

The Status of UK Academic Administrative Officers (President, Provost, Deans, Directors, Department Chairs) in Relation to The University Faculty, Faculty Senators, and Faculty Trustees

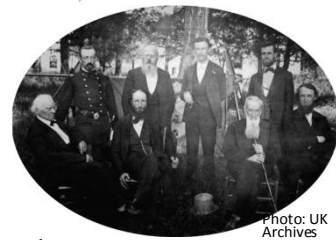
“The Faculty” of the University of Kentucky in Kentucky State Law

When the state legislature established the University of Kentucky as a separate educational institution in 1880 with a Board of Trustees, it also identified “the Faculty” as a decisional body in establishment of educational policy of the institution, and as the body deciding which graduates of courses of study would be recommended to the Board of Trustees for conferral of degrees:

“The Faculty of the Agricultural and Mechanical College shall have the power to grant certificates to teachers, students of the college...” [note: capitalization is in the original]

“only those students who [have] attained the prescribed standard of proficiency in the regular course of studies... shall receive a diploma from the college” and

*“Said board of trustees shall have power to grant degrees to the alumni of the institution, to prescribe the conditions upon which post-graduate honors shall be obtained by its alumni and others, and to confer such honorary degrees, upon the recommendation of the faculty of the institution, as they may think proper.”*¹

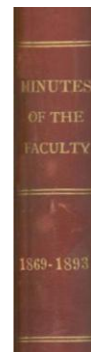


To implement these laws, the UK Board of Trustees defined “the Faculty” as being the Professors and the President (whose assigned teaching responsibility was at least 50% that of the Professors). The minutes of “The Faculty” show that “the Faculty” immediately exercised its authority under state law to determine which students had “attained the prescribed standard of proficiency,” i.e., were “graduates” of their course of study, and which of those graduates would be recommended to the Board of Trustees for conferral of the degree attesting to that graduation:

“ [students names] presented themselves as candidates for graduation and for the degree of Bachelor of Arts ... On motion they were all recommended for the degrees named, provided that they render satisfaction to the several professors in whose departments they have not completed the prescribed courses of study.” (1881)

In 1912 and 1915, the Board of Trustees exercised its authority under state law to

*“determine from time to time the colleges, schools, divisions, departments, bureaus, and ... arrange the distribution of divisions with the designation appropriate for each, and devise the means required for their effective instruction, administration, and government,”*²



by specifying Professors and Associate Professors must, in addition to research and course preparation, teach each semester ≥ 10 class hours/week, in order to be voting members of “the Faculty,” and that reports will be made to the Board showing the teaching hours of Faculty members, including Deans and Dept. Heads (i.e., Chairs).³ In 1918, the Board of Trustees renamed “the Faculty” as “the University Senate” and expanded it to include Assistant Professors.

In 1941, the Board of Trustees was persuaded by the Dean of Engineering that it had the authority to, and it did, abolish the University Senate, and replace it with a body composed of persons appointed to positions of administration (primarily the college Deans) --- with this new body being named “the University Faculty.”⁴ The Board of Trustees used this nomenclature to try to make it appear as though the statutory functions reserved by state law to “the faculty” of the university (e.g., determining which names of graduates will be on the list to the Board of Trustees for conferral of degrees) were actually being performed by “the faculty.” However, Faculty leaders urged upon the President and Board of Trustees that even though under state law

[the Board] *“may appoint a president, professors, assistants, tutors and other personnel and determine the ... duties and official relations of each,”*⁵

the Board cannot define “the faculty” in a way that contradicts the provisions and intent of state law. The Faculty leaders insisted to the President and Board of Trustees that “they overlooked the fact that they couldn’t legally graduate a class, because the faculty had to approve the graduation,” and that “faculty representation, true faculty representation” had to be reinstated.^{6,7} UK President Donovan conceded that the body created by the Board, although composed of academic administrators who held the academic rank of Professor, was really, as he

described, an “Administrative Council.”⁸ Hence, two years later, the University Senate was reinstated in a representative format, with Faculty Senators being elected by the college faculties.⁹

