




DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

MEMORANDUM

DATE: March 8, 2007

TO: Suzanne Clark, Professor
English Department
University of Oregon

FROM: Joe Gordon McKeever 
Senior Assistant Attorney General
Government Services and Education Section

SUBJECT: Enabling Legislation for University Senate
U of O/University Assembly
DOJ File No. 580-500-GG0182-07

QUESTION PRESENTED

You asked whether the Faculty Senate has the authority to make changes in the legislative governance structure that the University Assembly established under Enabling Legislation adopted on May 17, 1995.

SHORT ANSWER

In enacting the Enabling Legislation, the University Assembly delegated full, but non-exclusive legislative authority to the Faculty Senate. This authority includes the power to modify provisions of the Enabling Legislation.

DISCUSSION

The Oregon University System and the University of Oregon are creatures of statute. The Legislative Assembly designated the president of each state institution of higher education as the executive and governing officer of that institution.¹ The university president and professors constitute the faculty of each institution "and as such have the immediate government and discipline of [the institution] and the students therein."² In addition, the State Board of Higher Education has adopted Internal Management Directive (IDM) 1.123 concerning Internal Governance and Authority over the Faculty. This IDM states that each institution has the right to:

¹ ORS 352.004.

² ORS 352.010.

formulate a statement of internal governance expressed as a constitution or in other appropriate format, which shall be ratified as the official statement of internal governance by those included in the internal governance structure of the institution and by the President.

The internal governance statement is subject to review and modification when a new President assumes office and at such other times as shall be provided for in the internal governance statement; any amendatory action shall also be subject to ratification by those included in the internal governance structure and by the President.

I understand that the University Assembly consists of the teaching and non-teaching faculty at the University of Oregon. Up to January 1, 1996, the University Assembly served as the principal governing body for faculty. On May 17, 1995, the University Assembly enacted Enabling Legislation that established the Faculty Senate as the "sole governing body of the University in all matters of faculty governance."³ The Enabling Legislation prescribes the composition of the Faculty Senate and establishes a system for voting and representation of the various colleges and professional schools at the university.⁴ Although the Enabling Legislation was not titled as the university's "official internal governance statement" as that term is used under IDM 1.123, it appears to serve that function.

You have asked whether the Faculty Senate has the authority to modify the governance requirements that are set forth in the Enabling Legislation. For example, could the Faculty Senate enact legislation to modify section 3.6 of the Enabling Legislation to provide that senators shall be elected to three-year terms, instead a two-year terms? To address this question, we look to the language of the Enabling Legislation with the aim of discerning the intent of the University Assembly when it adopted the measure.⁵

Although the Enabling Legislation states that the Faculty Senate shall be the "sole governing authority", in fact the University Assembly reserved to itself some powers: section 6.2 gives members of the Assembly the right to introduce legislation and to debate any matter before the Senate; section 6.5 empowers the Assembly to refer legislation back to the senate for reconsideration; and section 6.6 states that the University Assembly "with full legislative power" may be convened after a petition to do so has been signed by 33 percent of those eligible to vote for non-student senators. These provisions reflect an intent that the University Assembly should have at least residual powers to enact legislation or have an effect on the legislative process.

The Enabling Legislation does not expressly state how or if its provisions can be amended. In one instance, the Faculty Senate is empowered and directed to change provisions of the Enabling Legislation by re-apportioning the representation of faculty on the Senate every ten

³ Section 2.1, Enabling Legislation.

⁴ The Faculty Senate consists of 48 members, including thirty-seven faculty members, two librarians, three administrative officers, five students and the President of the Senate. Enabling Legislation, section 2.1 and 2.2.

⁵ I have examined the minutes of the University Assembly when it adopted the measure and the minutes are not particularly helpful in determining the Assembly's intent.

years or if major changes in the distribution of faculty members occur within the colleges or professional schools of the university.⁶ Presumably the University Assembly could also amend the Enabling Legislation by convening under section 6.6 “with full legislative power.” Aside from these provisions, the Enabling Legislation is silent as to how or if its provisions may be changed.

On its face, the Enabling Legislation appears to be an organic document and to serve as the internal governance statement for the faculty. Unlike language contained in other charters, constitutions or similar instruments, the Enabling Legislation does not contain specific procedures for amendment of its terms. In a general context, it is axiomatic that a legislative body, absent a constitutional restraint, may amend or repeal its own legislation.⁷ Similarly, if the University Assembly has granted unrestricted legislative power to the Faculty Senate, this would include the power to amend legislation previously enacted by the Assembly.

As discussed above, the Enabling Legislation designates the Faculty Senate as the “sole governing body” for “all matters of faculty governance.” This language confers a complete delegation of the University Assembly’s legislative power, except for those powers that the Assembly reserved to itself to introduce legislation to the Senate, require reconsideration by the Senate and to convene the Legislative Assembly upon a petition by 33 per cent of persons eligible to vote for non-student senators. Even the powers reserved to the University Assembly are not exclusive, and they serve only as a procedural check on the legislative powers of the Faculty Senate. The Enabling Legislation does not limit the type or subject matter of the legislation the Faculty Senate may consider or enact. Thus, I conclude from the plain and unqualified language in section 2.1 of the Enabling Legislation that the University Assembly has delegated all of its legislative powers to the Faculty Senate, except for the limits discussed above. It follows from this that the Faculty Senate has the delegated authority to amend the governance provisions of the Enabling Legislation.⁸ Because the Enabling Legislation is the internal governance statement of the university as that term is used under IMD 1.123, amendments to the document are subject to ratification by the university president.

Please let me know if you have additional questions concerning this issue.

JGM:bw1/GENS9141.DOC

c: Melinda Grier, U of O
Gwen Steigelman, U of O

⁶ Section 2.4, Enabling Legislation.

⁷ *Patton v. Withycombe*, 81 Or 210 (1916).

⁸ You also asked about the significance of parenthetical comments that appear on the copy of the Enabling Legislation that are maintained in the Faculty Senate archives. These comments were apparently inserted on re-printing by unknown persons. The comments were not part of the Enabling Legislation that was approved by the University Assembly and, as such, they are of not useful for determining the Assembly’s intent.