DOCUMENT RESUME

ED 399 857 HE 029 490

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TITLE University of Minnesota Constitutional Autonomy. A Legal Analysis.
INSTITUTION Minnesota House of Representatives, St. Paul. Research Dept.
PUB DATE Jul 96
NOTE 33p.
AVAILABLE FROM Research Department, Minnesota House of Representatives, 600 State Office Building, St. Paul, MN 55155.
PUB TYPE Legal/Legislative/Regulatory Materials (090) -- Reports - Descriptive (141)

EDRS PRICE MF01/PC02 Plus Postage.
DESCRIPTORS Accountability; *Constitutional Law; *Court Litigation; Educational Administration; Educational Finance; Financial Policy; Government Role; *Government School Relationship; Higher Education; Institutional Autonomy; *Legal Responsibility; School Role; State Legislation; *State Universities; Trustees
IDENTIFIERS *University of Minnesota

ABSTRACT

This discussion of the special legal status of the University of Minnesota, known as constitutional autonomy, defines this status, states the rationale for the principle, and describes the relevant territorial act and constitutional provision. The main part of the legal analysis examines Minnesota court cases which addressed the issue of the university's autonomy. The discussion is organized around four major principles: (1) the Board of Regents alone is empowered to manage the university, with certain qualifications; (2) judicial relief is available if the Regents abuse the management powers granted by the constitution; (3) the legislature may place conditions on university appropriations, if the conditions do not violate university autonomy; and (4) the university is subject to the state constitution and is not above the legislature's lawmaking power. Two appendices list Minnesota statutes that regulate the university in some way and other states whose universities have a special constitutional status similar to that of the University of Minnesota. (Contains approximately 70 references.) (CK)

Revised: July 1996

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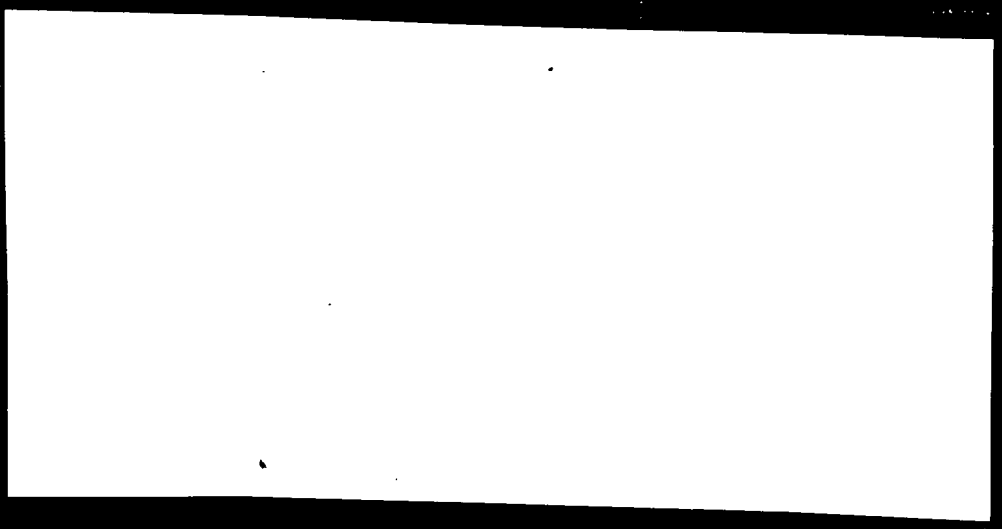
A Legal Analysis

Research Department
Minnesota House of Representatives



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Revised: **July 1996**

University of Minnesota Constitutional Autonomy

A Legal Analysis

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How This Legal Analysis Is Organized and What It Covers

The University of Minnesota has a special legal status, known as constitutional autonomy, which is of continuing interest to the legislature. Periodically, bills are introduced to amend the state constitution by eliminating or altering the autonomy provision.. More frequently, members ask whether a particular bill provision affecting the university would violate constitutional autonomy. Finally, at times the validity of current laws affecting the university is questioned. This legal analysis will be useful in the following ways:

- Legislators evaluating proposed constitutional amendments to eliminate autonomy can see the practical legal effect of the doctrine at the present time.
- Members concerned about the validity, under the autonomy provision, of a proposed bill or a law related to the university can see if case law provides any useful guidance.

This legal analysis first defines constitutional autonomy, states the rationale for the principle, and describes the relevant territorial act and constitutional provision. The main part of the legal analysis discusses Minnesota cases on the university's autonomy. The discussion is organized around four major principles that appear to be clearly established by the cases.

1. **The Board of Regents alone is empowered to manage the university, except as qualified below.**

   Case law prohibits either the legislative or executive branch from participating in internal management of the university. Cases especially reject broad legislative or executive branch control over university finances.

2. **Judicial relief is available if the regents abuse the management powers granted by the constitution.**

   The Minnesota Supreme Court has ruled that the judicial branch is also prohibited from interfering with internal university management. However, parties such as students or taxpayers may obtain relief from the courts if the university fails to follow its own rules or violates a valid law in such matters as procedures for student expulsion.

3. **The legislature may place conditions on university appropriations, if the conditions do not violate university autonomy.**

   A condition is more likely to be found valid if it applies equally to all public agencies and the court finds that it (1) promotes the general welfare, and (2) makes very limited intrusions on the regents' management duties. The Minnesota Supreme Court has said it is willing to review any conditional appropriation to determine whether these tests are met.

4. **The university is subject to the state constitution and is not above the legislature's lawmaking power.**

   As noted above, cases limit the legislative and executive branches' ability to manage internal university affairs and to place conditions on appropriations. Nonetheless, the legislature still has the power to impose on the university various general regulatory requirements that apply to other public agencies. The Minnesota Supreme Court has said that one criterion for evaluating the validity of such requirements is whether the university has accepted being covered by the statute in question.

After discussing the above principles, the legal analysis closes with two appendices. The first lists Minnesota statutes that regulate the university in some way. The second appendix lists other states whose universities have a special constitutional status similar to the University of Minnesota.

