

Office for Student Affairs  
Long Range Planning Committee

Final Report on A Proposed  
Policy on Advertising and Commercial Endorsements

October, 1983

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## INTRODUCTION

In the fall of 1982, Vice President Frank B. Wilderson, Jr. in consultation with the Coordinators of the Office for Student Affairs requested that the Long Range Planning Committee conduct an extensive study of the issue of commercial endorsements by the University in general and OSA in particular. His request included a charge to develop recommendations for a policy on advertisements and for commercial endorsements by OSA departments. Specifically, he asked the Committee to:

- review the pertinent literature;
- review current institutional policies;
- survey the experience of other schools and institutions;
- outline the benefits and liabilities of adopting a policy restricting advertising and endorsements, including specifying limits and criteria for accepting and evaluating advertisements;
- outline the process by which a policy could be implemented.

Since November of 1982, the Long Range Planning Committee has met (as a full Committee) approximately ten times to discuss issues and formulate recommendations. The number of meetings of the full Committee, however, does not adequately reflect subcommittee meetings and the extensive research efforts of individual Committee members in a variety of areas related to this issue. This report provides a summary of the background information relevant to the study and development of a proposed policy on advertising and commercial endorsements. This summary is followed by the Committee's conclusions and recommendations.

## EXTENT OF ADVERTISING AND COMMERCIAL ENDORSEMENTS IN OSA

As a first step in the Committee's investigation, an effort was made to identify those OSA units with actual or anticipated advertising income in 1982-83. Each OSA Coordinator was contacted to determine which of his or her units claimed income from advertising revenues. Discussions with individual unit directors followed to identify the nature and approximate amount of funds derived from advertising and commercial endorsements.

<u>Unit</u>	<u>Nature of Advertising/Endorsement</u>	<u>Annual Amount</u>
Recreational Sports	Rec Rundown, Scholarships, Programs	\$70,000
Coffman Union	Whole Coffeehouse promotion	2,500
St. Paul Student Center	Recreation Center promotion	500
Student Support Services	Class Schedule	55,000
Orientation Office	"It's Your Move" booklet	10,000

Under discussion (but not implemented):

Off-Campus Housing	Housing brochure	2,000
SODC	Subsidize fall leadership retreat	1,500

## LITERATURE REVIEW

The Long Range Planning Committee found an absence of any literature that directly addressed the question of the effects of advertising on campus either as it relates to the financial support of programs and services or to the use of products

by college students. An E.R.I.C. search was conducted which attempted to locate published articles on the effects of advertising on campus. Nothing, surprisingly, was found on this topic.

A review of selected issues of the Chronicle of Higher Education during 1982 revealed several articles that indirectly addressed the issue in the context of commercial publishing, sources of revenue from video games, and university contracts with private industry. The following observations are made from reviewing these articles:

- a dependable source of revenue is generated by outside business interests which defray actual costs to students as consumers;
- for university personnel to enter into contractual arrangements requires skill in this type of business negotiating;
- the most important problem is the potential distortion such relationships may cause to academic objectives and values;
- universities not only have a responsibility to maintain (academic) values but also to satisfy faculty, staff, students and the general public that they are being maintained; and
- problems arising within universities in connection with commercialization (of basic research) which stem from lack of communication between the two and equally the problems arising in industry have been ignored by academia.

One particular article brought to the attention of the Long Range Planning Committee was "The Problem of Alcohol Advertisements in College Newspapers" by James R. DeFoe, Ph.D. and Warren Breed, Ph.D. of Research Associates, Institute for Scientific Analysis. This article addressed the anti-educational theme of alcohol advertising in college newspapers, the pressure such advertisements puts on students and the overall effects of advertising. DeFoe and Breed summarize:

"Alcohol ads in campus papers - both as to quality and quantity - contribute virtually nothing to the basic purposes of education. The exact nature of these goals is open to dispute; it is suggested these goals are learning, intellectual discipline, growth, and the development of the ability to cope with complexity and ambiguity and the ability to make intelligent decisions. What the alcohol ads seem to promote is the temptation to chuck the hard work of study and intellection for the indignity of escape".

DeFoe and Breed were not aware of any published empirical studies on the effects of alcohol ads in college papers or in any other medium. However, correlations have been drawn between alcohol advertising and other behaviors among college students, such as a study by Straus and Bacon who reported that:

"...1.8% of the students sampled had been arrested for driving while intoxicated in the past year. When applied to a cohort of 10 million students, this would make some 180,000 students with DWI's in the past year alone".

