



STATE OF CONNECTICUT

BOARD OF TRUSTEES FOR THE STATE COLLEGES

P. O. Box 2008 NEW BRITAIN, CONNECTICUT 06050
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SCR#77-114
See 77-96
77-123

RESOLUTION

concerning

RESTRUCTURING OF THE CENTRAL ADMINISTRATION


November 7, 1977

WHEREAS, The Attorney General in a letter to Dr. Samuel B. Gould, Interim Commissioner of Higher Education, dated October 17, 1977, declared, "It is therefore our opinion that in accordance with the provisions of Public Act #77-573, S14, and in spite of any inconsistent provision of Connecticut General Statutes, S10-109b, the Board of Trustees for State Colleges may, within available funds, and without the approval of the Board of Higher Education, establish new professional unclassified positions in the Central Office staff, and determine the compensation of persons on its professional unclassified Central Office staff;" therefore, be it

RESOLVED, That so much of the second Resolved in Board Resolution #77-96, dated September 9, 1977, as reads, "effective upon approval by the Board of Higher Education" be amended to read, "effective November 4, 1977," and be it further

RESOLVED, That the first enumerated paragraph under the second Resolved in Board Resolution 77-96, dated September 9, 1977, be amended to read, "1. Two new unclassified positions are established - Assistant to the Executive Director and Director of Management Systems."

A Certified True Copy:


James A. Frost
Executive Director

BOARD OF

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HIGHER EDUCATION

CARL R. AJELLO
ATTORNEY GENERAL

State of Connecticut



Office of The Attorney General
30 TRINITY STREET
HARTFORD 06115

RECEIVED

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BOARD OF TRUSTEES
FOR THE STATE COLLEGES
Tel: 566-4990

October 17, 1977

Dr. Samuel B. Gould
Interim Commissioner
Board of Higher Education
P. O. Box 1320
Hartford, Connecticut 06101

Dear Dr. Gould:

This will acknowledge and reply to your letter of September 23, 1977 to the Attorney General

In your letter you ask whether or not the action of the Board of Trustees for State Colleges creating two new unclassified positions on its central office staff and adjusting the compensation of five other unclassified positions on its central office staff, is subject to the approval of the Board of Higher Education.

The statutes which set forth the relevant powers of the Board of Trustees for State Colleges are, as your letter points out, § 14 of P.A. No. 77-573 "An Act Concerning The Responsibilities of The Commission for Higher Education", and Connecticut General Statutes, § 10-109b.

P. A. No. 77-573, § 14 reads as follows:

"Notwithstanding the provisions of any general statute or special act to the contrary, the selection, appointment, assignment of duties, amount of compensation, sick leave, vacation, leaves of absence, termination of service, rank and status of the individual members of the respective professional staffs of the system of higher education shall be under the sole jurisdiction of the respective boards of trustees within available funds. Said

boards shall determine who constitutes the professional staffs of their respective units and establish compensation and classification schedules for their professional staffs. Each constituent board shall annually submit to the personnel policy board a list of the positions which it has included within the professional staff."

The relevant portion of Connecticut General Statutes, § 10-109b, reads as follows:

"The board of trustees may appoint or remove the chief executive officer of each institution within its jurisdiction, and with respect to its own operation the board of trustees may appoint and remove an executive secretary and executive staff. The board may determine the size of the executive staff and the duties, terms and conditions of employment of said secretary and staff, subject to the approval of the commission. The board of trustees may employ faculty and other personnel needed to maintain and operate the institutions within its jurisdiction. Within the limitation of appropriations, the board shall fix the compensation of such personnel, establish terms and conditions of employment and prescribe their duties and qualifications. Said board shall determine who constitutes its professional staff and establish compensation and classification schedules for its professional staff." (Emphasis added).

The context of Connecticut General Statutes, § 10-109b, makes it apparent that the word "commission", as used in the excerpt quoted above, refers to the Commission for Higher Education. Section 24 of P. A. No. 77-573 provides that whenever the term "commission for higher education" appears in § 10-109b, "it shall be deemed to mean the 'board of higher education.' "

Your letter refers to an apparent conflict between the two statutes quoted above, § 10-109b seeming to require Board of Higher Education approval of the size and duties of the Board of Trustees' professional executive staff and the terms and conditions of such staff's employment, and P. A. No. 77-573, § 14, placing such matters solely within the jurisdiction of the Board of Trustees.

This apparent conflict can be resolved by advertence to the introductory language of the first sentence of P. A. 77-573, § 14, reading: "Notwithstanding the provisions of any general statute or special act to the contrary...."

"Notwithstanding" in this context means "in spite of" or "without obstruction from". Theodore Roosevelt Agency, Inc. v. General Motors Acceptance Corp., 156 Colo 237, 398 P.2d 965, 966; Pinkier v. Jenkins, 118 Ga. App. 239, 163 S.E.2d 443, 454.

Consequently, we conclude that the provisions of P. A. No. 77-573, § 14 should be deemed to override any inconsistent provisions of § 10-109b.

We are strengthened in this conclusion by the fact that the predecessor to the Board of Higher Education, the Commission for Higher Education had, by virtue of § 10-324(a)(6), the authority to :

"approve the size of the executive staff and the duties, terms and conditions of employment of the executive staff and the duties, terms and conditions of employment of the executive secretary and executive staff of the constituent units, except as otherwise provided in the general statutes...."

Section 10-324(a) was repealed by P. A. No. 77-573, § 27, however, and there is no comparable language in P. A. No. 77-573.

It is therefore our opinion that in accordance with the provisions of P. A. No. 77-573, § 14, and in spite of any inconsistent provision of Connecticut General Statutes, § 10-109b, the Board of Trustees for State Colleges may, within available funds, and without the approval

Dr. Samuel B. Gould

October 17, 1977

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of the Board of Higher Education, establish new professional unclassified positions in the central office staff, and determine the compensation of persons on its professional unclassified central office staff.

Very truly yours,

CARL R. AJELLO
ATTORNEY GENERAL

Robert E. Walsh

By: Robert E. Walsh
Assistant Attorney General

REW:rm