Autonomy as a Legal Principle

Definition

Constitutional autonomy is a legal principle that makes a state university a separate department of government, not merely an agency of the executive or legislative branch. A university with this status is subject to judicial review and to the legislature's police power and appropriations power. However, its governing board has a significant degree of independent control over many university functions.

Rationale

At least 19 state constitutions besides Minnesota's contain a special guarantee of autonomy for the state university or university system.[1] Courts have said that the intent of these provisions is to insulate university operations from the political influences that appropriately operate in a legislature. Cases indicate that another purpose of autonomy provisions is to have most decisions about university operations made by a citizen board with long tenure and a commitment to educational management.

Tensions

Promoting professionalism and academic freedom in state universities is still as important as it was when autonomy provisions were first adopted. Over time, changes in the character and funding of state universities have increased the public stake in these institutions. This in turn has created occasional tensions over the practical effect of university autonomy. For example, modern universities have expanded beyond their initial teaching mission into such activities as research and the operation of hospitals. These activities affect numerous industries and other sectors of society. Further, a large proportion of state university funding historically came from student fees and private contributions; in modern times an increasing amount is received from state appropriations. Given these developments, legislatures and courts must balance the legitimate public interest in oversight of state universities with the need to maintain academic independence.

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[1] See Appendix 2.

Minnesota Autonomy Law

Statute and Constitution

The University of Minnesota was incorporated and its powers were set out in an 1851 act of the Territorial Assembly.[2] The act established a Board of Regents, provided for the legislature to elect the board, and gave the board general authority to govern the university. Specific powers granted to the board in the act include: the ability to appoint faculty, set faculty salaries (with legislative approval), grant degrees, determine tuition, and erect buildings.

When Minnesota became a state in 1858, the constitution carried into statehood the legal status the territorial act had given the university.[3] This recognition in the constitution of the university's original charter is known as constitutional autonomy. Cases have explained that the constitution did not place the university above the law or give it any powers beyond the scope of the territorial act. Rather, the constitution guarantees that the university will permanently exist as an independent corporation, with overall management power in the regents, just as the territorial act provided.[4] The university has also been described as a constitutional arm of the state[5]. By adoption of the autonomy provision, the power to abolish the university or amend or repeal the territorial act was transferred from the legislature to the people, acting through the constitutional amendment process.[6]

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[2] Terr. Laws 1851, chap. 28.

[3] Minn. Const., Art. XIII, sec. 3 ("All the rights, immunities, franchises and endowments heretofore granted or conferred upon the University of Minnesota are perpetuated unto the university.")

[4] *State ex rel. University of Minnesota v. Chase,* 175 Minn. 259, 265, 220 N.W. 951, 953-54 (1928).

[5] *Winberg v. University of Minnesota,* 499 N.E. 2d 799, 802 (Minn. 1993).

[6] The territorial act provided that the legislature may "at any time, alter, amend, modify, or repeal this chapter." Terr. Laws 1851, c. 28, sec. 20. The Minnesota Supreme Court found that this provision was nullified when the autonomy section was included in the state constitution. *Fanning v. University of Minnesota,* 183 Minn. 222, 225-226, 236 N.W. 217, 218-219 (1931).

Essential Case Law Principles

The Minnesota Supreme Court first interpreted the doctrine of constitutional autonomy in 1928.[7] A handful of cases decided since that time suggest four principles that may be used to evaluate legislative proposals affecting the university.

1. **The Board of Regents alone is empowered to manage the university, except as qualified below.**

2. **Judicial relief is available if the regents abuse the management powers granted by the constitution.**

3. **The legislature may put conditions on university appropriations, if the conditions do not violate university autonomy.**

4. **The university is subject to the state constitution and is not above the legislature's lawmaking power.**

The next part of this legal analysis discusses the case law supporting each of these principles.

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[7] The autonomy principle also has been relevant in several federal court cases on the issue whether the university shares the state's immunity from suit in federal court, which is granted by the eleventh amendment to the federal constitution. See *Perez-Lacey v. University of Minnesota,* 655 F. Supp. 1066 (D. Minn. 1987) and cases cited therein. Because the subject is of limited relevance to state legislators, it is omitted from this legal analysis.

1. The Board of Regents alone is empowered to manage the university.

Overall University Administration. The legal principle of the regents' exclusive control of the university, free from legislative intervention, was established in *State ex. rel. University of Minnesota v. Chase.*[8] Dicta in the same case indicates that the university is also free of executive branch control over internal management.[9] *Chase* arose when a state executive branch officer refused to pay the regents' bill for a survey analyzing a university faculty insurance plan, because the officer disapproved of the survey. The Commission of Administration and Finance had been given authority to supervise and control state expenditures, which it interpreted to include university expenditures. The university sought a court order requiring the commission to pay for the regents' survey.

On appeal the Minnesota Supreme Court agreed that the commission correctly interpreted the statute to give it power over all state agencies, including the university. However, as applied to the university, the court found that the statute violated constitutional autonomy. The court explained the extent of the regents' powers as follows:

> [T]he people of the state, speaking through their constitution, have invested the regents with a power of management of which no legislature may deprive them. . . . [T]he whole executive power of the university having been put in the regents by the people, no part of it can be exercised or put elsewhere by the legislature. . . . [S]o far as [the act in question] attempts to give the commission any power of supervision or control over university finances, it is in violation of . . . the state constitution and therefore inoperative. It follows that the commission had no concern with the proposed expenditure of university funds, their veto of which caused the auditor to refuse payment of the item now in question.[10]

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[8] 175 Minn. 259, 220 N.W. 951 (1928).

[9] *Id.* at 274-75, 220 N.W. at 957.

[10] *Id.* at 266-267, 220 N.W. at 954.