Similar evidence is available from the University's Special Counseling Office and Housing Office, both of which note a substantial relationship between drug and alcohol use and incidents of student misconduct.

## REVIEW OF UNIVERSITY POLICIES

The Long Range Planning Committee reviewed University policies to determine whether or not any existing policy has a provision directly related to the use of advertising in University publications or by University departments. Among the policies reviewed in detail were the Regents' Policies on:

- Affirmative Action and Equal Opportunity
- Alcoholic Beverages
- Use of University facilities
- Business Enterprises
- Consulting and Outside Affiliations
- Outside Consulting, Service Activities and Other Outside Work
- Use of the Corporate Seal
- Educational Materials
- Environmental Health and Safety
- Fundraising
- Minnesota Union
- Publications and Publicity Regulations
- Purchasing

None of these policies directly address the issue of use of advertising, although various policy statements, by implication, are relevant to the development of such a policy. The policy statements and their implications are:

- o The University has a commitment to non-discrimination, equal opportunity and affirmative action in all activities including its conduct of business with external agencies, housing, employment and educational access (Affirmative Action and Equal Opportunity Policies - 1969, 1976, 1977, 1979).

Implication: Neither the nature of advertisements nor the businesses or groups who are potential advertisers should jeopardize the University's equal opportunity/affirmative action commitment.

- o The University has an interest in the use of its name, logo, corporate seal and activities conducted in its interest and by its staff and faculty (Policy on Use of University Facilities, 1976; Policy on Outside Affiliations, 1933, 1957, 1973, 1980; Policy on Outside Consulting, Service Activities and Other Outside Work, 1982; Policy on Use of Corporate Seal, 1939, 1982; Policy on Publications and Publicity, 1940; Policy on Fundraising, 1965).

Implications: Advertising should not constitute endorsement by the University of products, businesses or services, or be used in such a way so as to imply endorsement.

- o Sponsorship or co-sponsorship by external University groups or businesses of activities or programs conducted on the campus must be related to the University's educational mission defined in a broad sense and is prohibited when the activity results in profit or private gain by non-University groups (except as provided for through rental agreements). (Policy on use of University facilities, 1974; Policy on Business Enterprises, 1980).

Implication: The use of advertising by University (OSA) departments should be restricted to supporting programs or activities that have a relationship to the University's broad educational mission and do not result in direct profits for advertisers.

- o The University has proprietary interest in its educational materials, primarily defined as instructional materials but also as materials for which the author has used some part of the time for which he or she was compensated by the University for their development (Policy on Educational Materials, 1967).

Implication: If OSA publications are determined to be under the jurisdiction of this policy, use of advertising in these publications must be consistent with all its provisions.

- o University policies acknowledge and/or specify lines of reporting, review, approval and administrative relationships in order to achieve compliance with the policies as they are implemented (all policies).

Implication: A policy on advertising should include an approval, review, monitoring and/or grievance mechanism.

#### REVIEW OF POLICIES OF OTHER INSTITUTIONS

The process of reviewing the policies of other institutions relied heavily upon information available to the Committee from various OSA staff members. Dr. Donald Zander reported on the fall, 1982 Allerton Conference (University of Illinois) of Student Personnel Vice Presidents. Mr. Carl Nelson received materials from the Ohio State University. Ms. Brenda Tracy reported on the fall, 1982 Student Activities Directors Meeting she had attended. Mr. Bob Barnett contacted the University of Kentucky as the result of interest in this issue indicated at a meeting of Student Affairs Vice Presidents. Dr. Barbara Foster shared information she had previously obtained regarding the reactions of institutions who had contracted with University Communications, Inc. to publish their class schedules. These reports and materials present a mixed picture on advertising policies, but leave a general impression that other institutions do not have well articulated or written statements.

#### o Findings from the Allerton Conference

Dr. Zander reported that representatives from over 100 public and private institutions were present. Policies ranged from non-existent to total advertising bans. Examples include:

- University of Indiana: no ads are allowed in school publications, an "all or nothing" policy which the university feels helps it avoid freedom of speech issues (related to selective bans).
- University of Illinois: no alcohol or cigarette ads or sponsorship on campus.

