

Opinion No. 70-80

October 9, 1970

BY: OPINION OF JAMES A. MALONEY, Attorney General

TO: The Honorable Alex Martinez New Mexico State Senator 1949 Hopi Road Santa Fe, New Mexico 87501

QUESTIONS

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Do the regents of the University of New Mexico enjoy the authority to:

- (1) exclude an expelled or suspended student from classroom premises during class periods;
- (2) exclude an expelled or suspended student from the campus and all university facilities;
- (3) require payment for damages to university property from a student organization when the Regents have cause to believe that such damages were the result of the actions of members of the organization; and
- (4) require payment for damages to university property from individual students who have been identified as causing the damage?

CONCLUSIONS

- (1) Yes.
- (2) Yes, but see analysis.
- (3) See analysis.
- (4) See analysis.

OPINION

{*137} ANALYSIS

The nature and extent of the powers of the boards of regents which govern New Mexico's institutions of higher education have been examined in depth twice before by this office. Attorney General Opinion No. 70-73, issued September 3, 1970; Attorney General Opinion No. 69-104, issued September 5, 1969. The fundamental doctrine

enunciated in both opinions is that the boards of regents enjoy (constitutionally-vested) primary authority over their respective campuses. This authority must not be trenced upon from outside, Attorney General Opinion No. 70-73, **supra**, and may not be improperly delegated to officials or groups within the university, Attorney General Opinion No. 69-104, **supra**.

The source of this authority is the Constitution of the State of New Mexico. Article XII, Section 13 of that document places responsibility for the "control and management" of each state-supported university in the hands of its board of regents. Sections 73-25-3 and 73-25-7, N.M.S.A., 1953 Compilation, specifically implement that constitutional grant of power with respect to the University of New Mexico:

73-25-3. Powers vested in board of regents. -- The management and control of said university, the care and preservation of all property of which it shall become possessed, the erection and construction of all buildings necessary for its use, and the disbursements and expenditures of all moneys, shall be vested in a board of five [5] regents.

73-25-7. Rules and regulations for university government. -- The regents shall have power and it shall be their duty to enact laws, rules and regulations for the government of the university.

In addition to these powers of government, the regents are authorized to regulate and supervise admissions to the university by Section 73-25-10, N.M.S.A., 1953 Compilation:

73-25-10. Admission of students -- Rules and regulations. -- The university shall be open to the children of all residents of this state and such others as the board of regents may determine, under such rules and regulations as may be prescribed by said board, whenever the finances of the institution shall warrant it, and it is deemed expedient by said board of regents.

Thus, the power of the regents to suspend or expel students from the University of New Mexico arises from statutory and constitutional grants, and is most correctly viewed as a function of the "control and management" of the institution. While the treatment of the issues herein assumes the legal and constitutional validity of an expulsion or suspension, it should be made abundantly clear that the substantive and procedural standards upon which disciplinary action might be based are subject to scrutiny under state and federal constitutional provisions. **General Order and Memorandum on Judicial Standards of Procedure and Substance in Review of Student Discipline in Tax-Supported Institutions of Higher Learning.** 45 F.R.D. 133 (W.D.Mo. 1968).

Since the regents enjoy the authority to expel or suspend, it is clear that they possess the authority to take all steps necessary and proper in the execution of those actions. **Reese v. Dempsey**, 48 N.M. 417, 152 P.2d 157 (1944); **State ex rel. Clancy v. Hall**, 23 N.M. 422, 168 P. 715 (1917); **McCulloch v. Maryland**, 4 Wheat. (U.S.) 316 (1819).

Since an expulsion or suspension can have little effect if the disciplined student is permitted to continue attending classes and enjoying the benefits of the university community in general, it lies within the power of the regents to exclude him from those classes.

As we have observed on previous occasions, the authority of the regents to control and manage the university is constitutionally derived. Thus, when acting to regulate access to campus facilities, the regents enjoy authority similar to that exercised by the legislature {*138} in other matters. The regents may, under their constitutionally-granted powers, establish reasonable rules and regulations prescribing those persons who may have access to university property and activities. Since the terms of an expulsion or suspension might, under certain circumstances, warrant the suspended student's complete exclusion from the campus area, such reasonable rules as might be necessary to enforce the exclusion would lie within the implied scope of the regents' powers. Such regulations would be subject to scrutiny on substantive and procedural questions of reasonableness and due process, and the standards to be applied would be identical to those applied to test enactments of the legislature in other areas.

It should be recalled, moreover, that the regents could seek injunctive relief against persons who persisted in returning to the campus and materially disrupting its functions. Should a disciplined student who had been banned from campus attempt to disregard the ban, the regents could seek a court order restraining him from his activities. Such relief would be available against any individual or group disrupting campus affairs, and is not limited to disciplined students.

The remaining two questions appear to imply that the liability of student organizations or individual students for damage to campus facilities is a matter for determination by the regents themselves. The regents are not a court of law and we advise you that in our opinion a court of law would readily so hold. A "cause to believe" that damages were the result of actions by members of an organization simply would not, in our opinion, stand up to a court test. As to question number 4, the regents would be on a more firm legal ground to require payment for damages to University property from individual students "who have been **identified**" (emphasis added) as causing the damages, but the regents would be required to proceed in an action at law in which the usual constitutionally-guaranteed requirements of identification, burden of proof of the offense, and proof of guilt of the charge would apply.

By: Richard J. Smith

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