The court then stated the rationale of the constitution in giving the regents exclusive control over the university:

> It was to put the management of the greatest state educational institution beyond the dangers of vacillating policy, ill informed or careless meddling and partisan ambition that would be possible in the case of management by either legislature or executive, chosen at frequent intervals and for functions and because of qualities and activities vastly different from those which qualify for the management of an institution of higher education. That history shows the dangers just mentioned not greatly to be feared from Minnesota legislatures and . . . governors, has nothing to say to the issue. Constitutional limitations are not to be ignored because no harm has come from past infractions or because a proposed violation has a commendable purpose.[11]

The rule and the rationale of *Chase* are important because they are still relied on by the Minnesota Supreme Court in contemporary cases on the extent to which any of the three branches of state government may regulate university affairs.[12]

Chase establishes the regents' independence from legislative control in managing university affairs, at least where a statute gives another state agency across-the-board "supervision or control" over university finances. The legal principle of the regents' exclusive management power must be considered when evaluating the constitutionality of any statute regulating the regents. However, there appears to be a distinction between subjecting the regents to extensive control by another agency, which is not valid, and a permissible limitation such as conditioning an appropriation by subjecting the regents to laws that promote the general welfare and involve only limited interference with internal management.[13]

Control of University Revenues. The regents have complete control of university revenues from sources other than legislative appropriations, if the funds are used for university purposes.

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[11] *Id.* at 274-75, 220 N.W. at 957 (citation omitted).

[12] See *Regents of Univ. of Minn. v. Lord,* 257 N.W.2d 796 (Minn. 1977); *see also Winberg v. University of Minnesota,* 499 N.W. 2d 799, 801(dicta), (Minn. 1993).

[13] See footnotes 31 to 43 and accompanying text.

In *Fanning v. University of Minnesota* taxpayers attempted to forbid the regents from building a dormitory.[14] They objected to the planned use of dormitory rentals to repay bonds issued for the construction. Plaintiffs' argument was in part that the plan violated a legislative appropriation to the university which required university rents to be used for campus improvements.[15] Plaintiffs lost in the trial court and appealed.[16]

The Minnesota Supreme Court found that contrary to plaintiffs' argument, the word "improvements" could be understood to include dormitory construction, so the proposed project would satisfy the legislative proviso (the court had noted earlier that student housing was a university purpose). However, at a more basic level, the court found that:

> [C]ampus rentals all the time were subject to the disposition of the board for university purposes. The legislature by the proviso assumed to give the university that which was its own. . . . [H]aving the right of disposition, the board could use campus rentals for the building of a dormitory without a legislative appropriation for such purpose and in spite of an appropriation for a different [purpose].[17]

The court dismissed the taxpayers' suit, in part because it lacked jurisdiction to interfere on behalf of taxpayers with the regents' choices regarding how to use university revenues for university purposes. Of greatest importance to the legislature is the dicta allowing the regents to spend university revenues in the absence of legislative authorization or even contrary to a legislative directive. The language suggests that if faced with the issue, the court might reject an attempt by the legislature to control the regents' disposition of university revenues derived from sources other than legislative appropriations.[18]

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[14] 183 Minn. 222, 236 N.W. 217 (1931).

[15] *Id.* at 227, 236 N.W. at 219.

[16] *Id.* at 223, 236 N.W. at 218.

[17] *Id.* at 227-28, 236 N.W. at 219-220.

[18] Other state courts have reached this result. *See Board of Regents of Univ. of Neb. v. Exon,* 199 Neb. 146, 256 N.W.2d 330 (1977); *Board of Regents of Higher Education v. Judge,* 168 Mont. 433, 543 P.2d 1323 (1975); *State v. Board of Trustees,* 387 So. 2d 89 (Miss. 1980).

2. Judicial relief is available if the regents abuse the management powers granted by the constitution.

The regents have complete control over university management, except that the courts will provide relief if the regents fail to perform duties imposed by a valid law or act in violation of university rules.

The first Minnesota case on the extent of judicial review of the regents preceded the *Chase* decision on the limits on legislative power over the regents. In *Gleason v. University of Minnesota,* a student expelled from the law school for deficient work and insubordinate acts toward the faculty sought a writ of mandamus directing the regents to reinstate him.[19] The issue on appeal was whether the regents were subject to such a suit. Regarding the extent of the judiciary's power over the regents, the court anticipated the result it would reach in *Chase* on the respective management roles of the legislature and regents. It ruled:

> We are of the opinion that the government of the university as to educational matters is exclusively vested in the board of regents and that the courts of the state have no jurisdiction to control the discretion of the board . . .[20]

The court then stated an exception to the rule:

> [B]ut if [the board of regents] refuses to perform any of the duties enjoined upon it by law, or arbitrarily refuses any person entitled thereto the privileges of the university . . . [judicial relief is available] to compel the board to act.[21]

The court reviewed the regents' various powers under the constitution, including the power to erect buildings, purchase supplies, and manage the endowment. It then noted legislation that provided other powers of the regents, such as determining student admission qualifications and setting courses of study. From these express constitutional and statutory powers, the court inferred that the regents had authority to establish rules for student deportment and advancement through school. Without further discussion, the supreme court remanded the case to the trial court. In effect, it required the regents to show why their refusal to re-admit the student was consistent with university rules. Implicitly, the court appeared to have

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[19] 104 Minn. 359, 360, 116 N.W. 650 (1908).

[20] *Id.* at 362, 116 N.W. at 652.

[21] *Id.* at 362-63, 116 N.W. at 652.

concluded that violation of such rules by the regents would amount to arbitrary refusal of university privileges, and that judicial relief would be warranted in the event a violation was established.[22]

Decades later the court expanded the rule in *Gleason*. In *State ex rel. Sholes v. University of Minnesota,* an individual sued the regents for an injunction against alleged use of university facilities to promote sectarian religion.[23] The court ruled that before a citizen could seek an injunction or judicial relief against the regents, he or she must first request relief directly from the regents.[24] Later the court distinguished *Sholes* in a manner that appears to limit its significance:

> [*Sholes*] involved an action to require the university's board of regents to adopt . . . rules . . . prohibiting all use of university property . . . for the teaching or dissemination of . . . religious doctrine . . . [I]n these circumstances a prior demand [on the regents] was necessary because . . . the actions requested . . . required so much study and analysis . . . before the court would intervene.[25]

Bailey v. University of Minnesota,[26] the most recent case on the availability of judicial relief against the regents, follows *Gleason* and *Sholes* in ruling that such relief will be granted only in limited circumstances. In *Bailey*, plaintiffs alleged that the regents were permitting various criminal activities on campus and requested the trial court to take continuing jurisdiction over administration of the university. The trial court dismissed the case. On appeal, the Minnesota Supreme Court affirmed the trial court.[27] It re-stated the rule that "very substantial deference [is] to be accorded the governing authority of the regents."[28] The court indicated that it would be willing to consider "a remedy of [a] particular abuse," but not to take complete control of

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[22] *Cf. Garner v. Michigan State University,* 185 Mich. App. 750, 462 N.W.2d 832 (1990) appeal denied, 439 Mich. 881 (despite constitutional autonomy, university must follow procedures for dismissal of tenured faculty in the case of a professor who lied on his application).

