

Minutes\*

**SENATE COMMITTEE ON FACULTY AFFAIRS**  
**Thursday, March 16, 1995**  
**3:15 - 5:00 p.m.**  
**238 Morrill Hall**

Present: Daniel Feeney (chair), Daniel Canafax, Carol Carrier, Carol Chomsky, Mary Dempsey, Ann Erickson, Judith Gaston, Kinley Lartz, Richard McGehee, Diane Mulvihill, Anne Sales, George Seltzer, Bernard Selzler, W. Donald Spring, Yang Wang

Regrets: Carole Bland, Rose Brewer, Ken Roering, Michael Sadowsky

Absent: Willard Manning, Roger Paschke, James Stone

Guests: Mark Brenner, Martha Kvanbeck

[In these minutes are actions on the Research Resolution and the Academic Freedom Statement, and discussions regarding the Professional Commitment Policy and the proposed Sexual Harassment Policy.]

**1. CHAIR'S REPORT**

Professor Feeney outlined the discussion at the FCC meeting earlier in the day. He mentioned the following points:

- The policy on Academic Freedom is a key point in the Administration's /Regents endeavors this year.
- The Tenure Code: Will it fit the three provost model or will a major overhaul of the Tenure Code be needed?
- Professional Commitment Policy

**2. APPROVAL OF MINUTES**

The minutes for February 7 and March 7 were approved.

**3. ACTION ON RESEARCH RESOLUTION**

Dr. Feeney reminded the committee that the resolution was initiated by the Research Committee and introduced to SCFA last academic year. At that time, the resolution was approved by SCFA in principle with the understanding that editorial improvements would be made. A subcommittee was assigned that responsibility. The revised version was reviewed and approved by a majority with one opposing vote and no abstentions. It will be forwarded to FCC for their consideration.

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\* These minutes reflect discussion and debate at a committee of the University of Minnesota Senate or Twin Cities Campus 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.

#### **4. DISCUSSION OF PROFESSIONAL COMMITMENT POLICY**

Dr. Feeney welcomed Acting Dean of the Graduate School Mark Brenner to the meeting for the continued discussion of the Professional Commitment Policy. The latest version of the document was distributed. Dr. Brenner then responded to a number of questions from committee members.

Q The policy states in section 2.1, subsection 2 that violations are those practices which "...inappropriately compete with the services or interests of the University...." Is this determination then to be made by the department head or the dean?

A The determination could be made by either. If a faculty member is engaged in an outside business that is competing with a University activity (that a particular unit has been doing for along time), the unit has a right to object.

Q Are medical fellows/graduate assistants who are 67-100% time, or those from similar groups covered by the policy?

A Yes.

Q Could the information be categorized in some way to make it easier for faculty members to understand the policy?

A Before the policy is presented to the Senate, examples will be added to illustrate how faculty may interpret it.

Q Is the Academic Staff Advisory Committee looking at this document?

A The policy should be reviewed by that group, but has not occurred to date.

Q Many academic staff do not have teaching as a part of their regular full-time assignment. They may periodically teach a class at the University or at other institutions. Is there a conflict if an academic staff member teaches a course at a nearby university that is similar in nature to one offered at the University?

A This is permissible if the course is not competing with an academic staff person's responsibilities.

Q Where does competition with the University stop, and who makes that decision?

A The University, like all employers, has the right to change the terms of employment. The University has the right to broaden its mission and take on different activities. Dr. Brenner provided an example to explain this how the policy would apply in this type of situation: A University employee has been teaching short courses on a regular basis for outside groups. The University subsequently decides to offer the same courses. A conflict from the University's point would exist at this point.

Another twist for the P&A's is that the dean could theoretically approve one's teaching in any number of places and not be concerned with how it would conflict with another academic unit. Finally, it is possible that department heads or deans may not know that the activities they authorize are conflicting with something that is being offered elsewhere at the University.

Q Under section 6.5, part G, would the following example be permissible: An academic staff member obtains a grant from a federal agency that buys out a certain percentage of his/her time in

order to do research on the project related to the grant. Therefore, money would then be available for the dean or department head to hire a part time/temporary person to cover part of the teaching load left unstaffed. It is discovered that the temporary person cannot handle the responsibilities. As a result, the dean goes to the original academic staff member, tells this person that he/she is needed to teach, and will be paid extra for the overload responsibilities.

