

March 23, 2016

MEMORANDUM

TO: State Board of Regents

FROM: David L. Buhler

SUBJECT: Southern Utah University – Request for approval to create the position of General Counsel

Issue

Currently, the Utah Attorney General's Office provides all legal services to Southern Utah University (SUU). SUU's ongoing institutional growth has substantially increased the University's legal services workload. SUU seeks to establish and fill the position of General Counsel to provide day-to-day 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's 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. 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, Salt Lake Community College and Dixie State University. Additionally, David Jones, Chief of the Education Division within the Utah Attorney General's Office, has expressed his support for SUU 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. SUU 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 that the Regents review the Southern Utah University request to create the position of General Counsel and approve the request effective immediately.

David L. Buhler
Commissioner of Higher Education

DLB/KLH/GTL
Attachments



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SCOTT L WYATT
PRESIDENT

February 29, 2016

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

Dear Commissioner Buhler:

Subject: Appointment of Legal Counsel

Pursuant to Utah Code, Section 53B-2-106 and Regents Policy R2200, Southern Utah University seeks Board of Regent approval to hire legal counsel to assist the university with its needs. The basis for this request is that the university cannot adequately address all of its legal needs with the limited time available from the one Assistant Attorney General assigned to the university half time. (SUU shares one AAG with Dixie State University.) SUU understands the limitations on "appointed attorneys" set forth in statute and policy and will adhere to the same.

SUU is the last university in the USHE system to seek Board approval to hire in-house legal counsel. All other universities have found a need to bolster their legal services through the hiring of university counsel and have been authorized to proceed.

Thank you for your consideration,


Scott L Wyatt

STATE OF UTAH
OFFICE OF THE ATTORNEY GENERAL



SEAN D. REYES
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

March 16, 2016

President Scott L. Wyatt
Southern Utah University
351 West University Blvd.
Cedar City, Utah 84720

Dear President Wyatt,

I appreciated your phone call and discussion earlier this week with regard to the appointment of legal counsel for Southern Utah University. The professional courtesy you have extended the Office of the Attorney General is valued as you proceed with seeking approval from the Board of Regents. The Office of the Attorney General is supportive of your request to seek part-time Special Counsel for Southern Utah University, but wants to underscore the value to Southern Utah University of continuing to have independent legal counsel and support from the Office of the Attorney General.

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 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 Southern Utah University, will continue to provide legal counsel, advice, and representation to Southern Utah University and looks forward to a cooperative relationship with legal counsel that may be appointed by you for Southern Utah University.

It is always a pleasure to talk with you. I hope we can find some time in the next few months to meet so I can provide you with more information regarding the provision of specialized legal services which the Education Division of the Attorney General Office has to offer and will be providing to all the institutions of higher education, including Southern Utah University. Please feel free to contact me at your earliest convenience should you have any further questions, concerns, or requests regarding this matter.

Respectfully,

DAVID C JONES
Assistant Attorney General
Director, Education Division

cc: D. Buhler