Dr. Zander reported that 40-50 percent of the schools represented at the conference did allow alcohol and tobacco advertising/sponsorship.

o Findings from the Student Activities Directors Meeting

Brenda Tracy reported that only one of 26 schools represented had a policy (University of Cincinnati has a Sales and Solicitation Committee and actively controls the use of the University Seal). Tracy's impression was that there is little that is written, much of what passes for policy is by way of informal agreement and past practice.

o The Ohio State University

At OSU a policy on commercial advertising exists and its major provisions are:

(a) to regulate and control the use of the University's name and other identifying marks and property in advertising, (b) to ensure that vendor and other forms of advertising does not reflect unfavorably on the University, (c) that any references to the University use of a product or service are made only with prior approval and consent of the University, (d) no vendor...shall appropriate or make use of the University's name...without the written consent of the Office of Business and Administration, (e) the Assistant Vice President for Administration...shall be responsible for the implementation of the Section.

The OSU policy appears to deal primarily with vendors whose advertising would make use of the University name. No reference is made to other advertising issues such as: selective bans on advertising, decision-making procedures (other than those related to the above). A review authority does exist.

o Findings from a Meeting of National Student Affairs Vice Presidents

Twice each year a select group of Student Affairs Vice Presidents from institutions across the country meet to share ideas and discuss issues. At the 1983 winter meeting, the item of "Student Affairs and Advertising" was placed on the agenda. The Long Range Planning Committee contacted the individual (Vice President Robert Zumwinkle, University of Kentucky) who had brought this issue to the Vice President's group for discussion requesting information both on the discussion held by the Vice Presidents as well as on other institutions which had implemented policies or procedures regulating advertising. His response indicated his efforts were roughly comparable to those of the Long Range Planning Committee:

"Our progress, at this point in time, (February, 1983) is about the same as yours. We have requested policies from other institutions, and are finding quite often that they have no policy in place".

o Experience of Other Big 10 Institutions

In the Spring of 1982, Dr. Barbara Foster was asked to review the experience of other Big 10 institutions with University Communications, Inc. to determine the reactions to the use of advertising in class schedules. Dr. Foster located three universities (Illinois, Iowa and Michigan) who had entered into contractual arrangements with UCI for production of class schedules. Each reported positive reactions presumably due to UCI's responsiveness to academic objectives, values and sensitivities. In addition, contractual agreements with UCI provide for final approval of all advertisements by the institution. Dr. Foster found, however, that no institutions she contacted, had formal written policies on the use of advertising.

The evidence made available to the Committee suggests that few of the institutions contacted have explicit policies regarding advertising. Even those that do have policies do not attend to all of the concerns that have been raised by the Long Range Planning Committee. There is noticeable lack of policy in the area of liquor and tobacco advertising. There is little reference to legal implications of various forms of advertising, advertising bans, etc.

### Implications

- University staff members who must deal with advertising issues would appear to be functioning in a relative void with respect to guidelines and policies, thus are vulnerable when seeking guidance and must deal with abuses, public repercussion after the fact.
- In the absence of policies and guidelines (as well as appropriate legal opinions), universities would appear to be vulnerable when abuses occur and/or when selective advertising decisions are made which ban certain products.
- Universities have not come to grips with the value-based issues, with the issue of the degree to which the institution should control advertising of products which can potentially lead to abuse and dependency, with the so-called freedom of speech issue.
- Should the University of Minnesota establish clear guidelines and policies, it could very well be setting a standard for other universities as well as responding to its own situation and community.
- The absence of policies and guidelines leaves staff and the University of Minnesota vulnerable to public criticism when advertising abuses do occur.

### ADVERTISING PRACTICES OF UNIVERSITY AND COMMUNITY PUBLICATIONS

o University Relations. Paul Blake, Associate Director of University Relations, is responsible for approving ads in the Student-Staff Directory. Although no written policy exists, Blake stated that University Relations adheres to general University policies regarding equal opportunity and bans ads that would imply University endorsement of a product. Ads with alcoholic beverages are permitted.

o Minnesota Daily. Two relevant sections from the Daily's general provisions on advertising state:

"The subject matter, form, or wordings, illustrations and typography of all advertising is subject to approval of the Publisher, but unless otherwise authorized in advance, no change will be made without the consent of the Agency or Advertiser. Advertising which attacks, criticizes or demeans any individual, race, religion, sex, institution, firm, business, profession, organization, or affectional preference shall not be accepted."

