

ADVISORY OPINION

APPROVAL DATE: September 12, 2003

NUMBER: 03-04

STATUS: **Current**

REVIEWED ON: February 29, 2016

NEXT REVIEW: February 2021

REFERENCES: RCW 42.52.010, RCW 42.52.150,
RCW 42.52.160

SUMMARY OF CHANGES: Amended to update statutory references.

Selling Textbooks Sent to Faculty for Evaluation or Review

QUESTION

May state higher education faculty sell complimentary textbooks, which were received under an exemption to the gift prohibitions?

ANSWER

The Ethics in Public Service Act allows state officers and employees, including state higher education faculty, to accept gifts of informational material, publications, or subscriptions. Once received, state officers and employees may use or retain such items in a manner consistent with the purpose for which they were provided, use or retain them to perform official duties, or dispose of them as provided under RCW 42.52.010(9)(g).

The issue before the Board is whether higher education faculty may sell publications, such as textbooks, for personal benefit or profit. The Ethics Act prohibits higher education faculty from selling textbooks. The answer is no because the Ethics Act prohibits the use of official position and the use of any resource or property under official control for private benefit or gain.

ANALYSIS

Higher education faculty members often participate in the selection of textbooks for use by students. Once selected, use of the textbooks is normally mandatory and college bookstores, which may be operated by the institution, stock books based on the faculty members' selection. In some instances, groups of faculty and staff select the textbooks for use by instructors. In other cases, the instructor working alone selects the textbooks.

In order to select an appropriate textbook, instructors may solicit evaluation textbooks from

publishers. On occasion, a publisher may send unsolicited textbooks. At other times, textbook publishers may send evaluation textbooks to faculty for the purpose of review and allow the faculty member to keep the textbook as compensation for submitting a professional evaluation. In addition, instructors who use textbooks that were mandated by an institution may request or receive courtesy copies or “desk copies” directly from the publisher.

The textbook publishing industry consists of a very limited group of publishers. Due to the high retail cost of textbooks in higher education, there is a secondary used textbook market consisting of book buyers that sell books to college bookstores. The companies that operate in this market are largely independent of the publishers. These independent textbook buyers, and also institutional bookstores, may solicit faculty to purchase textbooks. Used textbook buyers normally purchase books at a fraction of the original retail price, often less than 50% and usually less than 25%.

The Ethics Act prohibits the use of property under official control or custody for private benefit or gain, except to assist others in the course of official duties. RCW 42.52.160 provides, in relevant part:

(1) No state officer or state employee may employ or use any person, money, or property under the officer’s or employee’s official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee, or another.

While this opinion prohibits selling textbooks for personal gain, several options for disposing of textbooks exist in lieu of selling them. The faculty may retain publications for official use. This seems most consistent with what seems to have been the primary intent of exemption found in RCW 42.52.150(4)(d), that gifts of publications should be permitted because such gifts would benefit the state. In addition, higher education faculty can dispose of publications by either giving them to the institution or to charity, as provided in RCW 42.52.010(9)(g); or dispose of them in accordance with agency adopted surplus property procedures.