

R135, Institutional Legal Counsel in the System of Higher Education¹

R135-1. Purpose: To provide for the appointment and coordination of institutional offices of legal counsel within the System of Higher Education.

R135-2. References

- 2.1. Utah Code §53B-2-106(2) (Coordination of Legal Affairs Within the Institution and the System)
- 2.2. Policy and Procedures R131, Functions of the State Board of Regents

R135-3. Policy

3.1. Appointment of Attorneys: Subject to the authority of the Board of Regents, these Policies and Procedures, and specific Board of Regent approval, the President of each institution with the approval of the institution's Board of Trustees may create an office of legal counsel to provide legal advice to the institution's administration and to coordinate legal affairs within the institution.

3.2. Authority of the Board: The Board has reserved for itself the establishment of policies and procedures having statewide implications. By its effective coordination of legal counsel among the institutions and with the Office of the Attorney General, the Board shall seek to optimize the benefit of such legal counsel to the System as a whole and to each institution.

3.3. Board approval: The Board may approve the establishment of an office of legal counsel at an institution upon a demonstration of need pursuant to the following criteria:

3.3.1. On-campus Availability: Legal counsel must be located on campus to adequately monitor and coordinate campus legal affairs, determine priorities for the institutions' legal needs, review contracts and otherwise practice preventive law, coordinate legal affairs with academic and administrative policy and decision making, attend on-campus hearings, and provide administrators and other campus personnel seeking assistance with ready access to needed legal services.

3.3.2. Response Time: Certain matters require immediate response. The administration must be able to direct an institutional legal counsel to reorder priorities and respond in a timely manner.

3.3.3. Area of Expertise: The institution, or the System as a whole, has a need for a particular legal expertise (For example, patent, trademark, or communications counsel) which is not available from the Attorney General's Office.

3.3.4. Familiarity with Collateral Issues: In order to perform effectively, a legal counsel must have an ongoing familiarity with similar or collateral issues at the institution.

3.3.5. Lack of Alternative Support: The Office of the Attorney General is unable to meet the institution's need for legal counsel services.

¹ Adopted May 14, 1993; amended April 14, 2000 and June 29, 2000.

3.3.6. Costs to State: The costs to the state to retain institutional legal counsel compare favorably with the costs to the state for the institution to rely on legal services provided by the Attorney General's Office.

3.4. Funded from Internal Sources: The office of legal counsel shall be funded by the institution from internal reallocation of resources and not from new state appropriations requested for this purpose.

3.5. Coordination of Legal Affairs within the Institution: The President may designate the institutional office of legal counsel to coordinate the legal affairs within the institution.

3.6. Cooperation with the Attorney General's Office: A president appointed attorney shall not conduct litigation, settle claims covered by the State Risk Management Fund, or issue formal opinions, but shall, in all respects, cooperate with the Office of the Attorney General's effort to provide appropriate legal representation to the institution.

3.6.1. The institutional office of legal counsel shall communicate to and cooperate with the Attorney General on all matters which may be expected to impact on litigation or on one or more other System institutions.

3.6.2. Issues and conflicts relating to interpretations of federal or state statutes, regulations, or rules are subject to resolution by opinions from the Attorney General's Office.

3.7. Coordination of System Wide Training and Development by the Office of the Commissioner: The Commissioner or his/her designee shall coordinate, together with the Attorney General's Office, state wide efforts to provide training and development opportunities for attorneys at the institutions and to enhance the exchange of information, ideas and expertise between and among higher education attorneys at the institutions and in the Attorney General's Office.

3.8. Develop Range of Expertise at the Institutions and Across the System: The institutional attorneys and the Office of the Commissioner shall cooperate with the Attorney General's Office to encourage the development of a balanced range of expertise at the institutions and across the System and to provide mechanisms to share resources and expertise, as appropriate.

3.10. Periodic Report to the Board: Upon request, each institution shall provide a report to the Board of Regents on the activities of the institutional office of legal counsel in a format provided by the Office of the Commissioner.