

N.D.A.G. Letter to Nelson (March 15, 1991)

March 15, 1991

Honorable Gary Nelson
North Dakota Senate
State Capitol
Bismarck, ND 58505

Dear Senator Nelson:

Thank you for your February 15, 1991, letter requesting for Senator Donna Nalewaja an opinion regarding a procedure used at a meeting of the North Dakota State Board of Higher Education (hereafter Board).

At its January 11, 1990, meeting, the Board had before it a motion that the per credit hour charge at North Dakota State University (hereafter NDSU) be approved for the summer of 1990. It was then moved by one Board member and seconded by another to amend the motion to approve the per credit hour charge at NDSU contingent upon NDSU accelerating semester implementation by the fall of 1991 or, if that was impossible, no later than the fall of 1992. This motion to amend was voted on and passed. The Board then voted on the motion as amended which also passed by a majority vote.

You ask whether the Board's amendment of the original motion to accelerate semester implementation at NDSU was a procedural violation. You suggest that making approval of the per credit hour charge contingent upon NDSU accelerating semester implementation was inappropriate because it was "bordering on coercion" and "[p]roper procedures with affected constituencies to assess the impact were not apparently followed by the State Board of Higher Education."

The Board was created for the "control and administration" of the state institutions of higher education. See N.D. Const. art. VIII, § 6(l). Control and administration in general terms mean management and supervision of those institutions. Nord v. Guy, 141 N.W.2d 395 (N.D. 1966). The Board has "full authority over the institutions under its control" and can "delegate to its employees details of the administration of the institutions under its control. N.D. Const. art. VIII, § 6(6)(b); Posin v. St. Bd. of Higher Educ., 86 N.W.2d 31 (N.D. 1957). The Board also has "full authority to organize or reorganize within constitutional and statutory limitations, the work of each institution under its control, and [to] do each and everything necessary and proper for the efficient and economic administration of . . . [the] state educational institutions. N.D. Const. art. VIII, § 6(6)(b).

Given the broad authority of the Board over the state's educational institutions, including its ability to manage and supervise, it would appear that the Board has the authority to determine whether the institutions should operate on either a quarter or a semester system. Also, neither the North Dakota Constitution nor statutes require the Board to

solicit input from all parties which may be affected by its decisions or to use any particular parliamentary procedures. A Board bylaw states, "[g]enerally, Robert's Rules of Order shall be followed in meetings of the Board." North Dakota State Board of Higher Education Policy Manual, section 200, article XI. This bylaw does not require the Board to always follow Robert's Rules of Order, however. Such "rules of parliamentary practice are merely procedural and not substantive and they do not have the force of a public law. They are merely in the nature of bylaws, prescribed for a deliberative body for the orderly and convenient conduct of its own proceedings, and the power that made them can unmake them or disregard them." 59 Am. Jur.2d Parliamentary Law, § 1.

Thus, in response to your question, there was no procedural violation in the Board's amending its original motion to accelerate semester implementation at NDSU. The Board has the authority to require semester implementation at any time and it need not solicit input from all parties affected by its decisions. These actions are all within the Board's authority as derived from the constitution and statutes of North Dakota.

I hope that these comments adequately address your concerns.

Sincerely,

Nicholas J. Spaeth