

Title 3 – Legal Status of the University

Chapter 1

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Section 1. Introductory Statement

The University of Nevada was created by the Nevada State Constitution. The Constitution further sets forth certain requirements concerning the University of Nevada and prescribes certain powers, duties and limitations upon the Board of Regents. Pertinent provisions of the Constitution and digests of the Nevada Supreme Court decisions interpreting some of these provisions are included in this chapter.

Section 2. Pertinent Constitutional Provisions

The following are provisions in the Nevada State Constitution which affect the University of Nevada:

- a. Article 11, Section 4 – Establishment of state university; control by board of regents.
The Legislature shall provide for the establishment of a State University which shall embrace departments of Agriculture, Mechanic Arts, and Mining to be controlled by a Board of Regents whose duties shall be prescribed by Law.
- b. Article 11, Section 5 – Establishment of normal school and grades of schools; oath of teachers and professors.
The Legislature shall have power to establish normal schools, and such different grades of schools, from the primary department to the University, as in their discretion they may deem necessary, and all Professors in said University, or Teachers in said Schools of whatever grade, shall be required to take and subscribe to the oath as prescribed in Article Fifteen of this Constitution. No Professor or Teacher who fails to comply with the provisions of any law framed in accordance with the provisions of this Section, shall be entitled to receive any portion of the public monies set apart for school purposes.
- c. Article 11, Section 6 – Support of university and common schools by direct legislative appropriation; priority of appropriation.
In addition to other means provided or the support and maintenance of said university and common schools, the legislature shall provide for their support and maintenance by direct legislative appropriation from the general fund, upon the presentation of budgets in the manner required by law.
- d. Article 11, Section 7 – Board of Regents: Election and duties. {Effective through November 22, 2010, and after that date unless the proposed amendment is agreed to and passed by the 2009 Legislature and approved and ratified by the voters at the 2010 General Election.}
The Governor, Secretary of State, and Superintendent of Public Instruction, shall for the first four years and until their successors are elected and qualified constitute a Board of Regents to control and manage the affairs of the University and the funds of the same under such regulation as may be provided by law. But the Legislature shall at its regular session next preceding the expiration of the term of office of said Board of Regents provide for the election of a new Board of Regents and define their duties.

Article 11, Section 7 – Board of Regents: Creation; organization; appointment of members; duties. {Effective November 23, 2010, if the proposed amendment is agreed to and passed by the 2009 Legislature and approved and ratified by the voters at the 2010 General Election.}

1. There is hereby created a Board of Regents to control and manage the affairs of the University and the funds of the same under such regulations as may be provided by law.
2. The Legislature shall provide by law for:
 - a. The organization of the Board of Regents, including, but not limited to, the number of members of the Board of Regents and the qualifications and terms of office of the members of the Board of Regents;
 - b. The appointment of the members of the Board of Regents by the Governor; and
 - c. The duties of the Board of Regents and its members.

e. Article 11, Section 8 – Immediate organization and maintenance of state university.

The Board of Regents shall, from the interest accruing from the first funds which come under their control, immediately organize and maintain the said Mining department in such manner as to make it most effective and useful, Provided, that all the proceeds of the public lands donated by Act of Congress approved July second AD. Eighteen hundred and sixty two, for a college for the benefit of Agriculture, the Mechanics arts, and including Military tactics shall be invested by the said Board of Regents in a separate fund to be appropriated exclusively for the benefit of the first named departments to the University as set forth in Section Four above; And the Legislature shall provide that if through neglect or any other contingency, any portion of the fund so set apart, shall be lost or misappropriated, the State of Nevada shall replace said amount so lost or misappropriated in said fund so that the principal of said fund shall remain forever undiminished.

f. Article 11, Section 9 – Sectarian instruction prohibited in common schools and university.

No sectarian instruction shall be imparted or tolerated in any school or University that may be established under this constitution.

g. Article 11, Section 10 – No public money to be used for sectarian purposes.

No public funds of any kind or character whatever, State, County or Municipal, shall be used for sectarian purpose.

(B/R 6/09)

Section 3. Supreme Court Interpretations

The Nevada Supreme Court has had few occasions to interpret constitutional provisions relating to the University. However, such interpretations have great bearing on the authority of the Board of Regents and the manner in which the University is to be operated. The following are digests of these decisions as contained in Nevada Digests.