[23] *State ex rel Sholes v. University of Minnesota,* 236 Minn. 452, 54 N.W.2d 122 (1952).

[24] *Id.* at 458-460, 54 N.W.2d at 127-128.

[25] *Alevizos v. Metro. Airports Comm'n. of Mpls. and St. Paul,* 298 Minn. 471, 496-497, 216 N.W.2d 651, 667 (1974) (seeking injunctive relief against a government agency).

[26] 290 Minn. 359, 187 N.W.2d 702 (1971).

[27] *Id.*

[28] *Id.* at 360, 187 N.W.2d at 704.

the institution.[29] The court further noted that the proper recourse for suspected criminal conduct was to contact the county attorney.[30]

3. The legislature may put conditions on university appropriations, if the conditions do not violate university autonomy.

Controlling Case Law. The only Minnesota decision on this subject, *Regents of University of Minnesota v. Lord,* makes clear that:

- the legislature may condition university appropriations
- it is helpful if the conditions promote the general welfare and apply to all public agencies, not just the university
- the conditions must make only very limited intrusions on the regents' overall management of the university
- the court will carefully review any conditions to insure the least possible intrusion on the regents' authority.[31]

The principle that legislative appropriations to the university may carry conditions was first recognized in dicta in *Fanning v. University of Minnesota.*[32] The 1977 holding in *Regents of University of Minnesota v. Lord* affirmed the principle. The issue in *Lord* was whether conditioning the appropriation of funds on compliance with the state Designer Selection Board Act was an attempt by the legislature to control the regents' constitutional powers over internal university management.[33]

The Designer Selection Board Act sets procedures for choosing architects for government buildings. *Lord* arose when the university selected an architect for a proposed campus building, using its own criteria. The university did not comply with the Designer Selection

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[29] *Id.*

[30] *Id.*

[31] *Regents of Univ. of Minn. v. Lord,* 257 N.W.2d 796 (Minn. 1977).

[32] 183 Minn. 222, 236 N.W. 217 (1931).

[33] *Lord,* 257 N.W.2d 796, 797.

Board Act, although the act expressly applied to it. The state refused to pay for the planning expenses because of this noncompliance. The legislature then made compliance with the act a specific condition of the appropriation for construction of the building. The regents then sought and received from the trial court a declaratory judgment that the act was unconstitutional as applied to the university.[34]

On appeal, the Minnesota Supreme Court cited the statement in *Fanning* that appropriations to the university may carry conditions. It then observed that the present case required clarification of what conditions would be constitutional. In upholding application of the Designer Selection Board Act to the university, the court mentioned favorably certain characteristics of the act:

> The statute promoted the general welfare and prevented conflicts of interest and fraudulent acts in the selection of architects for public projects.
>
> It applied to all state agencies, not just the university.
>
> It imposed limited conditions, rather than being a direct attempt to control all university expenditures.[35]

The court concluded that any future challenges to a conditional appropriation would be decided on a case-by-case basis, because it was not possible to define as a general matter what conditions would be acceptable in other instances.[36] Despite this cautionary language, the factors listed above should be relevant for evaluating the constitutionality of other laws or proposed bills that condition an appropriation to the regents.

The first holding in *Lord* implied that a conditional appropriation might be valid if kept within narrow limits:

> [W]e hold that the legislature has applied very minimal conditions on the use of funds appropriated by it to the university—conditions which are limited in scope and which are not an intrusion into the internal control and management of the university by its board of regents.[37]

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[34] *Id.* at 797-798.

[35] *Id.* at 802.

[36] *Id.*

[37] *Id.*

The court paid further deference to the university in a second holding that, although the State Designer Selection Board is required by law to negotiate the architect's fee:

> [The] Regents . . . must be consulted during the negotiation process, and must specifically approve the contract both as to form and content before execution.[38]

In summary, the holdings make clear that to be valid, a conditioned appropriation must minimally intrude on the regents' management powers. The reasoning indicates that any condition must also promote the general welfare and not treat the university differently from other public agencies.[39] For discussion of the concept of the general welfare see number 4 on page 14.

Conditions on Faculty Compensation. Since *Lord*, only one Minnesota case has touched on the issue of a conditioned appropriation for the university. In *AFSCME Councils v. Sundquist,* public employee unions challenged legislation imposing a temporary increase in employee pension contributions.[40] On appeal the unions argued that the law violated equal protection by exempting university faculty pension fund members from any increase in employee contributions. The Minnesota Supreme Court rejected this argument, partly on the ground that including the fund in the legislation might have violated university autonomy. The court explained:

> In order for the legislature to have effectuated [the proposed result], state appropriations to the university would have had to have been "earmarked" or specifically set aside for that purpose. (citing *Lord*) Under the Minnesota Constitution, such conditions may be an improper invasion of the management prerogatives of the board of regents. . .[41]

This portion of *AFSCME Councils* suggests that if faced with the issue, the Minnesota Supreme Court might follow courts in other states that have ruled that salary and benefits determinations are not subject to legislation but rather are matters exclusively within the regents' control.[42]

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[38] *Id.* at 803.

[39] *Id.* at 802.

[40] 338 N.W.2d 560 (Minn. 1983) appeal dismissed 466 U.S. 933 1984.

[41] *Id.* at 572.

