

**MSU Board of Regents notes for August 26 Special Meeting regarding discussion on PAC 26.**

The three policies listed below were raised at the August 26 BOR Special Meeting regarding the discussion of PAC 26. Board Chair Paul Goodpaster was asked how the BOR is to respond to the apparent violation of the KY statute with the changes that the BOR wants to implement in PAC 26. His response was that he did not have a good response. He suggested that the financial responsibility of the BOR should supersede any KY statute regarding tenured faculty. He also indicated that the KY state statute has never been challenged in court. MSU Legal Council Jane Fitzpatrick indicated that the KY statute could be interpreted for individual faculty and not tenured faculty eliminated when a program is eliminated. President Andrews indicated that he would support the action of the board regarding PAC 26. The exchange indicated that there was no current valid legal defense in violating state law in this case. Nevertheless, the BOR will proceed with the current course with PAC 26 as outlined by the chair.

As a regent, I appose the MSU BOR placing itself in a position of legal jeopardy over any change in PAC 26 where the university would be liable and in violation of state law. There are many other methods of balancing a deficit budget other than the elimination of tenured faculty. The MSU BOR and the university should not be the test case for a legal contest over tenure rights. This would not be in the best interest of the university. I highly recommend to my colleagues on the BOR to not implement action that is in direct violation of Kentucky statutes, our own MSU policies, and national standards in higher education recognized by the majority of universities in the United States.

Royal Berglee

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1) Board of Regents Handbook 2016-17

Under section of Kentucky statutes governing Board of Regents

KRS 164.360

- The Board may appoint a president and on the president's recommendation may, in its discretion, appoint all faculty members and employees, determine their salaries and tenure of service.
- No person shall be employed for a term longer than four years.
- The Board shall not employ a person if the employee's relative serves on the Board of Regents.
  
- The Board may remove a president and upon the recommendation of the president may remove any faculty member or employee, but no president or faculty member shall be removed except for incompetency, neglect of or refusal to perform his duty, or for immoral conduct.

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2) Policy: PAC-27

Subject: Tenure and Reappointment Review

Approval Date: 08/06/88

Revision Date: 06/13/97; 06/08/01, 06/15/05, 8/21/12

Technical Change: 03/02/98

PURPOSE: To define the criteria, procedures, and conditions applicable to the review of University probationary faculty for reappointment and the awarding of tenure.

1. TENURE DEFINED

Tenure is a system by which competent, productive faculty members who meet specified criteria are informed that they have successfully completed their probationary period and are recognized as continuing members of the faculty free to pursue their academic interests and responsibilities with the confident knowledge that termination of their appointment can be only for cause as outlined in the appropriate Personnel Policies

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3) AAUP Letter to MSU Board of Regents 2016 (*this is only a segment of that letter*)

"... The AAUP does not oppose reorganizing or consolidating academic programs so long as the faculty exercises its primary responsibility in reaching decisions to do so, as is consistent with the Statement on Government. But the AAUP does oppose reorganizing or consolidating programs, absent a condition of financial exigency, when doing so requires the termination of faculty appointments, because the risk of appointments being selected for termination based on considerations that violate academic freedom are too great under these conditions. This is why Regulation 4d (Discontinuance of Program or Department for Educational Reasons) does not allow for reorganization or consolidations when terminations are involved. ..."