Kentucky Attorney General Clarifies Who is “Faculty” Within Meaning of the State Law

Faculty Trustees. On 05/25/1960, the Board of Trustees defined the three faculty ranks upon which tenure could be conferred (Asst. Professor, Asso. Professor, Professor) to be the same ranks as whose holders compose the automatic voting membership of each College Faculty body. That same year, the state law newly provided for the election of Faculty Trustees and defined the holders of these same three tenureable ranks as being those eligible in the election:

*“The two (2) University of Kentucky faculty **members** shall be of the rank of assistant professor or above. They shall be elected by secret ballot by all University of Kentucky faculty **members** of the rank of assistant professor or above. ... Faculty **members** shall be eligible for reelection, but they shall be ineligible to continue to serve as members of the board of trustees if they cease to be **members** of the faculty of the university.”⁹*

The UK Dean of Law, in noting this state law refers to faculty “**members**,” (i.e., not faculty “employees”), attempted to obtain that by virtue of the Deans being “members” of their respective College Faculty under the Board’s Governing Regulations (and therefore members of the University Faculty), the Deans must be among the election eligibles.¹⁰ However, instead, the Attorney General rendered the opinion that the above state law means that the eligibles in elections of Faculty Trustees are those “faculty members” whose primary duties are to perform actual faculty activities --- “teaching and research” --- rather than duties of an administrative nature.¹¹

Faculty Senators. In 1968 the KY Attorney General was asked by the Murray State University AAUP to clarify what kinds of university employees constitute “faculty members,” for the purposes of “a purely faculty senate” and for holding the office of a faculty regent (= faculty trustee). The Attorney General’s Opinion distinguished between (1) the faculty, (2) administrative officers, and (3) the staff of universities:

“[I]n OAG 68-611 ... we stated that it was permissible for the Board of Regents of Murray State University to establish a faculty senate, for which purpose “**faculty member**” would be defined as:

*‘ ... a person [...] who spends over one-half of his working time in teaching and/or research and directly related activities. His position **is thus distinguished from that of an administrative officer** of the University, **or a member of the non-academic staff.**’*

We ultimately concluded that a board of regents “*could, consistent with [state law] ... approve reasonable regulations governing the difference between **faculty status** and **employee** or **staff** status.*”¹²

In that opinion, the Attorney General does not list the administrative powers above the faculty --- of reappointment, termination, promotion, tenure, salary, DOE, space assignment, budget, dispersion of unit resources, disciplinary actions, etc. --- as being included in what the state law intends ‘faculty activities’ to mean.

UK Implements the Attorney General’s Interpretation of “Faculty” Under State Law

The UK Board of Trustees in its Governing Regulations prescribes that on matters reserved to “the faculty” in the above state laws, only the elected (“representative”) Faculty Senators can vote when those matters are before the University Senate.¹³ The Governing Regulations have also established which of the faculty “employees” have employment niches that render them ineligible in elections, within the meanings of the above various laws (e.g., temporary faculty, part-time faculty, visiting faculty, adjunct faculty, and voluntary faculty cannot be eligible under any circumstance). The Governing Regulations also establish that the academic “Administrative Organization” of the University is President, Provost, College Dean, School/Center Director and Department Chair.¹⁴ Finally, with respect to the status of these academic administrators under the above state laws, the Governing Regulations delegate to the President the responsibility act for the Board of Trustees in codifying that status, in the Human Resources Policies and Procedures Administrative Regulation (HRPP AR) 4.0.¹⁵

For many years HRPP AR 4.0 used the Attorney General’s ‘50% rule’ to determine which officers in the academic administrative chain of command were “faculty employee.” If an administrator was <50% time administration, s/he was a faculty employee, and hence could be eligible in the Faculty Trustee and Faculty Senator elections; if the individual was 50% or more administration, then the status was a staff administrative employee and not eligible.

(NOTE: Not having a status of “faculty employee” did not mean is not a “faculty member.” The UK Board of Trustee’s Governing Regulations elsewhere define the Deans and Department Chairs as being automatically voting “members” of their college and department faculties, and hence are automatically also members of the University Faculty. Similarly, the President is automatically a “member” of every college faculty body).