[42] See, *e.g. San Francisco Labor Council v. Regents of Univ. of Calif.*, 26 Cal.3d 785, 608 P.2d 277, 163 Cal.Rptr 460, (1980) (invalidating application of prevailing wage law to university); *Board of Regents of Higher Educ. v. Judge,* 168 Mont. 433, 543 P.2d 1323 (1975) (invalidating statutory limit on percentage increases in

However, while the University of Minnesota's charter authorizes the regents to set faculty salaries, the charter also provides for legislative approval of the salaries.[43] The latter provision could be relied on by a court to uphold at least some legislative regulation of faculty compensation.

4. The university is subject to the state constitution and is not beyond the legislature's lawmaking power.

Under *Fanning* and *Lord* at least some conditions may be placed on legislative appropriations to the university. A remaining question is whether the legislature may subject the university to regulatory laws with general application to other public agencies or to both public and private entities, in the absence of any connection with an appropriation. The answer is almost certainly yes.

In *Chase* the court indicated that the regents "are [not] the rulers of an independent province or beyond the lawmaking power of the legislature."[44] Unfortunately, aside from the discussion of conditioned appropriations in *Lord,* Minnesota cases give no guidance for determining which specific statutes would be valid exercises of the legislative lawmaking power over the university. Consequently, when evaluating the constitutionality of a bill or statute, the best approach probably is to rely on the factors the court seemed to approve in the conditional appropriation in *Lord*: that a provision is directed at an issue affecting the general welfare, treats the university like other public agencies, and only minimally interferes with internal management.[45] If all these factors are satisfied, there is a good argument that a statute or bill providing legislative authority over the university would be valid.

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university president's salary).

[43] Terr. Laws 1851, chap. 28, sec. 9.

[44] 175 Minn. at 266, 220 N.W. at 954. *See also Fanning,* 183 Minn. at 225-226, 236 N.W. at 219 (1931); *Winberg v. University of Minnesota,* 499 N.W.2d 799, 801 (Minn. 1993) .

[45] *Cf. Schraf v. Regents of University of California,* 234 Cal.App.3d 1393, 286 Cal. Rptr. 227 (1991) rev. den. 1992 (invalidated personnel statute that applied only to the university, was more restrictive then most other statutes in its area, and significantly intruded on the tenure process).

Under *Lord* it may be constitutional to subject the university to a regulatory statute that applies equally to all state agencies and is found to promote the general welfare. At least a few courts in other states have faced the issue of whether a statute affecting a university with constitutional autonomy promotes the general welfare,[46] reflects established public policy,[47] or deals with a statewide concern.[48] Like the Minnesota Supreme Court in *Lord,* these courts also refrained from any analysis that might provide guidance in future cases. A common characteristic of the results in the cases is that courts tend to approve statutes with systemwide general public sector applicability and to invalidate those which benefit a smaller group, burden only the university, or burden the university differently from any other public agency. For example, a local prevailing wage law was found to be literally not a statewide concern and thus was unconstitutional to apply to the university.[49] In another case, a court found a university subject to the repeal of government tort immunity, like all other state agencies.[50] However, a law that required only state educational institutions to divest South African interests was found unconstitutional as not reflecting state public policy, where other state agencies were still allowed to hold such interests.[51]

Case law from other states also has approved the application of a statute to a university when the statute applies on the same terms to private entities. Examples include application of workers' compensation law[52] and usury limits[53] to a state university. In each case, the laws applied respectively to private sector employers and lenders as well and were judged by the courts to further a general public policy of the state.

Another factor to consider in evaluating the constitutionality of a regulation is university acceptance of being covered by a particular statute or type of statute. In *Lord* the court listed several regulatory statutes that apply to the university, such as the Public Employee Labor

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[46] *Peters v. Michigan State College,* 320 Mich. 243, 249-251, 30 N.W.2d 854, 857 (1948).

[47] *Regents of Univ. of Mich. v. State,* 166 Mich.App. 314, 328-330, 419 N.W.2d 773, 779 (1988); appeal dismissed 453 N.W.2d 656 (Mich. 1989).

[48] *San Francisco Labor Council v. Regents of Univ. of Calif.,* 26 Cal.3d 785, 789, 608 P.2d 277, 279, 163 Cal.Rptr. 460, 462 (1980) followed in Regents v. Aubrey, 49 Cal.Rptr.2d 703 (Cal. App. 1996).

[49] *San Francisco Labor Council,* n.48.

[50] *Branum v. State,* 5 Mich.App. 134, 145 N.W.2d 860 (1966).

[51] *Regents of Univ. of Mich. v. State,* 166 Mich.App. 314, 328-330, 419 N.W.2d 773, 779 (1988) appeal dismissed 453 N.W.2d 656 (Mich. 1989).

[52] *Peters v. Michigan State College,* 320 Mich. 243, 30 N.W.2d 854 (1948).

[53] *Regents of Univ. of Calif. v. Superior Court of Almeda Cty.,* 17 Cal.3d 533, 551 P.2d 844, 131 Cal.Rptr. 228, (1976).

Relations Act, the Data Practices Act, and the Highway Traffic Regulation Act.[54] The court then observed:

> While these regulations are not at issue here, their existence and the acquiescence by the university in their application does carry some significance toward a practical construction of the statutes in controversy in the instant case.[55]

While university acquiescence in a statute or type of statute is one factor the legislature may consider when deciding whether to impose a similar, additional regulation, it is not possible to rely completely on a waiver argument to establish the validity of a statute or proposed bill. In the *Chase* decision, when striking down commission control of university finances, the court discussed at length past occasions when the university had acceded to legislative interference with its autonomy.[56] However, the court declined to find that those instances validated the statute at issue, given the impermissible intrusion on university autonomy.

Further, in *State ex rel. Peterson v. Quinlivan*, the court reviewed a challenge to a statute that revived legislative election of regents, as provided in the territorial act, after statutes for years had specified gubernatorial appointment of regents.[57] The court rejected the argument that the general constitutional provision on the governor's appointment power should supersede the territorial act on regent elections. Despite the long period of time during which statutes had provided gubernatorial appointment of regents, the court concluded that the constitutional requirement of legislative election must be followed.[58]

In conclusion, while *Lord* indicates that university acquiescence may be relevant on the question of a statute's validity, *Chase* and *Quinlivan* shows that such agreement does not guarantee validity if an express constitutional provision or a legitimate autonomy concern is involved.

