

November 4, 2015

MEMORANDUM

TO: State Board of Regents

FROM: David L. Buhler

SUBJECT: Dixie State University – Request for approval to create the position of general counsel

Issue

Dixie State University (DSU) is represented in all legal matters by the Utah Attorney General's Office. DSU's recent transition to university status, as well as ongoing institutional growth, has substantially increased the University's legal services workload. DSU seeks to establish and fill the position of general counsel to provide legal counsel for complex institutional issues, including contracts and grants review; state, local and federal regulatory compliance; personnel issues; intellectual property protection and other general legal services. The new general counsel will collaborate and coordinate with the Attorney General's office to provide comprehensive legal services.

Background

Utah State Code §53B-2-106, and Regents Policy R220 - Supplement, allow USHE institutions to appoint attorneys. Specifically, an institution president may "...appoint attorneys to provide legal advice to the institution's administration and to coordinate legal affairs" following approval by the Board of Trustees and the Board of Regents. Importantly, the policy also instructs, "these appointed attorneys may not conduct litigation, settle claims covered by the State Risk Management Fund, or issue formal legal opinions but shall, in all respects, cooperate with the Office of the Attorney General in providing legal representation to the institution."

Nearly all of the institutions have established a general counsel position, the most recent being Utah Valley University and Salt Lake Community College. Additionally, David Jones, chief of the education division within the Utah Attorney General's Office, has expressed his support for DSU to establish the general counsel position. In accordance with policy, the Attorney General's Office will retain the responsibility to represent the University in all litigation matters. DSU will divide legal responsibilities between the Attorney General's Office and the new general counsel as permitted by policy.

Commissioner's Recommendation

The Commissioner recommends the Regents review the Dixie State University request to create the position of general counsel and, if in agreement, approve the request effective immediately.

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David L. Buhler  
Commissioner of Higher Education

DLB/GLS/GTL  
Attachments

October 15, 2015

Commissioner David L. Buhler  
Utah System of Higher Education  
Board of Regents Building, The Gateway  
60 South 400 West  
Salt Lake City, UT 84101-1284

Dear Commissioner Buhler,

Dixie State University requests approval to create the position of General Counsel.

As you know, Dixie State University is a growing institution that transitioned to university status over the last couple of years and has experienced a variety of legal related challenges over that time. Timely legal advice and counsel is paramount in an increasingly complex campus environment. The majority of colleges and universities in the State have a General Counsel or are in the process of hiring one, with Salt Lake Community College and Utah Valley University receiving approval by the Regents for that position over the last year or so.

Utah Code section 53B-2-106 *Duties and Responsibilities of the President of each Institution: Approval by Board of Trustees* and Board of Regents' policy R220 *Supplement Reference to Responsibilities* provides for the position of institutional General Counsel. The position may be created with approval of the University Board of Trustees and State Board of Regents. The volume of legal work required at Dixie State University is exceeding the amount of staff support the Attorney General's office is able to provide.

The University is in need of General Counsel to provide legal advice, contract review, policy review, and compliance. The Attorney General's office retains the statutory responsibility to represent the University in all litigation matters. Institutional legal responsibilities would be divided between the Attorney General's office and University General Counsel.

I have had discussions with Michael Carter (DSU's assigned Assistant Attorney General) on this topic and he is supportive of our hiring General Counsel. I, along with you, met with Bridget Romano, Civil Division Chief in the Attorney General's office and David Jones, Director of the Education Division in the Attorney General's office to advise them of our intent to proceed in hiring a general counsel for the University. On October 20, 2015 the Attorney General's office sent us the attached letter indicating their support for Dixie State University in hiring General Counsel. Therefore I am writing to seek the Board of Regents approval.

Sincerely,



Richard B. Williams, PhD, ATC  
President  
Dixie State University

cc: Greg Stauffer

# STATE OF UTAH

OFFICE OF THE ATTORNEY GENERAL



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ATTORNEY GENERAL

SPENCER E. AUSTIN  
Chief Criminal Deputy

PARKER DOUGLAS  
General Counsel & Chief of Staff

TYLER R. GREEN  
Solicitor General

BRIDGET K. ROMANO  
Chief Civil Deputy

October 20, 2015

President Richard B. Williams  
Dixie State University  
225 South University Avenue  
St. George, UT 84770

Dear President Williams,

The professional courtesy you have extended the Office of the Attorney General is appreciated as you proceed with seeking approval from the Board of Regents for the appointment of legal counsel and the creation of an office of legal counsel at Dixie State University. Out of that same courtesy, the Attorney General is supportive of your request, but wants to underscore the value to Dixie State University of continuing to have independent Attorney General legal counsel and support.

As you are aware, the president of each institution of higher education, with the approval of the institution's Board of Trustees, may appoint attorneys for the institution and create an office of legal counsel, subject to the authority of, the policy established by, and the approval of the Board of Regents. While the Office of the Attorney General has no statutory role in the appointment process, the Office of the Attorney General, as part of its statutory duties and obligations set forth in Utah Code Ann. § 67-5-1 and § 67-5-5, will continue to be legal counsel for Dixie State University, will continue to provide legal counsel, advice, and representation to Dixie State University and looks forward to a cooperative relationship with legal counsel that may be appointed by you for Dixie State University.

Please feel free to contact me at your earliest convenience should you have any further questions, concerns or requests regarding this matter. It was a pleasure to meet with you to discuss the legal needs of Dixie State University. The Office of the Attorney General looks forward to continuing to provide legal services to Dixie State University in conjunction and in cooperation with any attorneys you may appoint for Dixie State University.

Respectfully,

A handwritten signature in blue ink that reads "David C Jones".

David C Jones  
Assistant Attorney General  
Director, Education Division

cc: Dave Buhler