"Advertising of alcoholic beverages is accepted in accordance with Minnesota State Law:

- A. No price claims may be made.
- B. No liquor coupons will be accepted."

o Community Publications. Several publishers, external to the University, were contacted regarding their advertising policies. Those contacted included: City Pages, Mpls./St. Paul Magazine, the Minneapolis Star and Tribune, and the St. Paul Dispatch and Pioneer Press. All place some kind of restriction on advertising. Potentially the most restrictive is City Pages which States:

"The publisher reserves the right to refuse any advertisement without explanation."

A slightly more explicit policy on alcoholic beverages and cigarette advertising is that of the Minneapolis Star and Tribune which is stated in full:

"Decline ads for mail order cigarettes.

"Advertisements for alcoholic beverages must meet State and Federal laws.

"Local liquor dealers/stores must have their advertisements approved prior to publication by the Commissioner of Public Safety, Liquor Control Division, State of Minnesota.

"A local store or restaurant may not advertise the price of 'mixed drinks'."

#### REVIEW OF INDUSTRY STANDARDS

The Long Range Planning Committee received extensive information regarding industry standards for the advertising of alcoholic beverages and cigarettes. This information is summarized as follows:

- o Cigarettes: Industry self-regulation led to adoption of a Code which, inter alia, bans cigarette ads directed primarily to persons under twenty-one years of age, bans ads in "school, college or university media (including athletic, theatrical and other programs)"; bans distribution of samples to persons under twenty-one or on campuses, school facilities, fraternities and sororities.
- o Distilled liquor: Voluntary industry self-regulation forbids any advertising in college or university publications and athletic programs unless the legal minimum age for drinking distilled spirits is eighteen.
- o Beer: The brewing industry does not have an advertising code as such.
- o Wine: The wine industry has a "Statement of Principles" which describes "good advertising and labeling" practices.

#### DISCUSSIONS WITH UNIVERSITY AND OSA PERSONNEL

The Long Range Planning Committee contacted and interviewed several individuals from within the University Community to determine their opinions and experiences with advertising. The discussions are summarized below:

o Professor Robert Jones, School of Journalism and Mass Communication:

When asked about the issue of advertising in general, Professor Jones indicated that in less financially constrained times, advertising was not as necessary and might have generated more of an adverse reaction if it had been introduced five or ten years ago. He further stated that use of advertising must be weighed against the alternatives (e.g. printing only one copy of the class schedule per college office and requiring students to use those or charging students for class schedules). It was his opinion that reactions to the use of advertising must also be viewed in relation to the reactions that might be stimulated by the kinds of alternatives to advertising mentioned above. He informed the Committee that a number of previously "pious" organizations such as PBS were moving in the direction of expanded advertising and increased commercialism in order to cover costs.

Professor Jones indicated that it was unlikely that individuals would associate particular products with the University, provided that there was sufficient variability in the kinds of ads placed in such documents as the class schedule or in a publication such as the Daily. He also said that variability in the kinds of ads also minimizes the negative reactions that individuals might have to a particular ad they find offensive. With respect to the task of developing a policy regulating advertising practices of University departments, Professor Jones stated a key issue was that of avoiding legal complications related to prior censorship and first amendment rights of potential advertisers.

o Professor Pat Mueller, Office of Recreational Sports:

Professor Mueller met with the Long Range Planning Committee to discuss the experiences of the Office of Recreational Sports which has the largest advertising income of any OSA department. His views are summarized as follows:

- Without advertising income, the Recreational Sports department would be unable to provide a number of important services and programs it currently offers including the "Rec Rundown", awards, scholarships and special events.
- The freedom of choice of an individual should be respected and thus advertising, endorsement or sponsorship of University activities by breweries or other potentially controversial sponsors should be permitted.
- Moreover, the possibilities of obtaining support from "non-controversial" sponsors (e.g. athletic equipment or footwear manufacturers) are limited.
- Guidelines on advertising practices would be helpful since they would enhance the ability of Rec Sports to delineate conditions on use of funds contributed by advertisers and sponsors in advance.
- Competitive bidding would be appropriate and possibly helpful in that a greater number of potential sponsors would be informed of the opportunity.

