

Subject: Re: Corrections

To: Dave Frohnmayer <dfrohn@uoregon.edu> Add to address book...

Cc: "Gordon Sayre" <gsayre@uoregon.edu>, "Peter Gilkey" <gilkey@uoregon.edu>, "Henri... Add to address book...

From: Franklin Stahl <fstahl@uoregon.edu> Add to address book...

Date: Sun, 3 May 2009 14:48:57 -0700

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Dear Dave et al.

Dave, I agree with you that it is very likely that the statutory faculty cannot irrevocably delegate its governance responsibilities to the UO Senate. In practice, however, the faculty may not be able to reclaim its authority unless the MEANS to do so is spelled out in the Governance document. As you know, the DoJ recognizes the necessity for including in our governance document a prescribed procedure for undoing or modifying delegation of faculty governance.

To illustrate this point, I quote from the DoJ Opinion of 7 November 2008:

"Other than these initial acts [referring to delegation of the faculty's statutory powers to the "Assembly" as defined in our present governance document, and to the establishment of quorum and voting requirements for this Assembly], the only necessary business for the statutory faculty is to retain a separate existence that would facilitate a reclamation of authority delegated to the Assembly should the faculty determine in its discretion that part or all of the delegation is no longer desirable. As means to this end, the faculty should establish some schedule of faculty meetings, along with a procedure for calling such meetings should some portion of the membership so desire."

The Opinion goes on to suggest that it may "also be desirable at the first such meeting to ratify the actions of the Assembly during the interim that pertain to curricular matters and to the immediate government and discipline of the University and its students, and affirm that the faculty is satisfied by the way in which the Assembly has exercised authority. "

And, finally, the DoJ Opinion says:

"The University's statement of internal governance also should be amended to recognize this role of the statutory faculty. Finally, since the statutory faculty would reassume its role as part of the "internal governance structure" of the University, and to be consistent with IMD 1.123, any amendments to the internal governance statement should also be ratified by the statutory faculty."

(Point of clarification: Even though the Opinion deals with delegation of authority to the Assembly, I assume that we all agree that it might equally apply to delegation of authority to the UO Senate.)

May I remind you that the enabling legislation of 1995 (as amended) does not provide for a means for the statutory faculty to meet and exist as a functional body and cannot, therefore, serve as a vehicle of the faculty to delegate its statutory powers to the University Senate, as proposed in Motion SF08/09-1.

Apart from the desire to comply with state law as expressed in the Opinion, the faculty has valid reasons for insisting on an internal governance document that lays out the means for ensuring faculty oversight. Imagine what might happen without such a document. A University President who might not wish to encourage faculty governance could actually prevent the faculty from exercising its powers by invoking a baffling, never-before-used rule as a pretext for dissolving the meeting of assembled members. Or, such a President might convene a meeting of the faculty, without explaining how the faculty may participate beyond attending. Such a President could then claim absolute ownership of the agenda for the meeting, and even preemptively state that any issues not on the agenda will be ruled out of order. All of this could happen if the internal governance document does not contain explicit means for the faculty to exercise oversight.

To avoid such a scenario, I trust that you will acknowledge the wisdom and legitimacy of considering a simple substitute, submitted by Nathan Tublitz and me, to Motion SF08/09-1 -- To legitimize the University Senate . The substitute motion proposes that the faculty delegates to the UO Senate its powers as laid out in an interim governance document minimally amended from the current "Enabling Legislation" with the purpose of bringing the University into compliance with the Opinion by the DoJ. Please communicate that acknowledgment to the faculty as quickly and effectively as modern communications permit.

Yours for a fruitful meeting etc.
Frank
PS: Please feel free to post this letter.

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I e-mail, therefore I am.