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Subject: SCFA 5/8/97 Minutes

MINUTES

SENATE COMMITTEE ON FACULTY AFFAIRS

Thursday, May 8, 1997
 140 Nolte Center
 3:00 - 5:00 p.m.

[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.]

Present: Daniel Feeney (chair), Josef Altholz, Gary Balas, Carol Chomsky, Robert Fahnhorst, Rolland Guyotte, Richard McGehee, Jack Merwin, Kevin O'Laughlin, Anne Pick

Regrets: Carol Carrier, Mary Dempsey, Judith Gaston, Richard Goldstein, Naomi Scheman, Richard Purple, Bernard Selzler

Absent: Cheryl Coryea, Carol Miller, Samuel Myers,

Guests: Assoc. Dean Frances Lawrenz (Graduate School)

Others: n/a

[In these minutes are discussions on faculty indemnification, the intellectual property policy, and academic misconduct policy.]

1. REPORT OF THE CHAIR

Administrative Review: Professor Dan Feeney said that the document/procedures developed to review administrators (deans and above) at the University has been developed and tested. It now is ready for SCFA review and should come before the committee before the end of the year.

Data Practices Act Guidelines: A document was presented to SCFA several months ago. General Counsel and a subcommittee of SCFA are finishing the final revision of this document. It may or may not come up for final review this year by SCFA. Professor Feeney will let the incoming SCFA chair, Professor Kent Bales, know of any loose ends that will need to be addressed next year.

Tenure: There is not a lot of development. Specifically, there has not been much communication between the administration and the Board of Regents. The Tenure Subcommittee has met, and has reviewed the potential items of difference between the administration and the faculty regarding the amendment of the Sullivan II code. One member of the Subcommittee noted that they are trying to develop an effective strategy so that the Tenure Code revisions can be completed before President-Elect Mark Yudof officially steps on board. The strategy is to develop lines of appropriate communication so that "things don't blow up again."

Compensation Committee: This committee is to be re-constituted including representatives from the Civil Service Committee, the P&A Advisory Committee, and faculty governance.

Meeting with the State of Minnesota Health Care Negotiators: Given the potential changes in the State of Minnesota health care options, SCFA and other committees on campus are trying to arrange a joint meeting the respective state personnel. To date, this has been difficult to arrange. This is also is an item that may roll-over into next year.

Medica Premier: Medica is considering eliminating the availability of its "Medica Premier" plan for the State of Minnesota employees. Mr. Bob Fahnhorst said that approximately 30% of the University covered employees use this plan. Medica has apparently lost millions of dollars with this program. The state is still negotiating with Medica on this issue. Mr. Fahnhorst speculated that the end result will be a revision of the Medica Premier plan (under a different name). One committee member said that faculty should be alerted of this situation as soon as possible so that those potentially affected by the changes are advised of the situation before the Summer break. Some faculty might be willing to pay more money for the Medica Premier plan. Nevertheless, this option is not being proposed.

2. FACULTY INDEMNIFICATION

Professor Feeney provided the committee a brief review and said that he and Professor Carol Chomsky had met with General Counsel, Mark Rotenberg, since the last meeting. Mr. Rotenberg seems to be much more sympathetic to faculty interests than the committee had speculated. Professor Chomsky said that although there are unavoidable issues of conflict between administrative and faculty interests, Mr. Rotenberg is sensitive to faculty concerns in an effort to be as comprehensive as possible to address faculty cases.

Data: Mr. Rotenberg said that all University research data, until it is published, is proprietary. A private company would not disclose its data from research in light of the potential intellectual and financial losses. To date, the University has been able to defend this same position for itself. He would like to develop a joint General Counsel / faculty coalition to go before the legislature. At this point a private enterprise can request (but cannot necessarily gain access to) data being produced at the University. Big industry does not want any limitation to access.

Proactive Defense of Faculty:

* The University has facilitated prosecution of people illegally hindering

- faculty research (i.e., animal rights activists), and has had restraining orders placed on students who harass faculty for various ideological reasons.
- * The General Counsel is active in supporting intellectual property licensing.
 - * If faculty are subpoenaed by a grand jury, private attorneys are hired to handle the situation. This is done because the General Counsel's office does not have expertise in criminal law. It is to the advantage of the faculty member that the University hire someone with greater expertise (at the University's expense).
 - * The University will not prosecute cases related to defamation of a faculty member (or administrator).
 - * When there is a conflict of interest, an outside counsel may be hired.
 - * General Counsel does defend and represent faculty who's research is falsely reported by outside parties.