- A central review and approval process for the acceptance of specific advertisements would hamper individual departmental efforts to obtain such funds.

o Dr. Barbara Foster, University Publications Center:

Barbara Foster and Judith Shalaby of the University Publications Center (Student Support Services) met with the Long Range Planning Committee to discuss the issue of advertising in the class schedule. Some of the major points that emerged from the discussion were:

- A policy statement had been developed to guide the unit in class schedule advertising.
- An advertising review authority had been established which consisted of a single individual, followed by a committee if necessary.
- Consultation within the University and with other universities had been conducted prior to the decision to allow advertising in the class schedule, including review and approval by the OSA Coordinators and Vice President.
- A prominent firm had been contracted with for the purpose of generating revenue/saving through class schedule advertising.
- A cost savings of a substantial nature (\$55,000, approximately 50% of the original budget) had been realized through advertising in the class schedule.
- Advertising allowed the class schedule to be produced without cost to the students/faculty/staff.

The advertising policy adopted by the Publications Center includes the following guidelines:

"any contract for advertising should include the right of the University (or unit) to review all advertisements and to veto specific ads that do not conform to the University's policies regarding equal opportunity (i.e., to reject any ads that are racist, sexist, etc.),

"advertisements for liquor, including wine and beer, should be prohibited,

"advertisements that imply University endorsement should be prohibited,

"a disclaimer should always be placed in a prominent position on any material containing advertising."

Although a sound process of consultation was utilized in formulating the class schedule advertising policy, no clearly established procedures were in existence to assist the Publications Center staff in making its final decision. Little by way of guidance was available from the three other universities contacted during the consulting process; no publications offices at those universities had formal written policies on ads. Some guidance was available in establishing an advertising policy, once it was decided

that advertising should be allowed in the class schedule; general principles established by University Relations were followed, in modified form, by the Publications Center staff. In general, however, there was not a clear policy for the staff to follow.

An ad hoc process was established regarding the review of advertising; little or no guidance was available to the staff in setting up this review mechanism. The decision to ban advertising of alcoholic beverages was made by the unit and represented an extension of the University Relations guidelines; the decision was a "value-based" one. The presence of this advertising contract has had a very beneficial economic impact; to eliminate advertising would mean that the University would have to face some very difficult options: charge for schedules; reduce the number printed; use cheaper materials.

### Implications

It could be concluded from the above that policies or sets of procedures would have assisted and could now guide the efforts of the Publications Center and the Office of Recreational Sports. These would include:

- a policy on the process of initial consultation and decision-making,
- a policy on the monitoring of advertising,
- a policy on contracting for advertising.

## PROPOSED POLICY ON ADVERTISING AND COMMERCIAL ENDORSEMENTS

### Introduction

The Long Range Planning Committee faced a dilemma in attempting to draft a policy on advertising for OSA. While the charge to the Committee limited the proposed policy to OSA, the issues associated with advertising are issues faced by the University as a whole. Therefore, the Committee is proposing a policy the provisions of which will apply to the entire University rather than to OSA only. The Committee recommends that OSA adopt the policy statement and that the Vice President for Student Affairs initiate action to bring the proposed policy before the appropriate authorities for review, revision and approval. During the interim, it is recommended that OSA procedures be put in line with the policy's provisions.

Proposed University Policy Statement on Institutional-Departmental Commercial Advertising

The University of Minnesota, as an acknowledged and respected leader in higher education within the State and Nation, has a legitimate interest in making certain its name and reputation are not formally associated with business enterprises whose products/services (either in themselves or as they are portrayed to the public), promote behavior or attitudes antithetical to the institution's mission. The acceptance of advertising revenue or support from such enterprises by the University or any of its departmental units could constitute such a formal association. It is, therefore, in the best interests of the University to establish uniform restrictions, conditions and review procedures and agencies as outlined below to ensure the prudent use of advertising as a legitimate source of institutional and departmental support as well as to avoid inappropriate formal associations.

