Summer 5-22-1974

Letter from Dr. Robert Sutherland, University Legal Counsel on Jurisdictional Disputes Between Disciplinary Groups

Academic Senate
Illinois State University

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Dr. Robert Sutherland  
Chairperson,  
Academic Senate  
Illinois State University  

Dear Dr. Sutherland,

You have requested my assistance in arriving at answers to questions posed by Dr. G. Alan Hickrod, Chairman of a Faculty Ethics Committee, as those questions were raised in Dr. Hickrod's memorandum to you dated May 10, 1974. I have considered the questions which Dr. Hickrod raises together with the additional questions which you suggested when we met to discuss this matter on the morning of May 20, 1974.

I believe there are two overriding issues attendant to a resolution of the dilemma which the Executive Committee and the academic disciplinary process face. One of those issues relates to jurisdictional confusion and the other relates to the need to maintain confidentiality in the disciplinary process.

With respect to the issue of jurisdiction, it is my strong recommendation that a mechanism be established to resolve jurisdictional disputes when they arise. I believe that the mechanism established should consist of representatives from the three faculty disciplinary tribunals; namely, the Academic Freedom and Tenure Committee, the Ethics Committee and the Grievance Committee. If Professor "X" lodges a complaint and requests a hearing with the Ethics Committee, the Ethics Committee considers the complaint and decides that perhaps the complaint ought be heard by the Academic Freedom and Tenure Committee, then the referee mechanism should convene a meeting for the purpose of determining precisely where the complaint should be heard. The same hypothetical could be used to describe the procedure which should be invoked in the event a complaint is submitted to either the Grievance or Academic Freedom and Tenure Committee, and one committee believes that it would be more appropriately heard by a different disciplinary group. I believe it unwise to permit non-disciplinary groups to have access to and knowledge about the factual situations giving rise to disciplinary proceedings between or among faculty members and/or administrators.

With respect to the issue of confidentiality related to the factual bases for disciplinary hearings which I touched upon in the sentence above, I am concerned for the possible personal litigation which may be spawned should such information be circulated, discussed and communicated and that information later proved to be inaccurate or untrue. The individual about whom unproven or unprovable allegations are spread would have a cause of action in defamation against those persons responsible for the spreading of the untruth. It would be my feeling that the potential for this type of legal controversy would be greatly diminished were only those bound by the confidentiality strictures of the disciplinary committee structure exposed to and involved in the substance of any complaint.
It is difficult to comment upon the questions raised by Dr. Hickrod without commenting upon the subject matter of the complaint itself. It would be improper for me to prejudice the disciplinary procedure by making a comment going to the heart of the matter under consideration. I see no reason why the chairperson of the previous Ethics Committee, the chairperson of the "new" Ethics Committee, and the chairperson of the Case Advisory Committee of the Academic Freedom and Tenure Committee, all of whom have been involved in the matter previously, could not be asked to meet and arrive at decisions with respect to whether or not the charges are "new" as opposed to rephrasing of old charges, and, if "new", where the charges should be directed for consideration and resolution. If the charges are revisits to old contentions, I believe it a disservice to the disciplinary processes of the institution as well as to the individual being charged that repeated efforts to go to hearing on the same matter are permitted. There is no system of justice with which I am familiar that tolerates repeated hearings on the same set of facts, even when those facts are used to support differing sets of allegations.

To summarize, I believe that the Senate should move to establish a referee body which would consist of representatives of the three major disciplinary groups which would meet when needed to resolve jurisdictional disputes. I would recommend that non-members of the disciplinary committees not be privy to information concerning any complaint. And finally, it would be my advice that the chairpersons of the new and old Ethics Committee, together with the chairperson of the Case Advisory Committee of the Academic Freedom and Tenure Committee meet to determine whether or not there are any new charges and, if so, where those charges should be brought.

Sincerely,

Joe Goleash, Jr.

JGpsp
TO: Executive Committee of the Academic Senate

FROM: Ralph Smith, Chairperson, Faculty Affairs Committee

RE: Resolution

This resolution was discussed at the Academic Senate meeting of May 8 and because it is important to get this resolution into the present legislature the Faculty Affairs Committee would like to have the Executive Committee take action on it tonight.

cc: Faculty Affairs Committee
Background

The Academic Senate at Illinois State University supports the position that the State should meet the minimum statutory requirement of appropriating funds for the State Universities Retirement System (SURS) sufficient to meet the normal cost of currently accruing liabilities (11.73 percent of payroll) plus interest on past service liabilities (currently 4.5 percent of payroll).

This statutory requirement has not been met for years and is again ignored in the Governor's Budget for FY 75, thus threatening further increase in the current (1973) unfunded liabilities of the SURS of about $467 million.

The Illinois Public Employees Pension Laws Commission, which is composed of 5 Senators, 5 House members and 5 public members appointed by the Governor, has approved a funding plan for all State-financed pension systems which would provide for a gradual increase in appropriations for retirement contributions each year over a period of years until all benefits earned to date by active and retired members will be fully funded. The plan provides for graded increases in the annual appropriations of 2% of payroll until a certain level of funding is reached. It is estimated by the Pension Laws Commission that this plan would provide a full funding level for the State retirement systems after a period of about 20 years.

It is estimated that the Pension Laws Commission plan would require an increase in appropriations for the State Universities Retirement System of approximately $9,955,000 for FY 75.

An additional compelling reason for affirmative action on this plan lies in contemplated legislation by the federal government to establish minimum funding requirements for public pension plans. Should requirements as are now under discussion in House/Senate conference committee become law and SURS fails to conform, there would be adverse income and estate tax consequences imposed upon University employees.

Resolution

The Academic Senate of Illinois State University strongly endorses the plan for gradually increasing the level of funding of the SURS as recommended by the Pension Laws Commission. Further, the Academic Senate urges representatives from the 44th legislative district to implement the funding plan proposed by the Pension Laws Commission.

Copies of this statement and resolution shall be forwarded to Representatives Gilbert Deavers, 122 North Street, Normal; John R. Lauer, 12 Arcade Building, Lincoln; Gerald A. Bradley, 226 East Market Street, Bloomington, and Senator Harber H. Hall, 104 E. Monroe Street, Bloomington.