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[54] *Regents of Univ. of Minn. v. Lord,* 257 N.W.2d at 801.

[55] *Id.*

[56] *Chase,* 175 Minn. at 271-72, 220 N.W. at 956.

[57] 198 Minn. 65, 268 N.W. 858 (1936).

[58] *Id.* at 77-78, 268 N.W. at 865.

Appendix 1

Minnesota Statutes Expressly Affecting the University

The lists that follow include statutes that expressly:

- require or prohibit the university to take or refrain from particular action
- expressly authorize or request the university to take a particular action, or
- exempt the university from compliance with a particular law.

Where available, footnotes indicate cases from Minnesota or other states of possible relevance to a particular statute's constitutionality.[1] All citations are to Minnesota Statutes.

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[1] Besides reviewing statutes that expressly deal with the university, it is useful to ask whether statutes that do not expressly name the university can be interpreted to cover it. In earlier cases, the answer appears to be that the university falls within the definition of such terms as "state agency," or "state institution," unless it is expressly excluded. Recent case law suggests the opposite conclusion: that the university is excluded from the definition of such terms unless expressly included. In any case, even if it is held to be a "state" agency, the university probably would not be considered either an "executive" or "legislative" agency.

The Minnesota Supreme Court first addressed this issue in *State ex rel. University of Minnesota v. Chase*. The statute being challenged applied to "all. . . departments and all officials and agencies of the state. *Chase,* 175 Minn. 259, 262, 220 N.W. 951, 952 (1928). The court found that the university was a state agency, and applied the literal meaning of the statute. *Id.* Further, the court noted that some state agencies had been expressly exempted from the statute, which could have been done in the case of the university had the legislature so intended. *Id.* at 262-263, 220 N.W. at 952, 953. See *The Minnesota Daily v. University of Minnesota*, 432 N.W.2d 189 (Minn. App. 1988) rev. den. 1989 (assumes without deciding that regents are covered by the Open Meeting Law); *City of Minneapolis Commission on Civil Rights v. University of Minnesota*, 356 N.W.2d 841 (Minn. App. 1984) (assumes without deciding that university is a state agency and subject to Human Rights Act). In addition, because the court emphasized the importance of placing the university beyond either legislative or executive management, it seems to follow that even if it is a state agency, the university would not be considered either a legislative or executive agency. *Id.* at 274-275, 220 N.W. 957.

More recently, the Minnesota Supreme Court reviewed a court of appeals decision in which the lower court had decided that the university was a political subdivision as that term is used in the Veterans Preference Act. *Winberg v. University of Minnesota*, 499 N.W.2d 799 (Minn. 1994). Functionally, the court decided that the university is not a political subdivision. .On the question whether the university was covered by the Veterans Preference Act the court reasoned:

> The legislature recognizes the University's unique constitutional status and in the great majority of laws it passes affecting the University, it expressly includes or excludes the University or its board of regents as subject to or not subject to the law. Thus if the Legislature had intended the Veterans Preference Act to apply to the University of Minnesota, it most likely would have included the University by specific reference.. . . the University, which is itself a constitutional arm of the state, would not be bound by the Veterans Preference Act unless explicitly named. 499 N.W.2d at 802.

Elsewhere in the decision, the court suggested that even without naming the university expressly, a statute might

Requirements and Prohibitions

1. Academic and Research

The university must assess practices and conduct research to keep Minnesota in a leadership role in access to, and distribution of government information. §15.96

In alternate years the regents and other boards of post-secondary education institutions must submit to the governor and the legislature long-range plans for program, staff and facilities. §135A.06[2]

Regents and other boards of post-secondary education institutions must develop (1) course guides for use by institutions with frequent student transfers and (2) policies for advanced placement course credit. §135A.08; 135A.10

The regents and other public post-secondary institutions must develop a policy for awarding credit for advance placement courses. §135A.10

2. Financial; Real Property

The Legislative Auditor and Department of Finance may examine university records. §§3.971; 137.0251

The university is subject to the law creating a preference for use of American made materials. §16B.101

Income from the permanent university fund is to be used for endowed chairs; half the funds for such chairs must come from non-state sources. §137.022

The Commissioner of Finance must not pay any funds to the university unless the university certifies that balances on hand do not exceed a specified amount. §137.025

Tuition must be refunded to students who enlist or are drafted before a course ends. §137.10

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be read to include it if the statutory terms included such broad ones as "any state agency, board, commission or department. . . or other public body" 499 N.W.2d at 802, quoting the Open Meeting law; emphasis omitted.

While *Winberg* does not appear to completely discard the approach in *Chase*, it at least creates enough uncertainty to encourage expressly naming the university in any statute intended to apply to it.

[2] *Cf. Regents of Univ. of Mich. v. State,* 395 Mich. 52, 235 N.W.2d 1 (1975) (constitutional requirement that university report proposed new programs valid where information helped legislature plan higher education funding and report requirement did not involve a veto over regents' plans).

The university is subject to various state bond regulations, including those on leasing, selling, or entering a management contract regarding state bond financed property. **§16A.695**

Unlike state agencies, the university must reimburse the Department of Administration for agency reports and publications it receives. **§16B.482**

Regents must set aside for small businesses 20 percent of the value of procurement contracts to be awarded during a fiscal year and to be paid in whole or in part by legislative appropriations. **§§16B.21; 137.31**[3]

University contracts must require contractors to make prompt payment to subcontractors. **§137.36**

The university must participate in computer matches of its vendors to determine tax law compliance. **§270.66**

Indirect cost recovery money must be used to support research or for other specified purposes. **§137.41**

3. Health and Safety

The university is subject to the state building code, including compliance inspections. **§§16B.60, 16B.71**

The university is subject to fire marshall inspection, as a condition of receiving certain state aid. **§69.011**

University students are subject to the law on post-secondary student immunization. **§135A.14**

The Commissioner of Health may investigate actual or potential hazardous substance releases on any employer's property, including university property. **§145.94**[4]

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[3] Regarding the statutory control over contracts to be paid only "in part" by a legislative appropriation, see *Fanning v. University of Minnesota,* 183 Minn. 222, 236 N.W. 217 (1931).