1. The University of Minnesota has a substantial interest in reducing the general consumption of products that have been shown to be health hazards or products that have been significantly misused or abused by segments of society. To advance that interest the University prohibits the acceptance of any advertising of alcoholic beverages. The University also adheres to the written code of cigarette advertisers which prohibits tobacco advertising in school, college or university media.
2. All advertising accepted on behalf of the institution or any of its departments must carry the disclaimer that such advertisements do not constitute endorsement by the University of the products or services advertised.
3. Endorsements, i.e. the direct linking of a product or service to the University or any of its departments where implied or actual "official" status is incurred, must be approved by the Board of Regents or the Board's designated representative.
4. Whenever possible advertising should be sought from those business enterprises that have traditionally portrayed their products or services to the public in such a way as to support and/or enhance the institution's educational and service missions.
5. Each Vice Presidential area should constitute an "Advertising Review Committee" which will:
  - a) Establish a process for approving area departmental requests to raise operational revenues through the solicitation of commercial advertising,
  - b) Establish a process that allows for a review of all contracts that involve area departmental advertising income or support.
  - c) Monitor compliance with the policy restrictions and conditions given in #1-4 above,
  - d) Monitor general standards for approved advertising with the area, and
  - e) Receive and handle all inquiries and complaints concerning advertising within the area and make recommendations for change in the overall University policy as necessary.

### Procedures for the Office for Student Affairs

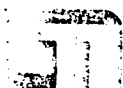
OSA accepts as operational guidelines, the specific restrictions, conditions and reviewing agencies as established in the proposed University Policy Statement on Commercial Advertising currently under institutional review.

OSA will establish an "Advertising Review Committee" to meet the requirements of the proposed policy. This Committee will consist of three (3) members representing different OSA units and be appointed by the Vice President for Student Affairs.

OSA units engaged in advertising sponsorship will identify to the Advertising Review Committee a designated officer who will work with the Committee on approvals for current and future advertising contracts and monitor the advertising/sponsorship within the unit once approved and underway.

### Recommendations

1. The proposed policy should be adopted by OSA and all specific provisions of the proposed policy statement/OSA operational guidelines should be implemented within OSA in Fall Quarter, 1983.
2. OSA should review the policy as part of the overall institutional review of the policy.
3. The OSA Advertising Review Committee should be established by November 15, 1983.



UNIVERSITY OF MINNESOTA  
TWIN CITIES

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October 12, 1983

TO: Neil Bakkenist, OSA Long Range Planning Committee  
FROM: Barbara Shiels, <sup>B&S</sup> University Attorneys Office  
RE: Proposed Policy on Advertising

I am writing in response to your request for a legal opinion on the revised version of the Planning Committee's proposed advertising policy. Bonita Sindelir, who reviewed the original proposal, has asked me to respond to this draft of the policy.

As we discussed in telephone conversations, the provision prohibiting racist, sexist and other prejudicial ads would be very difficult to defend if challenged on First Amendment grounds. However, with a few minor changes, the rest of the proposal has a good chance of surviving a legal challenge, including the provision on alcohol and tobacco advertising.

#### Restriction on Prejudicial Advertising

The first provision of the policy as currently written is constitutional, but it doesn't serve the Committee's objective because there are no state or federal statutes that prohibit discriminatory ads. The laws that exist to prohibit discrimination on the basis of race, sex, or other protected categories apply to areas such as housing, employment and education. These laws do not ban racist, sexist or other demeaning advertisements because to do so would violate the First Amendment. Similarly, any written University policy that prohibited prejudicial advertising in University publications also would raise serious First Amendment problems.

As you know from Bonita Sindelir's earlier memo on the proposed policy, advertising as a form of commercial speech is protected by the First Amendment, although to a lesser degree than other speech. Virginia Pharmacy Board v. Virginia Citizens Consumer Council, 96 S.Ct. 1817, 1825 (1976). The Committee's proposed policy is a state regulation of speech and therefore, must meet certain standards in order to withstand a constitutional challenge. See Bonita's earlier enclosed memo outlining the test for commercial speech regulations as set forth in Central Hudson Gas v. Public Service Commission of New York, 100 S.Ct. 2343, 2350 (1980).

Page 2  
Neil Bakkenist  
October 12, 1983

The major problem with a ban on prejudicial advertising under the Central Hudson test is that it is broader than necessary and vague. Regulations are generally unconstitutional under the First Amendment if they are too vague to make absolutely clear what they prohibit. In addition, the First Amendment invalidates regulations that give officials broad discretion to decide which speech related activities to permit. With respect to the proposed policy, the question of discrimination in the context of advertising is so subjective that any regulation banning racist, sexist and other offensive ads, is too vague to clearly notify potential advertisers as to what is prohibited. Further, unless the Committee establishes exhaustive standards for determining which ads are objectionable, the regulation necessarily gives broad discretion to University officials to decide when a given ad should be prohibited. Under the above tests, a court is not likely to uphold the provision banning prejudicial advertising.

