

Memo



State University of New York

Memorandum to Presidents ①

Date: May 9, 1974

Vol. 74 No. 19

From: University Counsel and Vice Chancellor
for Legal Affairs

Subject: Mandatory Student Activity Fees

The mandatory student activity fee remains a prominent administrative concern. Queries have been received regarding the use of mandatory fees for the acquisition of real property or other major capital assets. More recently a number of campuses have reported requests that the University bill students, on a voluntary basis, for the private purposes of various off-campus organizations. In light of these developments, a legal advisory on recurrent problems in this area may be useful.

THE HISTORY

In March 1968 Chancellor Gould initiated discussions with the State Comptroller as to whether the University could properly mandate the payment of fees by students as a condition of attendance, but delegate responsibility for the expenditure of the proceeds to student governments or other representative student organizations.

The Comptroller responded in the affirmative, with the understanding that the fund would be held in trust for these purposes. The Trustees thereupon (Resolution 68-132) formally authorized the collection of a mandatory student fee backed by University sanctions.

In September, 1970, the State Comptroller issued an audit report which reflected critically upon the experience of two years under the mandatory system and urged the University "to establish guidelines, to test student expenditures against guidelines, and to adopt prudent controls".

Immediately thereafter came the decision in Stringer v. Gould, 64 Misc. 2d 89, arising out of a student challenge of certain expenditures by a student government for various partisan political purposes. The University defended, in part, on the ground that the resolution had "authorized the student body to impose the fee and (that the Trustees) have no voice

Memorandum to Presidents
May 9, 1974

No. 74-19
Page 2

or control over any appropriations or expenditures of the fund". (64 Misc. 2d at 90)

The Court flatly rejected that theory, holding that any fee or charge imposed by the University as a condition of registration and eligibility for academic credit became the responsibility of the Trustees to superintend. Accordingly, no lawful expenditure from such a fund could be made without the approval of the Trustees as to the purposes for such appropriations and expenditures.

An appeal to the Appellate Division was dismissed on the theory that the decision below had refused to permit the expenditure of mandated student fees without prior University approval and that the subsequent adoption of Resolution 71-90 had remedied the previous omission of the Trustees to define and authorize permissible purposes.

THE RESOLUTION AND PROCEDURES

Resolution 71-90 (8 NYCRR 302.14) and the Fiscal and Accounting Procedures of October 29, 1971 incorporate the Stringer ruling and the administrative concerns expressed by the Comptroller's audit report of September 9, 1970.

As you know, the Resolution [302.14(a)] provides for a quadrennial campus referendum on the voluntary/mandatory issue. At any time during the four year period, the student government may, by further referendum, reverse the choice.

The Resolution [302.14(c)(1)] also requires the representative student organization to submit a proposed budget to the president prior to registration each term. The president must approve all budgetary allocations and any subsequent change in the budget. Further, under the Procedures (paragraph 4) every requisition, order and contract supported by a budget allocation must be approved by the president or his designee.

All projects (Procedures, paragraph 11) supported in whole or part by the mandatory fee which involve the collection of income must be described by a detailed statement of receipts and expenditures. Profits must be deposited with the approved fiscal designee. These funds then become subject to the Resolution and Procedures in the same manner as an original allocation. Further, the Procedures (paragraph 9) recite that "excessive surpluses in student fees shall not be allowed to accumulate."

CONCLUSIONS

A number of conclusions may be drawn from this cumulation of rules and procedures.

1. Clearly, the services of University staff and the use of University facilities are not available to private organizations for the collection, custody, and transmittal of funds whether these are assessed on a voluntary or mandatory basis. The rule may operate onerously, given the variety of worthy causes which may be involved from time to time. However, any modification of the rule would improperly involve a state agency in the business affairs of private organizations. Moreover, a policy of granting exceptions would inevitably require the University to pass judgment upon the relative merit of any number of charitable, educational, political and social groups.

2. One may infer that only a recognized student organization is contemplated as the instrumentality for the expenditure of these quasi-public funds. That is, the accountability rules cannot be applied in any reliable way if the mandatory fee funds are routinely transmitted to private corporations or off-campus organizations, not affiliated or associated with the University, for purposes which are extramural in nature.

3. It seems apparent that fiscal commitments proposed by the annual student activities budget should reflect the limited duration of the referendum then in effect and the possibility of an intervening referendum. Real property investments, for example, involve unpredictable ownership liabilities even in the absence of a long term purchase money mortgage, improvement loan or other lien. Income derived from a capital asset (rent, interest, appreciation, etc.) acquired originally by the mandatory fee allocation could not be budgeted and approved in advance. Similarly, it seems unlikely that such income funds would be subject to expenditure only upon requisitions approved by the campus president. Any income attributable to the original allocation of fees would tend to defy identification. If ascertained at all, the means of securing the prompt deposit of such profits with the authorized fiscal agent may be equally elusive. While the rules do not expressly preclude such projects, the burden of proof would clearly rest with the proponent.

4. It has been argued that the language [302.14(c)(3)(vi)] of the Resolution permitting "assistance to recognized student organizations, providing that the purposes and activities of the organization are of educational, cultural, recreational, or social nature" somehow requires approval of an allocation once the organization has qualified in terms of its announced purposes. On the contrary, no proposed budget allocation need escape presidential scrutiny from the mere circumstance of its origination by an organization meeting the subdivision (vi) definition.

5. In sum, the Trustees have discharged their legal responsibility by the promulgation of basic doctrine and by delegating a broad administrative discretion to campus presidents.

Memorandum to Presidents
May 9, 1974

No. 74-19
Page 4

Uniformity of programs among campuses is neither essential nor desirable. Nevertheless, the mere existence of rules and guidelines presumes the development of commonly accepted principles of interpretation. Ideally, these canons should neither compel programmatic uniformity nor permit conceptual inconsistency. We hope this advisory contributes to that result.

Walter J. Relihan, Jr.

This memorandum addressed to:

Presidents, State-operated campuses