- a. Attorney general, who was added as ex officio member of board of regents by legislative act, was not entitled to discharge duties of regent because he was not elected to that position in manner provided by previously enacted sec. 2, ch. 37, Stats, 1887 (cf. NRS 396.040), provided for election of three members of such board, or by Nev. Art. 11, & 7, requiring legislature to provide for election of member of board. *State ex re. Mach v. Torreyson*, 21 Nev. 517, 34 Pac. 870 (1893), cited, *King v. Board of Regents*, 65 Nev. 533, at 544, 200 P.2d 221 (1948), distinguished, *State ex. Rel. Dickerson v. Elwell*, 73 Nev. 187, at 189, 313 P.2d 796 (1957).
- b. Nev. Art. 11, & 4, provides that legislature shall establish state university to be controlled by board of regents whose duties shall be prescribed by law, and language of several statutes beginning 1887 that "powers and duties" of board shall be those prescribed by statutes did not establish practical construction broadening legislative authority, because where inescapable meaning of constitution is apparent from instrument itself, it is not permissible to adopt any different construction however long continued or however distinguished its authorship. *King v. Board of Regents*, 65 Nev. 533, 200 P.2d 221 (1948).
- c. Nev. Art. 11, & 4, provides that state university shall be controlled by board of regents and unquestioned right of legislature to appropriate required funds for maintaining university does not indicate that constitution does not best exclusive and plenary control in regents, because right to provide and limit funds is entirely different from administration and control of university itself. *King v. Board of Regents*, 65 Nev. 533, 200 P.2d 221 (1948).
- d. Nev. Art. 11, & 4, provides that legislature shall establish state university to be controlled by board of regents whose duties shall be prescribed by law and right of regents to control university in their constitutional, executive and administrative capacity is exclusive of such right in any other department of government, except for right of legislature to prescribe duties and for other legislative rights. *King v. Board of Regents*, 65 Nev. 533, 200 P.2d 221 (1948), distinguished, *State ex rel Richardson v. Board of Regents*, 70 Nev. 144, at 147, 261 P.2d 515 (1953).
- e. Nev. Art. 11, & 7, provides for election of board of regents to control state university, and provision of statute creating advisory board that governor appoint members from among nominees chosen by elected board did not save statute from rule that legislature in absence of express constitutional authority may not add foreign duties to or take away natural duties from constitutionally created office. *King v. Board of Regents*, 65 Nev. 533, 200 P.2d 221 (1948), cited, *Laxalt v. Cannon* 80 Nev. 588, at 592, 397 P.2d 182 (1964), distinguished, *Shamberger v. Ferrari*, 73 Nev. 201, at 206, 314 P.2d 384 (1957).
- f. Board of regents of university in exercise of its rule-making power under NCL & 7728 (NRS 396.110) could as to future employment revoke rule providing that member of staff could be dismissed only for cause and provide that any member of staff could be dismissed at the will of board of regents. *State ex rel. Richardson v. Board of Regents*, 70 Nev. 144, 261 P.2d 515 (1953).