A Yes, it would be allowable. The University is currently dealing with cases very similar to this example. The principle is that when one engages in overload responsibility for which there is compensation, that counts as a consultation effort.

Q Does part "H" apply if an activity is conducted on an international level?

A This area is still in some flux, but the Academic Integrity Committee (AIC) decided to leave this part more general in the policy. The Twin Cities deans' general definition would provide greater latitude for administrators. This will allow the parties to negotiate trade-off responsibilities. This could include faculty participating in distance education to the University while abroad. The [it was?] suggested that distance education be handled as an overload or as an augmentation. The distance education committee is now in the process of drafting a policy stating that compensation in such cases should be included. Therefore, the AIC decided to be all-inclusive rather than specific with this policy regarding international activity.

Q Would the following be a conflict under Section 6.3, Research Activities guidelines? A University academic staff member enters into an agreement with four other faculty members from four different universities. One of the other universities serves as the custodian and takes the grant.

A This would not be considered a conflict under the policy. The policy seeks to address cases where people establish an independent company by seizing a grant. More examples need to be presented in order to make this clear.

Q Could clarification be provided for section 6.3? The wording seems to indicate that this section could be used to prevent any outside activity? What is the literal interpretation of the point? Is it intended to be very strict on research activity or outside activity?

A The University is obligated to provide oversight regarding activities involving human subjects. Examples of other areas that the policy will cover includes:

- Operating a grant that would bypass the University structures of accountability,
- Setting up a company which does not charge indirect costs, or performs work at the University through a contract.

Consortia with other institutions occur all of the time and will be encouraged. These arrangements are not prohibited. Nevertheless, the policy states that there is an approval process that must be followed.

Q Is there an overlap between Section 3 (activities which are the university's responsibility) and Section 6, or any of the other sections. For example, what would happen if a person serves on the board of a professional organization which also meets the definition of a business? In that case, the membership is addressed in Section 6.1 and Section 3. Does one cancel the other?

A It would depend if the board was a nonprofit or governmental agency. If the answer is yes, the activity would be covered under Section 3, not Section 6.

Q More clarification needs to be made with the definition of business. Business could refer to non-profitable as well as profitable organizations which consider themselves businesses. Will further definitions be provided?

A The business definition has not been given much consideration. This idea has been carried directly from the Conflict of Interest Policy.

Q There needs to be a clear way to identify which section a particular example would fall under. This would alleviate overlaps. Has this been considered?

A This could be done by stating, for example, that a case should be covered by Section 6, unless already covered under Section 3.

Q Section 6 also addresses competition with time, stating that written permission must be obtained when a faculty member engages in an activity which might compete with his/her obligations to the University. What is the intention of this?

A If the time required for a project exceeds ten days, prior approval is still needed. An effort will be made to try to simplify certain sections of the policy and to combine others.

Q What are the requirements if a person is not being paid?

A During the time that a person is not being paid by the University, she/he is free to do whatever she/he wants. This point also needs to be included in the policy.

Q Are Sections 5 and 6 related? In Section 5, written approval must be given to engage in the "activity". This seems like an introduction to Section 6.

A Sections 4 and 5 are contextually bound to Section 6. This point could be made explicit in the document.

It was noted that the amount of consulting time for various percentages of appointments needs further discussion and clarification in the document.

Section 4.1 limits the amount of time an academic employee may set aside to spend on an enterprise unrelated to his/her University position: e.g., a faculty member who has a real estate business. Dr. Brenner said that this is a sensitive issue because some of these activities may not be income-producing: e.g., playing in a musical group on weekends. The policy is not meant to address these small matters, he said. It is meant to cover more serious potential conflicts, such as a faculty member who has a law practice.

