

Opinion No. 69-104

September 5, 1969

BY: OPINION OF JAMES A. MALONEY, Attorney General

TO: Senator I. M. Smalley, Chairman, Joint Legislative University, Investigating Committee, Legislative-Executive Building, Santa Fe, New Mexico

QUESTIONS

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To what extent may the Board of Regents of the University of New Mexico delegate to subordinate administrative units the authority to administer and govern the University?

CONCLUSION

The duties of the Board of Regents may be "delegated" only in a manner which reserves to the Regents final administrative authority in the conduct of University affairs, and which insures that the Board will in fact exercise this authority. An attempt to vest final authority in subordinate bodies within the University is improper, and policies which either explicitly or by operation deprive the Board of ultimate supervisory powers over University administration are in conflict with the statutes and Constitution of this state.

OPINION

{*165} ANALYSIS

It is improper under the Constitution and statutes of this state for the Regents to ratify any agreement which would attempt {*166} to make effective such a delegation. The University of New Mexico is specifically placed within the range of the power of the state to regulate its educational institutions by Article XII of the Constitution of New Mexico. Section 13 of that Article further provides that "The legislature shall provide for the control and management of each of said institutions by a board of regents for each institution, consisting of five [5] members, who shall be qualified electors of the state of New Mexico, no more than three [3] of whom at the time of their appointment shall be members of the same political party. The governor shall nominate and by and with the consent of the senate shall appoint the members of each board of regents for each of said institutions." It is evident that, in establishing the University of New Mexico, the legislature contemplated that the Regents would exercise ultimate authority in the management and control of the University. Sections 73-25-3 and 73-25-7, N.M.S.A., 1953 Compilation provide:

"73-25-3. Powers vested in board of regents. -- The management and control of said university, the care and preservation of all property of which it shall become possessor,

the erection and construction of all buildings necessary for its use, and the disbursements and expenditures of all moneys, shall be vested in a board of regents.

73-25-7. Rules and regulations for university government -- The regents shall have power **and it shall be their duty** to enact laws, rules, and regulations for the government of the university." (Emphasis mine).

Mindful of the complexities involved in the administration of a comprehensive educational program, the legislature further provided for the exercise of discretion and judgment at subordinate levels, subject to the ultimate control of the Regents. Sections 73-25-8 and 73-25-9, N.M.S.A., 1953 Compilation, declare:

"73-25-8. Departmental organization. -- The university shall have departments, which shall be opened at such times as the board of regents deem best, for instruction in science, literature and the arts, law, medicine, engineering and such other departments and studies as the board of regents may, from time to time, decide upon, including military training and tactics."

"73-25-9. Departmental faculties -- Course of instruction -- Books -- Degrees and diplomas -- Removal of officers. The immediate government of the several departments shall be entrusted to their respective faculties, **but the regents shall have the power to regulate the course of instruction, and prescribe the books** and authorities to be used in the several departments, and also confer such degrees and grant such diplomas as are usually conferred and granted by other universities . . ." (Emphasis mine).

It will be observed that while some powers of administration and government are permitted the various faculty groups, these powers are characterized as those of "immediate government." It would appear that the explicit references to the Regents' duties and responsibilities require that the Board review and approve the actions taken below in exercise of limited power of immediate government. It would further appear that the legislature saw fit (Sections 73-25-1 -- 73-25-25) to make this duty of review and approval mandatory, see specifically Section 73-25-7, and not to be waived or circumvented by the Board of Regents.

The UNM Faculty Constitution, adopted in 1949 and most recently amended in 1969, provides in relevant part, (Article I, Section 2):

{*167} "Sec. 2 Responsibilities: The University Faculty shall have the right to review and final action in regard to the following: (1) formulation of institutional aims; (2) creation of new colleges; (3) major curricular changes and other matters which in the opinion of the President of the University or his delegate affect the institution as a whole; (4) requirements for admission and performance in general; (5) approval of candidates for degrees; (6) regulations affecting student life and activities; (7) policies of appointment, dismissal, and promotion in academic rank; and (8) general faculty welfare. **Provided however, that actions taken by the University Faculty shall be subject to the**

authority of the Regents in matters involving finance, personnel, and general University policy." (Emphasis mine).

As noted above, it is the clear intention of the legislature that the Board of Regents shall possess final authority in the general operation and government of the University. It is not within the power of the Regents to delegate this right of final action, if so contemplated by the Regents or the UNM Faculty Constitution, to any other group or body within the University.