

Date Issued: April 15, 1981 (AGO 81-41)

Requested by: Kent G. Alm, Commissioner
State Board of Higher Education

- QUESTION PRESENTED -

Whether the Board of Higher Education may lawfully hold an executive session, pursuant to section 15-10-17(1), N.D.C.C., to consider the performance of a college president not related to the appointment or removal of a president.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that under section 15-10-17(1), N.D.C.C., the Board of Higher Education may lawfully meet in executive session to discuss a college president's appointment or removal, but no executive session is authorized by statute merely to engage in a general discussion of a college president's performance.

- ANALYSIS -

Section 15-10-17(1), N.D.C.C., states as follows:

15-10-17. SPECIFIC POWERS AND DUTIES OF BOARD OF HIGHER EDUCATION. The state board of higher education shall have all the powers and perform all the duties necessary to the control and management of the institutions described in this chapter, including the following:

1. To appoint and remove the president or other faculty head, and the professors, instructors, teachers, officers, and other employees of the several institutions under its control, and to fix their salaries within the limits of legislative appropriations therefor, and to fix the terms of office and to prescribe the duties thereof, provided that the consideration of the appointment or removal of any such personnel shall be in executive session if the board chooses unless the person or persons involved request that the meeting shall be open to other persons or the public. (Emphasis supplied.)

Executive sessions of the State Board of Higher Education are authorized only to consider the appointment or removal of the personnel specifically listed. If executive sessions were allowed merely for a general consideration of a president's performance, section 15-10-17(1), N.D.C.C., would be given an unwarranted extension. Under this section, the issue of appointment or removal is what must be centrally considered during any executive session, not just a president's general performance.

No doubt the question of performance will be a key point in the general question of whether or not a president ought to be appointed or removed. However, the sole question which should be discussed in executive session is the issue of whether a president is to be appointed or removed. Performance may be considered in an executive session only to the extent it relates to this central issue.

- EFFECT -

This opinion is issued pursuant to section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

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