[4] *Cf. Regents of Univ. of Calif. v. Supr. Ct. of Alameda Cty.*, 17 Cal.3d 533, 551 P.2d 844, 131 Cal.Rptr. 228, (1976) (general police power regulations affecting private persons and corporations may apply to university).

The state highway traffic code applies to roads on property owned by the regents, although the regents also have authority to set traffic and parking rules. **§§169.02, 169.965**[5]

The university hospitals are extensively regulated in chapter 158.

4. Personnel

The university is an employer for purposes of:

unemployment compensation law. **§268.06, subd. 26**

worker's compensation law. **§§176.011, 176.611.**[6]

public employee labor relations law. **§179A.03.**[7]

Non-academic university employees must receive pay comparable to classified state employees. **§137.02**[8]

The university may not commit reprisals against employees who refuse to contribute to it or other charitable causes. **§181.937**

The university's faculty retirement plan must file an annual public financial report. **§356.20**[9]

The university pays its own premium to the worker's compensation reinsurance association. **§79.34**

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[5] *Cf. Student Gov't Ass'n of L.S.U. v. Board of Supervisors,* 262 La. 849, 264 So.2d 916 (1972) (legislation limiting student parking fines invalid because it interfered with board's exclusive internal management powers).

[6] *Cf. San Francisco Labor Council v. Regents,* 26 Cal.3d 785, 789, 163 Cal.Rptr. 460, 462, 608 P.2d 277, 279 (1980) (application of worker's compensation law to university is valid under police power).

[7] *Cf. Regents of Univ. of Mich. v. Mich. Employment Relations Comm'n,* 389 Mich. 96, 204 N.W.2d 218 (1973); *University Police Officers v. Univ. of Neb.,* 203 Neb. 4, 277 N.W.2d 529 (1979), (both upheld application of public employee labor relations law to university where state constitution included provision on state role in labor relations or public employee right to bargain).

[8] *Cf. Board of Regents of Univ. of Okla. v. Baker,* 638 P.2d 464 (Okl. 1981) (regents cannot be required to give same raises as other state agencies).

[9] *Cf. Regents of Univ. of Mich. v. State,* 395 Mich. 52, 235 N.W.2d 1 (1975) (requirement that university disclose debt liquidation schedule to legislature held to be a valid means for planning appropriations and learning about matters affecting state credit).

5. Conditioned Appropriation

A statutory appropriation is conditioned on the university's conducting certain duties related to training primary care physicians. **§137.38 to 137.40**

6. Other

The university is a state agency for purposes of the tort claims act. **§§3.732, 3.736**[10]

The university is a state agency for purposes of the Data Practices Act. **§13.02**

The university is governed by the law on rights of individuals subject to computerized data matching programs. **§13B.01**

University employees are included in the prohibition against state employees accepting kickbacks. **§15.43**

The university is subject to the law on indoor ice facility access based on user gender. **§15.98**

The university is subject to the Designer Selection Board Act. **§16B.33**[11]

The Legislative Auditor may do performance audits of the university. **§16B.45**

The university is subject to the state building code. **§16B.60**

The university must cooperate with the Commissioner of Agriculture in furthering agricultural interests. **§17.03**

University agriculture and forestry colleges, agriculture experiment station, and agriculture extension service are directed to perform research, conduct training, and otherwise assist with such matters as shade tree disease, corn growing, water conservation, etc. **§§17.86; 18.023; 18B.045; 21.90; 89.015; 89.06; 89.65; 89.66; 103C.335; 137.14; 137.15; 137.33**

The university and other educational institutions must have Department of Natural Resources approval to establish forests. **§89.41**

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[10] See *Miller v. Chou,* 257 N.W.2d 277 (Minn. 1977) (university shared state tort immunity until the legislature abolished the provision).

[11] Upheld in *Regents of Univ. of Minn. v. Lord,* 257 N.W.2d 796 (Minn. 1977).

The regents may appoint peace officers with statewide arrest powers in cases involving university personnel or property. **§137.12**

University facilities, like other public facilities, must be made available for political party caucuses and conventions and for use as polling places. **§§202A.192; 204B.16**

The university must comply with state energy conservation standards. **§216C.20**

The university and other public agencies must give the revenue department taxpayer identifier numbers for those with whom it does business, to help find delinquent taxpayers. **§270.66**

The university and other post-secondary education institutions are required to assist in serving a student with an order to pay child support. **§543.20**

Express Authorization or Request

Income to the university is credited to it rather than to the state general fund. **§16A.72**

The university is authorized to pay interest on late payments to vendors; executive agencies are required to do so. **§16A.124**

The regents decide whether certain university employees are eligible for life and health insurance. **§43A.24, subd. 2**

The university controls state salt lands and the income from them. **§92.05**

Revenue from minerals on university lands must be placed in the permanent university fund. **§16A.125, subd. 6a**

Income to the university is credited to it rather than to the state general fund. **§16A.72**

The university is requested to convert to a semester academic calendar. **§135A.181**

Exemptions

The university (along with other specified entities) is exempt from:

- provisions affecting review of expenditure of federal funds and acceptance of such funds. **§§3.3005, 16B.31**[12]
- the Administrative Practices Act. **§§14.03; 14.38; 14.386; 14.387**[13]
- an annual report to the legislature on state property sold. **§16B.24**
- regulations on making, distributing, and charging for state agency reports. **§16B.51**
- state central motor pool. **§16B.54**
- any requirement that auxiliary aids be provided to handicapped persons in classes. **§15.44**
- any requirement that classes or seminars be held in a building accessible to physically handicapped persons. **§16B.61**
- the Government Records Disposition Act. **§138.17**
- the Charitable Solicitation Registration Act. **§309.515, subd. 1**
- the general ban on holding public events the evening of precinct caucuses. **§202A.19**

The university must do energy audits of its own buildings. The Commissioner of Administration audits other state buildings. **§216C.22**

The university is requested (1) to develop a sexual harassment and violence policy and (2) to participate in the statewide telecommunications access routing system. Other named entities are required to comply with these laws. **§§135A.15; 16B.465**

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[12] *Cf. State v. Kirkpatrick,* 524 p.2d 975 (N.M. 1974) (federal funds not subject to legislative appropriation).

