



State University of New York

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## Memorandum to Presidents

Date: December 30, 1985

Vol. 85 No.19

From: Office of University Counsel and  
Vice Chancellor for Legal Affairs

Subject: Student Members of Community College Boards  
of Trustees and State University Councils

**RECEIVED**

To: Presidents, Community Colleges  
Presidents, State-Operated Campuses

JAN 2 1986

ACADEMIC PROGRAMS  
POLICY & PLANNING

Community Colleges. A recent formal Opinion of the Attorney General (No. 85-F14, copy attached) has clarified the effect of recent legislation extending voting rights to the student members of community college boards of trustees (L. 1985, ch. 338; eff. September 1, 1985).

The Attorney General has concluded that voting community college student trustees are public officers who are required to file an oath of office. With the granting of full voting rights, student trustees now possess all of the powers, privileges and responsibilities conferred on the remaining trustees. For example, the student member is subject to every provision of law or regulation applying to the other trustees with respect to the discharge of their duties, including codes of ethics, disclosure requirements and conflict of interest standards.

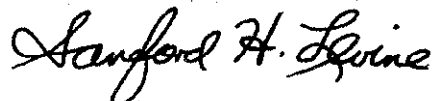
The Attorney General has advised, however, that since under the Education Law the primary requirement for election of a student trustee is membership on the college's student body and not residence in the college's sponsoring municipality, student trustees need not be residents of the sponsoring county, city, school district, or community college region. The oath of office must be filed, however, with the clerk of the sponsor. Community colleges should obtain a copy of the form appropriate to their sponsor that is utilized in the appointment of all other trustees of the college.

In conformity with the change in legislation, the State University Trustees' guidelines concerning the election process for student trustees of community colleges have now

been amended to delete the reference to "non-voting" (Section 604.4 of Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York). In addition, the voting student members are to be counted for purposes of fulfilling quorum requirements. Based on provisions of the Public Officers Law, the quorum requirement for community college boards of trustees is now six of the total number of ten trustees, and six affirmative votes are necessary for approval of any formal action of a board.

State-operated Campuses. Although voting rights have been authorized for the student member of the State University Trustees and each Council at a State-operated campus since 1979 (L. 1979, ch. 406), it is important to note the continuing requirement for the filing of oaths of office by the student members of these bodies. As is the case with other Council members, each student member should execute an oath of office which includes an acknowledgment of receipt of the provisions regarding conflicts of interest and standards of ethics in the Public Officers Law (see copy of form attached). All completed forms should be filed directly with the Corporations and State Records Division, Department of State, 162 Washington Avenue, Albany, New York 12231. (See also Memorandum to Presidents, Vol. 79, No. 8, August 27, 1979.) Based on provisions of the Education Law, the quorum requirement for Council meetings is five of the total of ten members, and the act of a majority of the members present at such meetings is necessary for formal actions.

Please note that under current law the student member of the Board of Trustees of the State University College of Environmental Science and Forestry continues to have non-voting status. A formal change to voting status has been recommended in the University's legislative program for 1986.



Sanford H. Levine

Attachments

cc: Chairs, Boards of Trustees of Community Colleges  
Chairs, Councils  
Chair, Board of Trustees of College of Environmental  
Science and Forestry

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Memorandum addressed to:

Presidents, Community Colleges  
Presidents, State-operated campuses

Copies of information only sent to:

Deans, Statutory Colleges  
President Coll  
Vice Provost Spencer



STATE OF NEW YORK  
DEPARTMENT OF LAW

ALBANY 12224

ROBERT ABRAMS  
ATTORNEY GENERAL

November 12, 1985

STATE UNIVERSITY OF NEW YORK  
RECEIVED  
OFFICE OF THE CHANCELLOR

Hon. Clifton R. Wharton, Jr.  
Chancellor  
State University of New York  
State University Plaza  
Albany, New York 12246

Formal Opinion  
No. 85-F14

NOV 12 1985  
FBI  
SIC 101011215436

Dear Chancellor Wharton:

Your University Counsel and Vice Chancellor for Legal Affairs has inquired about the implications of chapter 348 of the Laws of 1985, effective September 1, 1985, conferring full voting rights on the student members of community college boards of trustees. Specifically, he has asked whether the student trustees now are to be considered "local public officers" to be counted for quorum and other voting purposes. Second, if the student members are local public officers, must they be residents of the State and of the community colleges' sponsoring municipalities in order to be eligible for election by the student bodies as trustees? Finally, if students residing outside the sponsoring municipalities are eligible, should their oaths of office be filed with the clerk of the sponsoring municipalities or with the clerks of the students' counties of residence?

