

## **Opinion No. 60-133**

July 11, 1960

**BY:** OPINION of HILTON A. DICKSON, JR., Attorney General

**TO:** Mr. T. E. Mears, Jr. Member, Board of Regents Eastern New Mexico University  
Portales, New Mexico

### **QUESTION**

#### QUESTIONS

1. What is meant by "other charges" in subsection A of Section 8 of the Faculty Regulations of 1955?
2. Can a faculty committee be created to entertain charges against a teacher with tenure?
3. How should the faculty committee be created and given proper authority?
4. Is it necessary to present formal charges to the faculty committee?
5. Should a hearing before a faculty committee be open to the public?
6. Is the accused teacher entitled to appear before the faculty committee with counsel?
7. If a hearing is had before the Board of Regents, who prosecutes the case?
8. Is the accused teacher entitled to have written charges presented to him?
9. Is the accused teacher entitled to a hearing before the Board of Regents before he can be discharged?
10. Can the faculty committee discharge an accused faculty member with tenure?
11. Must the act of discharge be the act of the Board of Regents?

#### CONCLUSIONS

1. See analysis.
2. Yes.
3. See analysis.

4. No.
5. See analysis.
6. See analysis.
7. See analysis.
8. Yes.
9. Yes.
10. No.
11. Yes.

## OPINION

### **{\*511} ANALYSIS**

1. A portion of subsection A of Section 8 of the Faculty Regulations of Eastern New Mexico University, presently in force, reads as follows:

" . . . Charges of inefficiency or other charges should be tried before persons whose professions make them competent to judge; the accused having had full knowledge of the charges in advance, and opportunity to present his defense. . . "

We are of the opinion that the words "other charges" mean any other charges of whatsoever nature which properly relate to the broad general subject of ethical standards which is the subject matter of Section 8. When the entire section is read together we believe the draftsmen of the section intended the words to apply to this subject generally rather than to the restrictive area of inefficiency and related charges.

2. The answer to this question is yes. We are of the opinion that the Board of Regents can, if it so desires, appoint a committee composed of faculty members to investigate charges or allegations against a tenure teacher. This does not mean that the committee will, in fact, make a determination of guilt. Its duty is merely investigatory in nature, reporting its findings to the Board of Regents. On the basis of the committee findings, the Board of Regents could declare that the charges or allegations had no basis in fact or it could order the teacher to appear before it for a full hearing to determine guilt or innocence. This is to say that if the Board of Regents finds from the committee report that there is some evidence of wrongdoing by the teacher at that time, formal charges may be initiated.

3. We are of the opinion that the faculty committee is created in the discretion of the Board of Regents to have such power and {\*512} authority as the board deems

necessary for it to carry out its investigation. It would not, of course, have the power of subpoena etc. since the Board of Regents, itself, is not authorized to bestow such powers upon anyone. The committee may be composed of persons appointed by the Board of Regents.

4. As we view the creation of this committee, no formal charges need be presented to the committee. Its purpose would only be to investigate allegations of wrongdoing and reporting its findings to the Board of Regents.

5. The operations of the committee may or may not be open to the public. This would be discretionary to the board establishing the committee. The accused could not, as a matter of right, demand that the committee meetings be open. We reiterate its sole purpose would be to collect facts to prove or disprove allegations made.

6. The answer to your sixth question is no, the accused does not have the right to appear before the committee with counsel. We are of the opinion that the committee could exclude the accused himself from its meetings if it so desired. We point out, however, that for the committee to properly perform its function of collecting facts, it will by necessity have to hear the accused. We are of the opinion further that counsel for the accused need not be allowed to attend these committee meetings. There would be no adversary proceedings at this point since no formal charges will have been made. The attorney for the accused teacher should appear in the process when and if formal charges are brought against the teacher and presented to the Board of Regents for hearing.

7. We are of the opinion that if the committee recommends formal charges be brought, the Board of Regents may hire an attorney or designate any person it so desires to prosecute the case before the board. This is in keeping with standard procedure before state administrative boards and bodies.

8. The eighth question is answered in the affirmative. Subsection A of Section 8 of the Faculty Regulations requires that the accused teacher have full knowledge of the charges in advance. The tenure provision (Section 22) of the Faculty Regulations certainly implies the same. The only proper manner to inform a teacher of charges made against him or her in advance would be to reduce them to writing and present them to the teacher sufficiently in advance to allow the teacher to prepare his or her defense. Anything less would constitute something bordering on star chamber proceedings. If the committee report contains sufficient evidence of wrongdoing and a Board of Regents desires to prosecute these charges, a formal notice of charges and time of hearing before the board should be sent to the accused teacher.

9. We are of the opinion that under the tenure provisions, Section 22, of the Faculty Regulations, an accused teacher is entitled to a full legal hearing before the Board of Regents. This includes advance notice in writing and opportunity to present testimony and be represented by counsel.

10. As pointed out earlier, the faculty committee could not discharge an accused teacher. Its function would only be investigatory. The Board of Regents cannot delegate its responsibility to discharge a tenure teacher after a hearing.

11. As stated above in other terms, the act of discharge must be the act of the Board of Regents. This power and responsibility it can delegate to no one.

By: Boston E. Witt

Assistant Attorney General