- g. Rule that professor with tenure may be discharged only for cause, adopted by board of regents of university pursuant to NCL & 7728 (NRS 396.110), had force and effect of statute and was binding upon such board. *State ex rel. Richardson v. Board of Regents*, 70 Nev. 144, 261 P.2d 515 (1953).
- h. Discharge of professor by board of regents was judicial act subject to review by court on certiorari where board had adopted rule, pursuant to NCL & 772B (NRS 396.110), that professor with tenure could be discharged only for cause after hearing. *State ex rel. Richardson v. Board of Regents*, 70 Nev. 144, 261 P.2d 515 (1953).
- i. In original action of quo warranto to oust four defendants from office as members of the board of regents of University of Nevada, where legislature had increased membership of board from five to nine members, vacancies which existed in four new offices could be filled until next general election only by appointment by Governor, appointment of persons to fill such vacancies by legislature was without constitutional authority. *State ex rel. Dickerson v. Elwell*, 73 Nev. 187, 313 P.2d 796 (1957).
- j. For purposes of resolution adopted by board of regents of university that professor with tenure could be discharged only for "cause," cause did not mean any cause which board deemed sufficient cause, but rather legal cause, which touches on qualifications of person or his performance of duties, showing that he is not fit or proper person to hold office. *State ex rel. Richardson v. Board of Regents*, 70 Nev. 144, 261 P.2d 515 (1953).
- k. Where faculty member of university was dismissed for insubordination on ground that he had made false accusation against president of university when he opened meeting of American Association of University Professors, of which he was president, by stating that he was surprised to see so many present in view of unfair and unwarranted criticism of association by president of university, and remark referred to address to faculty by president which most members of association had heard, remark could not be considered more than a statement of opinion, could not have misled those who had heard the president's address, and was not valid ground for dismissal. *State ex rel. Richardson v. Board of Regents*, 70 Nev. 347, 269 P.2d 265 (1954).
- l. Where university professor was dismissed by board of regents for insubordination on grounds that he distributed to faculty, for purpose of attacking department of education and president, a magazine article that was critical of public schools, colleges of education, teachers colleges and professional educators, evidence did not support such ground where it appeared that lowering of entrance requirements was being considered, that professor distributed article to substantiate argument against lowering of requirements, that another article which was critical of the one distributed was admitted by professor to be fair criticism, that he offered to distribute that article, that dean of college of education did not regard article as attack upon him, the college, or president, that there was no disruption of faculty, and that there was university policy in effect which approved faculty participation in academic matters. *State ex rel. Richardson v. Board of Regents*, 70 Nev. 20, at 24, 293 P.2d 424 (1956), *Oliver v. Spitz*, 76

Nev. 5, at 10, 348 P.2d 158 (1960), *Urban Renewal Agency v. Iacometti*, 79 Nev. 113, at 119, 379 P.2d 466 (1963).

- m. "Insubordination" which would warrant dismissal of university professor imports willful disregard of express or implied directions, or such defiant attitude as to be equivalent thereto. *State ex rel. Richardson v. Board of Regents*, 70 Nev. 347, 269 P.2d 265 (1954).
- n. Where annually published bulletin of state university contained rules for its government, description of its organization, and report of its activities, continued appropriations by legislature and allowance of claims for bulletin from year to year could be said to constitute legislative approval of matters reported. *King v. Board of Regents*, 65 Nev. 533, 200 P.2d 221 (1948).
- o. Professor received tenure with Desert Research Institute only, and not in University and Community College System of Nevada as whole because at time tenure was granted he was employed solely as DRI staff member who taught no more than one course per term in University, and DRI, as established by NRS 396.795 and 396.7953, was separate University division operating under personnel policy and procedure distinct from normal University policies. *Winterberg v. University of Nevada System*, 89 Nev. 358, 513 P.2d, 1248 (1973).
- p. Order enjoining University of Nevada Board of Regents from discontinuing uneconomic University-operated food service and laying off classified employees in order to obtain such services from independent contractor was reversed on appeal where record clearly established that Regents acted in good faith to effect real, and not fundamentally sham, reorganization for substantial rather than arbitrary and capricious reasons. Although "good faith" alone would not justify layoff of classified employees and engaging independent contractor under NRS 2874.380 and 284.173, regularity of official action was presumed and burden was on party challenging action to show that action was in bad faith, fundamentally a sham, or was taken arbitrarily, capriciously, or for insubstantial reasons. *University of Nevada v. State Employees Association*, 90 Nev. 105, 520 P.2d, 602 (1974).
- q. Review of record established that nontenured probationary faculty member at the University of Nevada, Las Vegas received a notice of termination sufficient to satisfy the mandate of the University and Community College System of Nevada Code and thus, his termination was lawful. *Edwards v. The Board of Regents of the University of Nevada, et al*, 92 Nev. 744, 557 P.2d 709 (1976).
- r. Statute requiring all personnel actions taken by state, county or municipal departments, agencies, boards or appointing officers to be based solely on merit and fitness reasonably and properly imposes upon the governing board of the University of Nevada the obligations that it imposes on other state, county and municipal boards, namely the obligation to make hiring and retention decisions on the basis of merit and fitness and not on an immaterial factor such as age, sex, race, color, creed or national origin. *Board of Regents v. Oakley*, 97 Nev. 605, 637 P.2d 1199 (1981).

- s. The Legislature may not invade the constitutional powers of the Board of Regents of the University of Nevada through legislation which directly interfaces with essential functions of the university. Board of Regents v. Oakley, 97 Nev. 605, 637 P.2d 1199 (1981).

Section 4. *Nevada Revised Statutes, Chapter 396*