

# MARSHALL UNIVERSITY BOARD OF GOVERNORS

## Rule No. GA-9

### General Conflict of Interest

#### 1 General Information.

- 1.1 Scope: This policy establishes guidelines in accordance with the West Virginia Governmental Ethics Act for all employees of the Marshall University Board of Governors.
- 1.2 Authority: WV Code §18B-1-6.
- 1.3 Passage Date: October 12, 2006.
- 1.4 Effective Date: October 12, 2006.
- 1.5 Control: This policy is controlling over Marshall University and Marshall Community and Technical College.
- 1.6 History:
  - 1.6.1 The Higher Education Policy Commission transferred this policy to the institutions while retaining some level of control over the content of any ethics policy (which it describes in HEPC Series 31). See Series 31 for a more detailed history of the Ethics Act as it relates to WV higher education.
  - 1.6.2 Statutory References: WV Code §6-9A-1 through §6-9A-12

#### 2 Approval of Activity.

- 2.1 Institutional approval of any activity pursuant to this rule shall be deemed to be a part of the employee's employment contract with the Marshall University Board of Governors.
- 2.2 Any institutional approval granted pursuant to this rule may be revoked upon reasonable notice to the employee.
- 2.3 Approval for any activity under this rule may only be given by an institution's president or the president's designee or designees. Such delegation of authority by a 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 departmental chair, director or other similar department supervisor.
- 2.4 Approval for any activity may be granted on a case-by-case basis or, when such activities are common within an institution, a department of other category or grouping of employees, to all of an institution's employees or any sub-grouping thereof.
- 2.5 Each institution shall establish appropriate procedures for the review and approval of those employee activities covered by this rule.
- 2.6 Disclosures required by this rule are personal in nature and shall be kept confidential, as permitted by law.

### **3 Solicitation of External Funds.**

- 3.1 Unless otherwise restricted by one's supervisor, employees shall be permitted to solicit gifts which directly benefit the Board of Governors or the employing institution. Solicitations on behalf of a particular department, on behalf of an institution's supporting foundation, or on behalf of an affiliated corporation, or center shall, for the purposes of this rule, be deemed to be a solicitation on behalf of or for the benefit of the employing 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 an institution to support teaching, research, publication or service activities of the institution;
  - 3.2.2 Contracts with governmental agencies, foundations, corporations, or individuals to an institution to support teaching, research, publication or service activities of the institution;
  - 3.2.3 Donations from foundations, corporations, or individuals to an institution to support teaching, research, publication, or service activities of the institution.
- 3.3 Support for teaching, research, publication and service activities shall include but not be limited to such normal and regular institutional needs as support for salaries; scholarships; capital improvements or repairs; and classroom, laboratory, athletic, medical, scientific and other similar equipment supplies.

### **4 Use of Public Office for Private Gain.**

- 4.1 No solicitation or other activity 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 in an institution governed by the Marshall University Board of Governors uses his or her knowledge and personal prestige for private gain without the use of the employee's public office, or the prestige of the employee's public office, then there is no requirement to obtain an exemption under this ethics rule.
- 4.3 W. Va. Code §6B-2-5(l) 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 an employee in an institution governed by the Marshall University Board of Governors seeks to use his or her public office or the prestige of 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 appropriate institutional authority 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 appropriate institutional authority may grant the employee an exemption to permit the employee to use the employee's public office, or the prestige of 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;
  - 4.5.5 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 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 an institution under the Marshall University Board of Governor 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 the institution 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 of the Marshall University Board of Governors.

## **5 Interests 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 W. Va. Code §6B-2-5(d)(2).
- 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.

## **6 Additional Permissible Activity.**

- 6.1 Unless otherwise prohibited by the Marshall University Board of Governors, no activity permitted under the West Virginia Ethics Act shall be deemed to be a violation of this rule.
- 6.2 Unless otherwise prohibited or restricted by the Marshall University 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.

## **7 Other Conflict of Interest Policies.**

- 7.1 This policy is a general policy on conflicts of interest. Specific units or activities may have additional policies approved by the Marshall University Board of Governors. Such policies may be more restrictive than the guidelines set forth in this policy and will take precedence for those specific units and/or activities (e.g., Policy AA-41, Individual Conflict of Interest in Research).

## **8 Presidents.**

- 8.1 The Chairman of the Marshall University Board of Governors shall have the authority to review and grant approval of those activities of the institutions' presidents which may involve a conflict of interest pursuant to this rule.