In the data base held by the General Counsel's Office, since 1992, 63 cases have arisen involving defense and indemnification. Of these, only about 25% involved faculty. All but 3 of the 63 were accepted for indemnification, none of which involved faculty. Three (3) partial denials did at least involve one faculty member. The Mr. Rotenberg is willing to issue a report on this information, if SCFA so desires. He also is willing to provide a description of how he interprets the Regents Indemnification Policy. Professor Chomsky said the General Counsel interprets the Regents policy in a manner that is favorable to the interests of SCFA and the faculty.

This conversation initiated because there was suspicion that a General Counsel visit is not necessarily in the best interest of a faculty member. Mr. Rotenberg said that his office operates differently. He also indicated that if it became apparent that there was an institution/faculty conflict of interest, or potential criminal act involved, the representative from General Counsel would read the faculty member their Miranda Rights.

SCFA members said that they would like the interpretation of the Regents policy would be helpful. Professor Chomsky said that the General Counsel is favorable to an indemnification appeal committee (an appeal committee for faculty who are denied indemnification).

Professor Feeney said that he would ask Mr. Rotenberg to provide SCFA with the above mentioned interpretation, and copy of and discussion on the pre-indemnification/defense questionnaire. It is anticipated that a meeting between SCFA and the General Counsel may need to be postponed until next year (academic).

3. DISCUSSION ABOUT THE INTELLECTUAL PROPERTY AND ACADEMIC MISCONDUCT POLICIES w/ Assoc. Dean Frances Lawrenz

Academic Misconduct Policy:

Dr. Lawrenz proceeded to describe the past changes to the Academic Misconduct Policy that were discussed at a former SCFA meeting. The proposed change is to eliminate all of the procedures from the Regents policy. The procedures will become part of the University policy which can be adapted when need be, and distinguish between the policy and procedures portions of the existing document. Therefore, the new Regents policy would be only 3 pages.

Regents Policy, Section 3: Change "recommend" to "approval of the President (as recommended by the Vice President for Research) and approval of the Faculty Senate. The committee proceeded to discuss the definitions in the draft policy and some of the corresponding language.

Dr. Lawrenz directed the committee to the University Policy, Section I.B. The long paragraph detailing interim administrative action (to protect funds, etc.) was provided by the Senate Research Committee. Dr. Lawrenz noted a new change in the policy -- The responsible administrator cannot be from the same unit as the respondent (faculty member in question). This definition is detailed in the definition of responsible administrator (II.D.). The Scientific and Scholarly Advisory Board (SSAB) is satisfied with the document, and is in the process of

reviewing it in detail. The group continued to discuss a number of additional items, and affirmed that the document could proceed through the Senate structure.

Intellectual Property Policy:

Dr. Lawrenz said that the draft policy before the committee was assembled by a committee rather than resulting from a rewrite of an existing policy. The policy has been drafted to state that any royalties received up to \$10,000 may be retained by the creator. Those royalties exceeding \$10,000 would be divided into thirds: one third for the creator personally, one third for your college and department allocated to the creator's research efforts, etc., and one third for the University endowment.

One faculty member noted that a creator will not know if they have earned over \$10,000 until the year has ended and s/he receives her/his royalty statement (and later receives a check). Therefore, there is a need to develop procedures that would accommodate this. In addition, taxes may have been assessed on the individual before the split has occurred. Dr. Lawrenz proposed that the policy could be written such that anyone receiving more than \$10,000 in one year would be subject to the divisions listed above on the following years. Other points included:

- * The payment to the University may occur in a different tax year than when the creator received the royalty payment.
- * It may be difficult to regain the amount of tax deducted that would have gone to the University.
- * SCFA recommended that Dr. Lawrenz speak with one of the tax attorneys in the General Counsel's office.
- * Some type of mechanism would need to be established such that the amount for the University would not go to the creator.
- * Publishers own the copyright of most academic work created by the faculty member. They are actually in charge of the royalty distribution.
- * Faculty should be able to disclose this University policy to the publisher.
- * Items created during the faculty member's personal time, not using University property, exclusively belongs to the creator. The policy should reflect that certain University facilities are public (i.e., libraries).
- * "Creators" needs to be defined for copyrights. Confusion exists as to who is the creator within a group that develops a copyrighted item (i.e., software).
- * The current Technology Transfer Policy allows the creator to retain 75% of income generated by a item. Patented material is divided in thirds. Non-patentable software is 75%. Software covered under the educational materials policy is 50/50. The Intellectual Property Policy is an attempt to provide a consistent provision.
- * This policy could serve as a disincentive.
- * In comparison to other universities, this draft policy is middle of the road in terms of what it provides for the faculty and what the University would retain.

The committee decided that they would revisit this item. SCFA was interested in receiving more information on similar policies at peer institutions.

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