In a previous opinion, we dealt with the question whether community college trustees are public officers (1982 Op Atty Gen [Inf] 107). We distinguished a public office from a position of employment (ibid.). A public officer has the authority under law to exercise some portion of the sovereign powers of government (ibid.; Matter of Haller v Carlton, 42 AD2d 829 [4th Dept, 1973]). As compared to an employee who does not discharge independent duties but acts by the direction of others, a public officer is vested with discretion as to how he performs his duties (ibid.).

In our 1982 opinion, we set forth the powers and duties delegated by law to community college trustees. The trustees have the duty (subject to approval by the State University trustees) to appoint a president of the college (Education Law, § 6306[2]). They may appoint the members of the staff of the community college or may delegate this responsibility to the president (*ibid.*). The trustees may acquire real or personal property suitable for carrying out the program and purposes of the college (*id.*, § 6306[4]). They have the responsibility for the care, custody, control and management of the land, buildings, facilities and equipment of the college (*id.*, § 6306[5]). We concluded in the 1982 opinion that the voting members of the boards of trustees of community colleges exercise sovereign powers of government, and therefore are public officers. In an earlier opinion, however, we concluded that the student trustees, as non-voting members, do not exercise sovereign powers, and are not public officers (1975 Op Atty Gen [Inf] 79).

In 1977 (chapter 164), section 6306 of the Education Law was amended to grant to student trustees the same parliamentary privileges conferred upon voting members including but not limited to the right to make and second motions and to place items on the agenda (see, also, § 6310[1] of the Education Law, added by L 1984, ch 552). With the granting of full voting rights (L 1985, ch 338), student trustees possess all of the powers, privileges and responsibilities conferred on the remaining trustees. It follows that student trustees now have the status of public officers and because they have the right to vote should be counted for quorum and other voting purposes.

Having decided that student trustees are public officers, the second question is whether they are local officers who must be residents of the sponsoring municipality. Your counsel has pointed out that enrollment at community colleges is available to both residents and non-residents of the sponsoring municipality. Thus, the student bodies of community colleges are not composed exclusively of residents of the sponsor. The question becomes whether non-residents are eligible to serve as trustees.

In our 1982 opinion, we applied section 2 of the Public Officers Law, defining "state" and "local" officers. We found that community college trustees, other than non-voting student trustees, are local officers required to reside at the time of their appointment and throughout their terms of office within the geographical boundaries of the local sponsor (see, also, Public Officers Law, §§ 3 and 30).

Under the provisions of the Education Law, however, the student members of community college boards of trustees are "elected by and from among the students of the college" (*id.*, §§ 6306[1], 6310[1]). With the granting of full voting rights to the student trustees, this appointment provision was not modified. Thus, it appears that the Legislature's intent was to permit any member of the student body, whether or not a resident of the sponsor, to serve as a student trustee. It seems clear that the authorization for student trustees is intended to provide the student body with representation on the board of trustees. The requisite is continued membership on the student body, not residence in a particular location. Residency requirements for public officers are designed to encourage employees to maintain a commitment and involvement with the governmental employer (Mandelkern v City of Buffalo, 64 AD2d 279 [4th Dept, 1978]). With respect to student trustees of community college boards, however, the critical factor is their identity with and membership in student bodies. Thus, we believe sections 6306 and 6310 of the Education Law do not require that student trustees be residents of the sponsoring municipality.

Your final question is, assuming that non-residents are eligible to serve as student trustees, whether their oaths of office should be filed with the clerk of the sponsoring municipality or with the clerk of the student's place of residence. All public officers are required to take and file oaths of office (Public Officers Law, § 10). The oath of every officer of a municipal corporation is required to be filed with the clerk of such municipal corporation (*ibid.*). Thus, a student trustee should file his oath of office with the clerk of the municipal corporation or school district serving as the local sponsor.

We conclude that the student members of community college boards of trustees are public officers but need not be residents of the sponsoring municipality. They must file their oaths of office with the clerk of the sponsoring municipality.

Very truly yours,  
*Robert Abrams*

ROBERT ABRAMS  
Attorney General

Oath of Office Form for Council Members,  
State-operated Campuses

**State of New York**



COUNTY OF \_\_\_\_\_

} ss.:

*I do solemnly swear (or affirm) that I will support the constitution of the United States, the constitution of the State of New York, and that I will faithfully discharge the duties of the office of*

\_\_\_\_\_  
(Title of position)

\_\_\_\_\_  
(Department)

*according to the best of my ability.*

*Subscribed and sworn to before me this*  
\_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_  
(Signature of appointee)

\_\_\_\_\_  
(Type name of appointee)

\_\_\_\_\_  
(Type address of appointee)

\_\_\_\_\_  
(Notary, Comm. of Deeds, or other qualified officer)

*I hereby acknowledge receipt of a copy of Public Officers Law Sections 73 through 78, have read the same, and agree to conform to the provisions thereof.*

G 110-670

\_\_\_\_\_  
Signature of Appointee

\_\_\_\_\_  
Date