

**CALIFORNIA COMMUNITY COLLEGES
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July 1, 2004

Dr. Harriett J. Robles
Vice President of Instruction
Mission College
3000 Mission College Blvd.
Santa Clara, CA 95054-1897

Re: Required Instructional Materials
Legal Opinion L 04-11

Dear Dr. Robles:

You requested a clarification of our earlier Legal Opinion L 02-29, entitled "Faculty Profits from Required Instructional Materials" in connection with one of the College's courses.

You reported that the instructor of a course entitled "Principles of Real Estate" requires his students to purchase a packet of his lecture notes that costs \$14.70 to produce. The instructor adds a royalty of \$10, resulting in a figure of \$24.70, and the College bookstore adds a mark-up of 30% for a total cost to the student of \$35.30. (Our calculations do not result in a total of \$35.30, but the specific numbers are not critical to our analysis.) We understand that the bookstore is the only source of the materials.

Under the circumstances you describe, you are correct in concluding that students cannot be required to pay an amount that includes a royalty. As we indicated in our Legal Opinion L 02-29, if the materials are solely available from the College through its bookstore, the cost to the students is limited to the actual cost of production and "a small markup necessary for selling the item through the college bookstore." However, the actual cost cannot be augmented by a royalty fee.

Your second question is whether students must actually purchase texts or materials that are required. Our opinion L 02-29 does refer to the students' "purchase" of materials, but we used that phrase with respect to specific issues in our previous opinion. The use of the term "purchase" may lead to some confusion that we are happy to clarify.

Education Code section 76365 confirms that districts are not required to provide all materials to students free of charge. It directs the Board of Governors to adopt regulations to implement the section, and it states that the regulation "shall specify the conditions under which a district may require students to provide those materials. . . ." Title 5, section 59400 is one of the regulations adopted in this area, and it also describes when students may be required to provide certain instructional materials.

The distinction between requiring students to purchase materials and requiring them to provide those materials seems to be an issue in the situation you describe. As you point out, two students could share the cost of the lecture notes such that each has access to them for purposes of the class. The College library might buy a copy of the notes from the bookstore and check them out to students for use in the class, or students might sell their used lecture notes from the previous semester.

If materials qualify as required instructional materials, students may ordinarily provide the materials themselves through a variety of means. The preliminary question is whether materials qualify as required instructional materials. Section 59402 of title 5 provides that an instructional material of this type is a material "which is necessary to achieve those required objectives of a course. . . ." Thus, in order to determine whether the lecture notes constitute a required instructional material, the College must be able to show that the materials are necessary to achieve the course objectives. The syllabus you provided indicates that there are two required items for the class; one is the textbook entitled "California Real Estate Principles," and the other is the lecture notes. Three optional items are listed: a workbook, a reference book, and a calculator.

Whether the lecture notes are truly required by the objectives of the course is a factual determination for the College and cannot be determined from the outline provided to us. A review of the course outline of record may verify for you the necessity of the lecture notes in terms of achieving the course objectives. Because it appears that the instructor requires recently purchased lecture notes, it will presumably be necessary for the College to determine why recently purchased lecture notes are required as opposed to lecture notes that were not recently purchased. In particular, there must be some basis for believing that purchased lecture notes are required instructional materials while borrowed or shared lecture notes will not equally assist the student in meeting the course objectives, or why lecture notes that were purchased in a previous semester will not similarly assist the student in meeting the course objectives.

We do notice that the outline reflects eighteen class sessions. Three of these sessions are dedicated to examinations. Each of the remaining fifteen "instructional" sessions includes specific assigned chapters, but it is not clear if the chapter references are to chapters in the textbook. If they are chapters in the textbook, then there is no indication as to how the lecture notes tie into these sessions.

You have not described the nature or purpose of the lecture notes at issue here. However, unless recently purchased lecture notes are reasonably related to the achievement of the course objectives, they cannot be established as required instructional materials and students cannot be required to provide (or purchase) them. If the lecture notes do not qualify as required instructional materials, they can still be offered to students on a purely optional basis and students could be charged a reasonable optional fee.

Conversely, if the College determines that the lecture notes qualify as required instructional materials, the College can require students to have them, as noted above. If the College insists

that students purchase the materials from it, either directly or through the bookstore, it must provide the materials at cost.

To review this point, if the College determines the lecture notes qualify as a required instructional material, and the lecture notes are solely available from the College through the bookstore, a fee in the form of the bookstore purchase price may be appropriate, but the fee may not exceed the cost of production plus a reasonable markup by the bookstore. That is, if students are required to purchase the lecture notes through the College, the price may not include a faculty royalty.

Your final question is whether an instructor may require an original and current proof-of-purchase of the lecture notes as a condition of enrollment. We see no basis for considering a proof-of-purchase document as an instructional material. It is merely a slip of paper evidencing the purchase of something else; it has no apparent intrinsic relationship to the course and it is not used to meet course objectives. It does not have continuing value to the students outside the classroom. Unless the College can demonstrate how the slip of paper is used as a required instructional material, we cannot see how students can be required to provide it as a condition of enrollment or for any other reason.

We hope the foregoing is useful to you.

Sincerely,

Steve Bruckman
Interim General Counsel

RB:VAR:sj

cc: Dona Boatright, Vice Chancellor, Educational Services
Stan Arterberry, Chancellor, West Valley-Mission Community College District
Frank Chong, President, Mission College