[13] *Cf. Grace v. Board of Trustees for State Col. and Univ.*, 442 So.2d 598, 601 (La. App. 1983) writ denied 1984 (board's power to adopt regulations for internal university management without legislative consent makes it exempt from Administrative Procedures Act).

Appendix 2

Other States with University Constitutional Autonomy

Several other states have constitutional provisions giving their state university a special independent legal status. The language of the relevant provisions varies greatly, as does each state court's degree of reliance on the constitutional provisions. Following is a list of states with some form of university autonomy provision in their constitution. The states are grouped according to whether they have (1) extensive case law on the subject, (2) some case law, (3) cases that either decline to implement autonomy or give it minimal practical effect, or (4) no case law. For each state, one significant case (sometimes the only case) is included.

States with Extensive Case Law on the Extent of University Autonomy

California — **Cal. Const., Art. IX, §9**
See *San Francisco Labor Council v. Regents,* 26 Cal.3d 785, 608 P.2d 277, 163 Cal.Rptr. 460 (1980) (unconstitutional to subject university to prevailing area wage law; includes test for areas of legitimate legislative regulation).

Michigan — **Mich. Const., Art. VIII, §§4, 5**
See *Peters v. Michigan State College,* 320 Mich. 243, 30 N.W.2d 854 (1948) (application of worker's compensation law to university upheld as exercise of police power).

States with at Least One Case Giving Effect to University Autonomy

Alabama — **Ala. Const., Art. XIV, §264**
See *Opinion of the Justices,* 417 So.2d 946, (Ala. 1982) (legislature may not by statute remove trustees' discretion regarding university management).

Georgia

Ga. Const., Art. VIII, §4(a)
See *McCafferty v. Medical College of Georgia,* 249 Ga. 62, 287 S.E.2d 171 (1982) (recognizing special constitutional status of regents); overruled on other grounds in *Self v. City of Atlanta,* 259 Ga. 78, 377 S.E.2d 674 (1989).

Hawaii

Hawaii Const., Art. X, §6
See *Levi v. University of Hawaii,* 63 Hawaii 366, 628 P.2d 1026 (1981) (regents have exclusive authority over internal management consistent with laws of statewide application).

Idaho

Idaho Const., Art. IX, §10
See *Dreps v. Board of Regents of the University of Idaho,* 65 Idaho 88, 139 P.2d 467 (1943) (constitution prevents legislature from restricting regents' employment decisions); cited in *State v. Continental Casualty Company,* 829 P2d 528 (Idaho 1992).

Louisiana

La. Const., Art. VIII, §§5-7
See *Student Government Ass'n of LSU v. Board of Supervisors,* 262 La. 849, 264 So.2d 916 (1972) (legislation on maximum student parking fines found to violate board's full administrative authority over students).

Montana

Mont. Const., Art. X, §9
See *Board of Regents of Higher Education v. Judge*, 168 Mont. 433, 543 P.2d 1323 (1975) (legislature may not control private donations to university nor limit presidential salary increases.).

Nebraska

Neb. Const., Art. VII, §10
See *Board of Regents of University of Nebraska v. Exon,* 199 Neb. 146, 256 N.W.2d 330 (1977) (legislature may not subject university revenues to appropriation power; may not control manner of giving university employee raises; may not impose certain controls on construction; may not subject university to state data processing or purchasing procedures); but see *State v. Beermann,* 455 N.W.2d 749 (Neb. 1990) (transfer of state college to university system violated state constitution, but the law was upheld under a separate constitutional provision requiring five votes to invalidate a statute).

Nevada

Nev. Const., Art. XI, §4
See *King v. Board of Regents of University of Nevada,* 65 Nev. 533, 200 P.2d 221 (1948) (legislation requiring creation of an advisory committee to the regents invalid encroachment on regents' essential power to manage university).

Oklahoma

Okla. Const., Art. XIII, §8
See *Board of Regents of University of Oklahoma v. Baker,* 638 P.2d 464, (Okla. 1981) (legislature may not mandate faculty raises).

States That Have Rejected University Autonomy or Give It Minimal Practical Effect

Alaska

Alaska Const., Art. VII, §3
See *University of Alaska v. National Aircraft Leasing, Ltd.,* 536 P.2d 121 (Alaska 1975) (despite constitutional autonomy, university is part of the state educational system); followed in *Carter v. Alaska Public Employees Association.* 663 P.2d 916 (Alaska 1983)

Colorado

Colo. Const., Art. IX, §12
See *Uberoi v. University of Colorado,* 686 P.2d 785 (Colo. 1984) (regents' discretion can be limited by clear legislation).

Mississippi

Miss. Const., Art. VIII, §213A
State ex.rel. Allain v. Board of Trustees, 387 So.2d 89 (Miss. 1980) (trustees control self-generated university funds but court refused to reach the question whether the board was autonomous).

Missouri

Mo. Const., Art. IX
See *Heimberger v. Board of Curators,* 268 Mo. 598, 188 N.W. 128 (1916) (constitution does not give board sole governance over university).

New Mexico

N.M. Const., Art. XII, §13
See *State v. Kirkpatrick,* 524 P.2d 975 (N.M. 1974) (non-state funds are not subject to legislative appropriation).

North Dakota **N.D. Const., Art. VIII, §6**
See *Zimmerman v. Minot State College,* 198 N.W.2d 108 (N.D. 1972) (upheld statute which conflicted with the board's rule).

South Dakota **S.D. Const., Art. XIV, §3**
See *Kanaly v. State,* 368 N.W.2d 819 (S.D. 1985) (regents' constitutional authority not infringed by legislation closing a campus without their consent) appeal dismissed 484 U.S. 998 (1988) *reh denied* 485 U.S. 930 (1988).

Utah **Utah Const., Art. X, §4**
See *First Equity Corp. of Florida v. Utah State University,* 544 P.2d 887 (Utah 1975) (university corporation exists solely as convenient tool for state governance of the institution).

States with Apparent Constitutional Autonomy Provisions but No Case Law

North Dakota **N.D. Const., Art. VIII, §6**

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