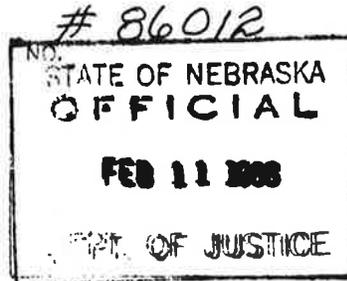


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509



ROBERT M. SPIRE
Attorney General
A. EUGENE CRUMP
Deputy Attorney General

DATE: February 5, 1986

SUBJECT: "One Person, One Vote": Its Application to the Board of Regents Student Members.

REQUESTED BY: Senator Lee Rupp, Chairman
Constitutional Revision and Recreation Committee

WRITTEN BY: Robert M. Spire, Attorney General
Yvonne E. Gates, Assistant Attorney General

You questioned whether granting voting rights to student members of the University of Nebraska Board of Regents would violate Article 1, Section 22 of the Nebraska Constitution and the Fourteenth Amendment of the United States Constitution. The Free Elections Clause, Neb. Const. art. I, §22, demands that each qualified voter be free to exercise the right to vote without any impediment. The general election of the Board of Regents by district is free and open to all electors of the district. Likewise, the process of electing a Student Body President for each of the university campuses does not impede the right of any student voter. Therefore we see no violation of the Nebraska Constitution in this respect.

The Equal Protection Clause of the United States Constitution presents a more complex situation. The 1974 Amendment to Article VII, Section 10 of the Nebraska Constitution in effect appoints the Student Body President of each campus to the Board of Regents. That the Board of Regents is comprised of both elected and appointed members does not contravene the Equal Protection Clause. In Sailors v. Board of Education, the United States Supreme Court ruled "At least as respects nonlegislative officers, a State can appoint local officials or elect them or combine the elective and appointive systems as was done here." 387 U.S. 105, 111 (1967). The question then must focus on whether the Board of Regents is a legislative or administrative body.

The board appears to be legislative based on a cursory reading of its bylaws and empowering statute. Neb.Rev.Stat. §85-106 specifically grants: "The Board of Regents shall have

L. Jay Bartel
John M. Boehm
Dale D. Brodkey
Martel J. Bundy
Janie C. Castaneda

Dale A. Comer
Laura L. Freppel
Lynne R. Fritz
Ruth Anne E. Galter
Yvonne E. Gates

Jill Gradwohl
Calvin D. Hansen
Royce N. Harper
William L. Howland
Marilyn B. Hutchinson

Mel Kammerlohr
Sharon M. Lindgren
Charles E. Lowe
Harold I. Mosher
Bernard L. Packett

Terry R. Schaaf
LeRoy W. Sievers
Mark D. Starr
John R. Thompson
Linda L. Willard

Senator Lee Rupp
February 5, 1986
Page -2-

power (1) to enact laws for the government of the university; . . ." . The board's authority also includes the election of university presidents, deans, chancellors and others. It prepares and controls the annual budget, generally determines policy and sets guidelines for the university. However, the Nebraska Supreme Court stated that the Board of Regents is an administrative agency of the state with power to make rules and regulations germane to its legislated purpose. Board of Regents v. County of Lancaster, 48 N.W.2d 221, 154 Neb. 398 (1951). Because the Board of Regents is basically an administrative unit of the state exercising limited governmental powers, an election of regents is not required. The principle of "one person, one vote" only applies to elections of officials with essentially legislative responsibility. It does not apply to the Board of Regents.

Additionally, we call to your attention that Neb.Rev.Stat. §85-103 was not revised subsequent to the 1974 amendment to Article VII, Section 10. It does not provide for student membership on the Board of Regents and, consequently, is in conflict with the constitution.

Sincerely yours,

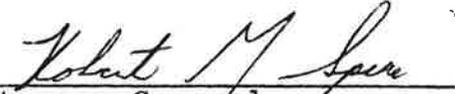
ROBERT M. SPIRE
Attorney General


Yvonne E. Gates
Assistant Attorney General

YEG/bae

cc: Patrick J. O'Donnell
Clerk of the Legislature

APPROVED:


Attorney General