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 Subject: SCFA 4/3/97 Minutes

Please note that the minutes to be approved at the next SCFA meeting (4/24/97) are from 4/3/97. You may wish to make this correction to your agenda.

MINUTES

[These minutes reflect discussion and debate at a committee of the University of Minnesota Senate or Twin Cities Assembly; none of the comments, conclusions, or actions reported in these minutes represent the views of, nor are they binding on, the Senate or Assembly, the Administration, or the Board of Regents.]

SENATE COMMITTEE ON FACULTY AFFAIRS

Thursday, April 3, 1997
 Regents Room
 3:00 - 5:00 p.m.

Present: Daniel Feeney (chair), Josef Altholz, Gary Balas, Carol Chomsky, Cheryl Coryea, Robert Fahnhorst, Judith Gaston, Richard Goldstein, Rolland Guyotte, Richard McGehee, Jack Merwin, Kevin O'Laughlin, Richard Purple, Naomi Scheman, Bernard Selzler

Regrets: Mary Dempsey, Carol Miller, Anne Pick,

Absent: Carol Carrier, Samuel Myers

Guests: Michelle Gross (Grants Management), Fred Morrison (Law School)

Others: n/a

[Included is are discussions on faculty indemnification, faculty appointment terms and the semester calendar, and Grants Management's Information Access Project.]

1. APPROVAL OF THE AGENDA

The agenda was approved as amended to include a discussion with Michelle Gross from Grants Management.

2. REPORT OF THE CHAIR

Transition in Administration: Professor Dan Feeney said that no final announcements have been made regarding changes in administration by President-Elect Mark Yudof. A statement may come at the end of April.

List of Issues: A number of upcoming issues before the University will need to be addressed by SCFA including the fiscal 1998 compensation plan. Other issues that may be discussed later are semester conversion (i.e., sabbaticals and workloads), tenured-nontenured-nonpermanent appointments, faculty indemnification, intellectual property, and cafeteria benefits.

12 Month Pay Disbursement for Faculty with 9 Month Appointments: A delayed biweekly payroll will be available starting the beginning of July 1997 that will allow faculty (especially those with B-appointments) to spread their salary disbursement over a 12 month period. Professor Fred Morrison explained that ALL faculty will be switched to biweekly payroll as of September 1997.

3. APPROVAL OF MINUTES

The February 27 and March 13 minutes were approved.

4. FACULTY INDEMNIFICATION

Professor Carol Chomsky distributed copies of the AAUP guidelines for faculty indemnification policies. Professor Morrison proceeded to briefly explain the history of indemnification at the University, and define defense, indemnification, and representation. Defense is providing a lawyer and/or other investigation services to represent a University employee if that person is sued or accused in some way. Indemnification involves the payment that results from the defense of a client. Representation includes standing for a faculty member outside of litigation (i.e., protection of faculty regarding the Data Practices Act). State statues do not address issues of representation. Therefore, this is an internal issue that can be promoted to enhance good morale.

Defense and indemnification are available to a faculty who are is acting "in the scope of [their] employment." Professor Morrison provided an example of a Nabisco salesman who was upset because his biscuits were placed below those of Kebler. The store-keeper was reluctant to move either of the products, to which the Nabisco salesman punched the store-keeper in the nose and broke it. The Minnesota Supreme Court ruled that the sales man was acting "in the scope of his employment." Therefore, Nabisco was responsible for broken nose.

Faculty are not within the scope-of-their-employment if they are consulting for pay. Those activities that are within the general description of one's employment are with the scope-of-employment and allow one access to defense and indemnification. Coverage is not available in cases were the faculty member exercised "willful neglect."

Regarding representation, Professor Morrison said that General Counsel is torn between two positions. If an outside party requests a faculty member's research notes based on the premise that this material is public, the General Counsel must determine if he is to providing a balanced judgment whether the material is public, or if they are to vigorously represent the faculty member's right to keep the material confidential. The General Counsel has expressed that he represents the Board of Regents primarily, and for the faculty if the two do not contradict. Professor Morrison said this is why defense and indemnification issues can potentially be adversarial between the faculty and University administration.