#### Restriction on Alcohol and Tobacco Advertising

Like the first provision of the policy, the paragraph on alcohol and tobacco ads also bans a certain type of advertising from University publications. However, there are several reasons why the courts would treat this provision differently. Clearly, a ban on alcohol and tobacco advertising is neither vague nor subjective. All potential advertisers know exactly what is prohibited and University officials exercise no discretion in determining which ads to reject.

Further, the courts have recognized that under the Twenty-First Amendment to the Constitution the states have broad authority to regulate the liquor industry and a substantial interest in the issue of alcohol consumption. See California v. LaRue, 93 S.Ct. 390 (1972). In Queensgate Investment Company v. Liquor Control Commission, 101 S.Ct. 31 (1982) the Supreme Court summarily upheld a state regulation prohibiting bar owners from advertising the price of their drinks. Although the law is unsettled as to whether this decision also applies to a total ban on alcohol advertising, (see, Lamar Outdoor Advertising v. Mississippi State Tax Commission, 701 F.2d 314 (1983)), there are several strong arguments for applying the Queensgate holding to the University's proposed policy.

The restriction on tobacco advertising is more vulnerable to attack than the alcohol prohibition because there is no comparable grant of authority to the states under the Constitution for regulating this industry. However, it can be argued that the University as part of the state has a substantial interest in

Page 3  
Neil Bakkenist  
October 12, 1983

promoting the health of state residents, and that restrictions on tobacco advertising in University publications directly advance that interest in a way which is consistent with the advertising regulations already enforced by the federal government.

In addition to the above arguments, there is another legal theory available to support both the restrictions on tobacco and alcohol advertising. The Supreme Court in a recent line of cases has differentiated between regulations that prohibit speech in public forums such as streets and parks, and those that merely deny some groups access to government property which is not a forum for public communication. See, Lehman v. Shaker Heights, 94 S.Ct. 2714 (1974); Greer v. Spock, 96 S.Ct. 1211 (1976); U.S. Postal Service v. Greenburg Civic Associations, 101 S.Ct. 2676 (1981); and Perry Education Association v. Perry Local Educators Association, 103 S.Ct. 948 (1983). The court has held in these cases that the government may deny access to public property that is not a public forum without violating the First Amendment. The test for determining the legality of restrictions under this line of cases focuses on whether the regulation is reasonable in light of the purpose which the forum at issue serves.

The decision that most strongly supports the University's proposed restriction on alcohol and tobacco advertising is Lehman v. Shaker Heights. The Supreme Court held in this case that a city government may rent advertising space on city buses to commercial advertisers, but refuse to accept political ads from a candidate running for office. In a more recent case which cites Shaker Heights with approval, the court held that a public school may allow an incumbent teachers union to use its interschool mail system to distribute union information, while denying access to a rival union. Perry Education Association.

Following the rationale of the above cases, the University would argue that because its publications are not a public forum where all are entitled to air their views, it reasonably may deny access to alcohol and tobacco advertisers in light of the overall educational purpose behind the publications and their primary intended audience of students. This same argument is not readily available to support the prohibition on prejudicial advertising because that policy denies access not to identifiable groups, but solely on the basis of the content of each ad.

The above argument supporting the proposed restriction on alcohol and tobacco advertising is strong, but not certain to succeed because First Amendment law is very unsettled and it is

Page 4  
Neil Bakkenist  
October 12, 1983

difficult to predict how the courts will analyze a given fact situation. However, in light of both the above theory and the earlier argument based on the Twenty-First Amendment, the courts are likely to uphold the alcohol restriction. As for the tobacco prohibition, the arguments supporting it are somewhat weaker, but they still have a good chance of succeeding.

Recommended Minor Changes in the Policy

The phrasing of the provision on alcohol and tobacco advertising would be more appropriate if it just identified the University's substantial interest, rather than society's interest as well. Provisions 3, 4 and 5 of the policy raise no legal problems, and as we discussed earlier, Provision 5 basically can be used to accomplish the objectives of Provision 1 without establishing in writing an unconstitutional policy. Finally, Part C of paragraph 6 should not include the word "interpret", as that suggests University officials have impermissibly broad discretion under the policy.

BLS:dmf

cc: Bob Barnett