your book.

Question: Can I avoid this problem if someone else decides whether or not to assign my book?

Answer: Yes, but only if you avoid “participating” in the decision. Be aware that the Ethics Act defines “participate” broadly to include active involvement in the “approval, disapproval, decision, recommendation, [and] the rendering of advice...” by which the official decision is made. Local level discussion with your department chair, program director, or dean regarding the reasonableness of not “participating” may be advisable.

Question: When did this interpretation take effect? Is it possible that I could be found to have violated the Ethics Act for textbook decisions made in previous years?

Answer: The Ethics Board issued this advisory holding on September 15, 2008. It did not address retroactive application, although the Board appeared to believe it was simply stating the law as it already existed. Technically, the Ethics Board can wait up to five years to pursue a violation.

Question: Am I safe from an ethics violation if I can show that my annual donations to the University already exceed the textbook royalties I earn?

Answer: It would probably be important to have documentation that identifies or reasonably estimates the amount of royalties you received from textbooks sold to your students. That amount could then be attributed to your annual donations to the University.

Question: There should be other ways to address this issue, such as rebating my royalties directly to my students, letting the students select a charity to receive the royalties, or making in-kind book donations that have a value equal to my royalties. Are these viable alternatives?

Answer: Until we have a formal policy that has received a thorough review, there is no way to predict with confidence whether these or other alternative approaches would be found sufficient to avoid the ethics violation. However, any approach should be viable if it genuinely separates all personal profit from the official acts of a faculty or other employee.

Question: Is there some form to sign or some other process I need to follow to prove I am in compliance with the Ethics Board’s holding?

Answer: Not at this time. Until the University adopts a formal policy on this subject, individual faculty members should simply take steps to satisfy themselves that they understand the holding and act consistently with it.