Potential solutions include a (1) review of indemnification procedures, (2) faculty group insurance policy for outside legal counsel if needed. Professor Morrison said that he does not believe that the problem is with the policy, but with the administration of the policy (i.e., The University has been expanding its definitions of "willful neglect.").

Discussion with the committee:

- * The current state indemnification policy was written to cover snow-plow operators who run over people's.
- * The National AAUP can step in to defend a faculty member in some special case.
- * Not all cases are negative. There are cases when the University operates under good faith to represent faculty.
- * If the faculty choose to employ an insurance policy, they could meet with the same problems of coverage with a body that understand very little about the academic enterprise.
- * One could be "hanging" oneself by completely disclosing all the circumstances of a case to the General Counsel.

The committee continued discussing their concern between internal and external coverage of faculty indemnification. Professor Morrison recommended that the Faculty Senate could present a recommendation to the President, requesting that he consult an appropriate Faculty Senate body before deciding not to indemnify a particular faculty member. A committee member recommended that the faculty need to be involved in the hiring of the General Counsel. Professor Feeney said that he, Professors Joe Altholz, Carol Chomsky, and Assoc. V.P. Carol Carrier will meet with the General Counsel. Professor Morrison also recommended that the group could review the documents that are used in the University's indemnification process. Additional comments can be forwarded to Professor Feeney.

5. FACULTY APPOINTMENT TERMS AND THE SEMESTER CALENDAR

Professor Richard Goldstein proceeded to review the semester calendar developed by the Senate Committee on Educational Policy. He also explained that Professor Peter Zeterberg, Chair of the Semester Conversion Committee, told him SCFA is responsible to make the final recommendation to the administration regarding the start and end dates for faculty on nine month appointments. Some units are interested in a more flexible start date than that of the Twin Cities campus calendar (i.e., Law School, Morris Campus, etc.). Professor Morrison noted that the start and end dates will not be as critical if a faculty member chooses to have her/his pay distributed over the new twelve month schedule. Professor Goldstein recommend a fixed start and end date for nine-month faculty appointments (i.e., August 21 - May 20 or August 25 - May 24). This simplifies Grants Management's responsibilities if a faculty member is eligible for grant support over the summer. Grants Management needs specific pay dates over the term of the grant that may last three to five years.

Professor Chomsky, who also sits on the Semester Conversion Committee, said that there is likely to be only one waiver/alternative from the established semester calendar. Another committee member identified three

issues that were key to the discussion:

When do classes begin?

When are faculty legally required to be on campus?

When do faculty get paid?

The committee continued to discuss whether faculty need to be on campus when their appointments legally begin. There is a current assumption that faculty are to be on campus on the start day of their appointment term. One member recommended that SCFA should seek to consult with those units that have earlier start dates. It would be unfair to set start dates for faculty that may be the same day that classes begin.

6. GRANTS MANAGEMENT'S INFORMATION ACCESS PROJECT

Professor Feeney introduced Ms. Michelle Gross from Grants Management attending to present the new Information Access Project that will be going to the University Executive Council for approval in the near future. The objective was to make information available to PI's, and improve usefulness and usability of the information system. The data included in this discussion is public information (as defined by the Data Practices Act) available to employees of the University that can only be viewed (not altered). Therefore, although this only addresses public data, it can only be viewed by University personnel, nor can the data be altered. Private data will remain confidential (i.e., SSN, home address, phone number, gender, veteran status, student grades, etc.). Salary is public data.

The team that reviewed the University information system recommended that new PI's should be given automatic permission to review all of the public data. Ms. Susan McKinney, the University Records Manager, informed this team that there is some data that is not necessarily private, depending on the needs of the project (i.e., health records, research results, passwords, etc.). Mr. Robert Fahnhorst noted that retirement accounts are not held by the University.

All of the public information is available to external audiences, but not through the same means that are provided for University employees. The committee members were concerned about the data that may not be private as listed above. One committee member noted that health records may need to be available if a research is working with animals, and certain vaccinations are required. Ms. Gross explained that employees with access to this information must sign a statement assuring that they will not allow others to use their privilege. Failure to comply with this requirement is subject to termination.

Ms. Gross added that this item will be going before the University Executive Council for approval at the end of April. A committee member was concerned that this presentation exemplifies a type of consultation that is "telling more than asking."

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