Memorandum to Presidents

Date: June 27, 1974
From: Office of the University Counsel and Vice Chancellor for Legal Affairs
Subject: Contract Procedures

A number of recent lawsuits and audit reports have reflected upon the University's contract procedures and suggests the need for clarification.

As you know, Section 112 of the State Finance Law provides that any contract requiring the expenditure of more than $1,000 in state funds or any obligation by a state agency to give a consideration other than money (viz: goods, services, use of facilities) must be approved by the State Comptroller as a condition precedent to the formation of a valid contract.

Internally, our University procedures for contract handling are described in letters dated April 17, 1972 and May 18, 1972. Both are attached for your information and files.

The lawsuits mentioned above have involved vendors, suppliers, or other "contractors" seeking payment or the performance of some other obligation by the University under an agreement which the complainant assumes to be binding. Unless Section 112 has been satisfied, however, no legal duty has been created and the supposed contractor has no remedy even though he may have fully performed his side of the bargain. In some cases, this performance may have involved a considerable expense or other detrimental change of position.

In at least one extraordinary recent case, a claim for money damages was brought against University officials in their personal capacity, growing out of the plaintiff's inability to recover on a contract cause of action against
the state itself. Where correct contractual procedures have been followed, it cannot be argued that the individual official acted outside the scope of his lawful authority, and, arguably, outside the relation of principal and agent in which only the state, as principal, is the responsible party.

Without laboring the legal technicalities, it suffices to note that improper handling of an agreement which the parties intend as a binding obligation may result in a serious injustice to the putative contractor as well as quite unnecessary difficulties for the University and even those individual University Employees who may be involved in the transaction.

Walter J. Relihan, Jr.

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Enclosure

This memorandum addressed to:

Presidents, State-operated Campuses
Dear

As the result of our letter of April 17, 1972, describing changes in contract processing procedures, several questions have been raised. The purpose of this letter is to explain the application of these procedures in greater detail.

The revised procedure will apply to all agreements in which the University is obligated to expend a sum greater than one thousand dollars and any agreement in which the consideration from the State University is something other than money, as for example, the use of State facilities. In both cases, the State Finance Law requires the approval of the State Comptroller as a condition precedent to the formation of a valid contract. Thus, revocable permits between State and outside parties, or similar agreements, should also be processed through the Office of the Vice Chancellor for Finance, Management and Business. Agreements with other State Agencies, in which the State University provides educational services, would also come under the revised procedure.

Agreements involving the Faculty-Student Associations, Student Governments, or the Research Foundation do not generally come under this revised procedure unless such agreements are directly between the State University and such organizations. Agreements between Student Associations and outside organizations or individuals are not considered "State Contracts", nor do they involve the expenditures of State funds. In regard to such contracts, please note the accounting and fiscal procedures prescribed by the Chancellor under the Trustees Student Activity Fee regulations. Thus, they would also fall outside this revised processing procedure.

If any further problems arise, please do not hesitate to contact us.

Very truly yours,

Walter J. Relihan, Jr.

Harry K. Spindler
Dear

One of the findings of the recent consultant survey of campus legal needs was that contract processing, as presently handled, lacks both consistency and speed. In an attempt to improve these procedures, a new system of handling University contracts is being implemented.

Effective immediately, all proposed contracts and leases, including maintenance and service agreements, should be sent directly to the Office of the Vice Chancellor for Finance, Management and Business. Upon receipt, the necessary University approvals will be obtained. Thereafter, the proposal or agreement, if a formal one exists, will be sent to the Office of the University Counsel for drafting, if necessary, and review. Upon completion, the formal agreement will be returned to you, for execution on behalf of the party with which the University is contracting. After execution, the agreement should be returned to the Office of the Vice Chancellor for Finance, Management and Business, for execution on behalf of State University, and the completion of necessary processing.

Hopefully, this procedure will enable University contracts to be completed within a considerably shorter time than at present. Your cooperation in this matter will be greatly appreciated. We are looking forward to a much improved system of serving your needs.

Very truly yours,

Walter J. Relihan, Jr.

Harry K. Spindler

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