

ETHICS OPINION (A general opinion)

ISSUE: Whether or not it is a violation of the Ethical Principles and Code of Conduct (Governing Regulation I.D) for a faculty member to mandate use of her/his own textbook in a class that s/he teaches? Whether it is a violation of the Ethical Principles and Code of Conduct for a faculty member to mandate use of her/his own textbook in her/his class and receive a royalty payment for the use of that textbook?

FACTS: Often University of Kentucky faculty are the experts in particular subject matter and often UK faculty members have written the authoritative textbook on the subject matter of a class that the UK faculty member teaches. When the UK faculty member has written an authoritative textbook on the subject matter, the faculty may mandate her/his own textbook for her/his class. Sometimes, the textbooks are sold at the bookstores or on line and, on an occasion, the textbook is sold directly by the faculty member when the faculty member is the publisher. The faculty member will receive a financial benefit (royalty payment) as a result of the sale of the textbook to students enrolled in her/his class.

OPINION: There is not a conflict of interest for a faculty member to mandate use of her/his textbook in her/his own class; however, there is a conflict of interest for a faculty member to mandate use of her/his own textbook and receive a royalty payment from a publisher or one's own publishing company. It is necessary for the University to manage the conflict of interest.

APPLICABLE SECTION(S) OF ETHICAL PRINCIPLES AND CODE OF CONDUCT (Governing Regulation I-D.j. and l.):

1. Under Conflict of Interests the document states, "Confidence in the University of Kentucky is put at risk when the conduct of University members does, or may reasonably appear to, involve a conflict between private interests and obligations to the University."
2. Further, under Conflict of Interests, it states: "It is essential that potential conflicts be disclosed and reviewed by the University. After disclosure, the University can make an informed judgment about a particular activity and require appropriate oversight, limitations, or prohibitions in accord with this policy. It is important to remember that each relationship is different, and many factors often will need to be considered to determine whether a conflict of interest exists."

3. Under the section on Financial Advantage, the EPCOC states: “Members of the University community must exhibit personal integrity, honesty and responsibility in all actions. Official position or office shall not be used to obtain financial gain or benefits for oneself or members of one’s family or business associates. Any action that creates the appearance of impropriety should be avoided.... An indirect interest may be defined as a real or perceived use of a University position or office with respect to a purchase or contract, leading to financial or other benefits to the individual or a member of his or her family. An indirect interest includes situations where a business owned or controlled by a family member does business with the University area where the employee is assigned.”

RATIONALE/DISCUSSION: The nature of a conflict of interest is that a decision-maker would tend to make a decision in favor of a party because the decision-maker has some financial interest or some financial gain for her/himself or a family member. Thus, the results would be that a decision-maker would make a decision on behalf of her/his own interest and the decision may be contrary to the University’s interest or to her/his obligations to members of the University community (students enrolled in the course). The nature of a financial advantage is that a decision-maker would make a decision that would result in financial gain for her/himself or a member of the decision-maker’s family

In most cases, faculty members at the University are the decision-makers as to the textbook and/or course materials. In some cases, the faculty of the department are the decision-makers as to textbooks and/or course materials.

The conflict of interest occurs not when a faculty member mandates use of her/his textbook, but when the faculty member benefits financially (receives a royalty payment) for the use of her/his own textbook.

It is noted that, if the decision to use a particular faculty member’s textbook is made by the faculty of the department and the faculty member-author abstains for participation in the decision, there is not a conflict of interest for the particular faculty member’s textbook to be used and it is not a conflict for the faculty member to receive her/his royalty payment. It is only a conflict of interest when the faculty member is the decision-maker and her/his own decision results in financial gain for her/himself.

It is noted that several universities have set up a procedure for a committee’s or a department’s review of a faculty member’s request to mandate her/his own textbook in her/his class. The purpose of such a committee’s or department’s review is to ensure that the textbook is truly an authoritative text on the class subject. The committee’s or department’s review and approval of a particular textbook is an affirmation of the faculty member’s decision and lessens or eliminates any appearance of a conflict of interest. The Ethics Committee believes that a decision to have a committee’s or department’s review is not an ethics issue, but is an academic issue, and would, therefore, be under the jurisdiction of the Provost or the University Senate (and not the Ethics Committee).

RECOMMENDED COURSE OF ACTION: It is necessary for the University to manage conflicts and appearances of conflicts of interest and financial gains. The Ethics Committee believes that there are several possible, appropriate methods of managing this conflict of interest. While we are making the following recommendation, we think that it is entirely appropriate if the Provost or the University Senate (since managing the conflict is a faculty issue) decides to review this issue and decide an appropriate method of managing this conflict. Attached is a recent survey of some significant institutions and their management of this issue. Perhaps this survey could assist the Senate if it decides to review the issue of managing this conflict.

The Ethics Committee recommends that, if a faculty mandates use of her/his own text, the faculty member should estimate the financial advantage s/he receives. The amount of the direct financial advantage should be given to the University or a charitable or another educational entity. Based on a self-reporting honor system, each semester, the faculty member should write a check as a donation to her/his department, to a scholarship fund, or to the general University development fund for the estimated amount s/he received from University students who were mandated to use hers/his particular textbook. If the donated funds are given to the faculty member's department, the donated funds shall not be available for the personal benefit of the faculty member/author and shall not be under her/his control. The faculty member may decide to donate the estimated royalty payment amount to a charitable or another educational entity.

As an example of this method of managing the conflict, a faculty member who authors a textbook would have a contract with a publisher. Probably the faculty member receives a royalty payment, e.g., an amount per book sold or a percentage of total sales if there are other authors. While the textbook may be used by other faculty at the University or at other institutions, the faculty should estimate the number of her/his textbooks sold for her/his class(es), multiply by the dollar amount per book or calculate the appropriate percentage to arrive at her/his financial advantage. A check for the amount of the financial advantage should be donated. If donated to the University department, a scholarship fund or the general development program, the check should be made payable to the University of Kentucky and deposited through the Development Office. The faculty/author will receive confirmation of the gift from the University Development Office and the amount is a tax deductible donation. If donated to a charity or another educational entity, the check should be made payable to that entity which will furnish a acknowledgement of the gift.

There are other methods of managing the conflict and, if the Provost or the University Senate wishes to use a different method, the Ethics Committee has no strong preference in a particular method of managing the conflict. The objective of eliminating the conflict of interest is that the faculty does not receive a financial gain as a result of the mandated use of her/his textbook.

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