

Minutes
OHIO BOARD OF REGENTS
Columbus, Ohio
May 11, 2000

CALL TO ORDER AND ROLL CALL

The meeting was called to order by the Chair, Tahlman Krumm, Jr.

The roll was called by the Secretary, Gerald H. Gordon. Those present were:

Edmund J. Adams	Thomas W. Noe
Jeanette G. Brown	Stephen A. Perry
Gerald H. Gordon	J. Gilbert Reese
Tahlman Krumm, Jr.	Ralph E. Schey
Gerald M. Miller	

Regent Gordon stated "the record should show that notice of this meeting has been given in accordance with provisions of the Board of Regents' Rule 3333-1-14, which rule itself was adopted in accordance with section 121.22(F) of the Ohio Revised Code and of the State Administrative Procedures Act."

ITEM FOR DISCUSSION

Consideration of identification of 'exceptional circumstances' regarding a college or university request for an exemption from the fee caps pursuant to §7.03 "Higher Education – Board of Trustees" of Amended Substitute House Bill No. 282.

Regents were presented with a draft document from staff identifying three types of exceptional circumstances that could be encountered by universities. The draft document also contained guidelines for information that Regents may request when universities are attempting to establish exceptional circumstances. After discussion, Regent Gordon moved to refrain from identifying exceptional circumstances at this time. He noted the impossible task of anticipating and categorizing all instances where a university might desire to present Regents with a claim of exceptional circumstances.

DISCUSSION:

Regent Gordon: The General Assembly has put into effect, by law, 6% fee caps with the caveat for exemption when "exceptional circumstances" exist. The Ohio Board of Regents has the prerogative to say there is an "exceptional circumstance." The draft document (Consideration of Campus Requests for Exemptions to Fee Caps for "Exceptional Circumstances") includes the phrase: "exceptional circumstances" is not defined in the provision of Am. Sub. H.B. 282 and the Board of Regents is directed to identify "exceptional circumstances" when approving exemptions to the fee caps. Regent Gordon stated his

interpretation of that to mean that “exceptional circumstances” are to be defined on an issue-by-issue basis, not to define a general set of “exceptional circumstances.”

Regent Perry: Looking at the law, there is a directive that states “ the Board of Regents will have the responsibility of determining what constitutes an exceptional circumstance.” Each individual case has to be reviewed on its individual merits. At the same time, it would be useful for the Regents to have a guideline or a frame of reference. Regent Perry referred to the draft document which identifies possible areas of “exceptional circumstances.” He questioned whether this possible area for exemptions to the tuition cap would be rarely used or is there an expectation that the Board of Regents would use it frequently.

Regent Adams: A threshold question was raised that needs to be dealt with. That question is whether the Board of Regents ought to be trying to define “exceptional circumstances” in terms of general principles or dealing with these issues on a case-by-case basis. I believe we should deal with these issues on a case-by-case basis. Courts define terms like “exceptional circumstances,” by looking at the totality of the circumstances presented in a given case, and over the course of time evolving, in a sense, basic principles. I cannot foresee what all the exceptional circumstances might be. As a lawyer, I believe “exceptional circumstances” presents a relatively high hurdle, not a common or ordinary situation, or not one that is going to be replicated by every other university.

Regent Noe: I have a problem with a three or four page document that will set what “exceptional circumstances” will be twenty years from now. If we had discussed “exceptional circumstances” fifteen years ago, we would not have talked about technology. We don’t know what the future will be in higher education. The draft document is helpful, but I believe that etching everything in granite and not looking at everything individually as it comes along would be a huge mistake on our part.

Regent Brown: I agree, and part of the reason for not defining exceptional circumstances is that I understand that this language found in Am. Sub. House Bill 282 lasts for the biennium, this budget cycle, at which point a new bill will be drafted.

Regent Perry: I’m not advocating that we should adopt the policy. I am advocating that as we make any decision we should have the frame of reference so that we can explain to whoever is impacted by the policy where we are coming from.

Regent Brown requested appending the document Consideration of Campus Requests for Exemptions to Fee Caps for “Exceptional Circumstances” to the Minutes to serve as guidelines for the future.

Regent Krumm then restated the motion as a motion to take each request for consideration of an exemption to the Tuition Caps imposed by §7.03 under the “exceptional circumstance” clause on a case by case basis rather

than trying to define a whole category of issues. Regent Brown seconded the motion and it was unanimously passed.

Regents then questioned staff members and students from The Ohio State University regarding the proposed exemption from the tuition cap and increase of \$50 per student per quarter. Regents acknowledged they will consider the formal request from Ohio State University at the May 18, 2000, Board meeting to be held at Kent State University - Trumbull Campus

ADOPTION OF A RESOLUTION IN SUPPORT OF SENATE BILL 286

A motion was made by Regent Noe to approve agenda item 4 for Adoption of a Resolution in Support of Senate Bill 286. Regent Brown seconded the motion and it was unanimously passed.

RESOLUTION 2000-113

WHEREAS, a compelling public interest exists in using the considerable resources of Ohio's universities to advance economic development through technology commercialization within the state of Ohio; and

WHEREAS, the competitive advantage of Ohio's universities is directly related to their ability to recruit and retain highly qualified faculty and staff as well as the ability to maintain a sophisticated, cutting edge research environment; and

WHEREAS, Ohio desires to be a leader among states and nations in knowledge and technology and technology commercialization is widely viewed as a significant attraction when recruiting and retaining highly qualified faculty and staff; and

WHEREAS, technological commercialization of university research resulting in discoveries, inventions, intellectual property, or patents frequently serves as a catalyst to enhance economic development; and

WHEREAS, there is a desire to expand the existing law, Ohio Revised Code §3345.14, while respecting the longstanding policy to protect the public against conflicts of interests; and

WHEREAS, the Regents' Research Officers' Council, the Inter-University Council and the Columbus Technology Leadership Council are supportive of Senate Bill 286;

NOW, THEREFORE,

BE IT RESOLVED: the Ohio Board of Regents supports Senate Bill 286 and House Bill 675, the companion bill, expanding the authority of Ohio's universities to define the circumstances under which an employee may solicit or

accept and under which a person may give or promise to give to such an employee, a financial interest in any firm, corporation or other association to which the university has assigned, licensed, transferred or sold interests in discoveries, inventions or intellectual property made or created by that employee or in patents issued to that employee.

The next meeting of the Board of Regents will be held on Thursday, May 18, 2000, 1:30 p.m. at Kent State University, Trumbull Campus, Warren, Ohio.

Chair

Secretary

Date

Date