Graduate assistants serving 75-100% time are in a vulnerable position because they will be covered by this policy without being aware of their responsibility. A committee member recommended that the graduate assistants be held accountable to regulations set by the Graduate Assistant Office rather than this policy. The individuals in this category will have a difficult time speaking for themselves to influence the policy because there are so few of them. Associate Vice President Carrier suggested pulling the graduate assistants out of the policy until the issue could be more thoroughly reviewed. They could be added later or perhaps be covered by a separate policy, she said.

Dr. Brenner would like to see the policy presented to the University Senate for information in April. It is anticipated that the presentation will prompt vigorous discussion, assisting the authors to make corrections that will accommodate all concerned parties.

Professor Feeney said the Conflict of Interest and Professional Commitment Policies have been established to assist department heads and deans. A committee member suggested that a letter should be sent from central administration to all the deans and department heads stating how these policies should be interpreted. The letter could state that administrators and faculty should make a good faith effort to work towards amicable solutions.

In closing, Dr. Brenner said the policy will also be presented to the P&A Committee and the FCC.

### **5. Continued Discussion of the Proposed Sexual Harassment Policy**

[For previous discussions refer to SCFA minutes of February 2, 1995 and March 2, 1995.]

Professor Feeney reviewed that the current Sexual Harassment Policy "discourages" consensual relationships where a power differential exists are problematic, but does not "forbid" them. When the subordinate person in such a relationship reports a problem and the two parties disagree, the Equal Opportunity and Affirmative Action Office (EO/AA) has a difficult job determining the truth. The proposed language takes the ambiguity out of the policy.

One person asked what kind of sanctions will be implemented for those who violate the policy. The EO/AA has indicated that it is unable to enforce the policy or recommend sanctions because of the problems related to establishing whether the relationship was consensual or not.

The proposed policy also allows for third party reporting which some members though could be used in a malicious manner rather than a manner that serves the institution and the individuals involved. This discussion prompted several questions:

- How would malicious third party reporting, if that can be determined, be handled?
- Will the University define "committed relationship?"
- Will there be opportunities for couples in such "forbidden" relationships to document their position and thereby be covered by the Nepotism Policy?

A legal expert on the committee expressed that committed relationships covered by the Nepotism Policy (that is those expressed in writing to the Sr. V.P. for Academic Affairs) are not subject to sanctions resulting from the proposed Sexual Harassment Policy.

Other points offered by SCFA members:

- he third person reporting is a "Pandora's Box."
- he follow phrase from Section 4-2 is problematic: "the pre-existing nature of a sexual relationship." It is difficult to determine how to interpret the language in this section. Professor Poppele said that relationships should be reported to the Sr. V. P.'s Office and not undertaken in a clandestine manner. In reality, the seriousness of a relationship is established over time. A couple is not likely to go to the Sr. V. P.'s Office after the first date.
- If a supervisor is considering dating a subordinate, she/he should take themselves out of the superior role immediately. This could be explained explicitly in the policy that one either changes the relationship or reports it to the Sr. V. P.'s Office before the relationship begins.

- According to the proposed policy, the responsibility lies with the person in the superior position no matter which party initiates the relationship.
- If the policy is approved, it should be reviewed after 2-3 years.
- What should be done if neither party wishes to admit to their relationship?

The chair summarized the main points being made by the committee:

- There needs to be a very clear interpretation in the text as to the relationship of the proposed policy and the Nepotism Policy.
- The term "committed relationship" must be defined.
- Will third party reporting create more problems than it solves? The concern about malicious reporting must be addressed.
- Language should be inserted indicating the consequences for violating the policy.
- A clause should be added that the policy, if approved, should be reviewed in three years.

If these recommendations are applied, SCFA would approve the policy in principle.

Professor Feeney said that he will draft a letter to Professor John Adams forwarding SCFA's comments.

## **6. Continued Discussion of the Academic Freedom Statement**

After brief discussion (due to the lateness of the hour), SCFA approved a motion expressing that the committee did NOT approve the revised Academic Freedom Statement (5 in favor of the motion, 3 abstentions) as presented. The committee could support the statement with appropriate modifications especially regarding the section on "responsibility." Professor Feeney will prepare a letter on this issue addressed to Professor Adams.

The meeting was adjourned at 5:00 p.m.

-- Kevin Gormley

University of Minnesota