Change in Faculty Employment Status of Academic Administrators

In 2007-8, some academic administrators informed the Provost they objected to being classified by HRPP AR 4.0 as “staff employee” instead of “faculty employee,” even though they were still “faculty members” of their units and of the University Faculty body. The Provost responded that they had to choose whether they wanted a “faculty employee” status and faculty employment benefits, or a “staff employee” status and staff benefits (certain staff benefits, e.g. accrual of paid vacation days, were more lucrative than faculty benefits). The Provost vetted the issue through the Provost’s Council of Deans and through the Senate Council.¹⁶

A part of that vetting was considering what to do with the statutory intent of the Attorney General’s 50% rule, while still remaining within the intent on the roles of “faculty” in the state laws. The Senate Council heard testimony that severe problems had arisen in the way administrative time was being recorded, or not, in the D.O.E. of Dept. Chairs.

-The SREC Chair attested that when using the 50% rule to determine which Department Chairs were eligibles to vote/serve in the elections of Faculty Trustees and Faculty Senators, he saw some Department Chairs had literally “0.0” time for administration recorded on their official D.O.E. One large college recorded a Chair as having a 100% time Research assignment and 0% time administration. Another large college had recorded a Chair as having 95% Research assignment. These situations were not an issue of ‘interpretation’ as to whether the D.O.E. was correct; rather, the recorded D.O.E. of these Chairs by definition could not possibly be correct.

-The SREC Chair also attested to direct experience during confirmation of election eligibles, that it would also happen that a Department Chair had >50% time D.O.E as Chair, which made the person ineligible for election to the University Senate or Board of Trustees --- but when the SREC called to the Dean or Chair to draw their attention to this status, the next day it was reported back to the SREC Chair that the DOE was reduced to 49.9% time for ‘Dept. Chair activities’ --- without any actual change in actual performed duties. Again, the D.O.E in these cases, as practiced, was not an accurate or reliable determinant of the eligibility of these persons within the meaning of state law and the Attorney General’s 50% rule.

-The SREC Chair reported some faculty members with administrative assignments such as Asso. Dean, Asso. Vice President, Asso. Provost (or as Directors of administrative units reporting directly to Deans or higher) had greater than 50% administrative assignment, which, if accurate, made these persons ineligible to vote/serve.

Change in Faculty Employment Status of Academic Administrators

After consultation with the Provost's Council of Deans, with the endorsement of the Senate Council,¹⁷ and upon the recommendation of the Provost, the President on 04/06/2009 promulgated a revised, HRPP AR 4.0,¹⁸ that classifies status instead based on the nature of the administrative powers and authority above the level of the faculty. Persons appointed to the administrative chain of command (President-level, Provost-level, Dean-level, Dept. Chair/Center Director; Directors of administrative units reporting to Dean or higher level)¹⁹ are not eligible to (1) vote/serve in University-level elections of ‘faculty representatives’ to the Board of Trustees, nor (2) vote/serve in elections of ‘faculty representatives’ to University Senate-level bodies that decide the degree-list and decide final University educational policy.²⁰ However, the tenured faculty members in these administrative positions still retain the other status, rights and privileges possessed by the other members of the University Faculty, including

- (1) retain the status of "faculty employee" for Human Resources purposes when they become appointed to administrative positions at or above the level of department chair (HRPP 4.0)
- (2) for academic purposes, are "members" of their Department Faculty body, their College Faculty body, and the University Faculty body (GR VII.A.6)
- (3) have the same voting rights in their College Faculty body, on matters of educational policy of the college, as are possessed by any other voting members of the College Faculty (GR VII.A.4)
- (4) are eligible for election to college-level committees/councils of faculty representation, as their College Faculty Rules may so provide (GR VII.A.4)
- (5) are eligible to run for election to the University Senate if their term of office as Department Chair ends prior to the beginning of the Senate term (HRPP 4.0)
- (6) have the same protection of academic freedom, in their capacity as a faculty member, as is enjoyed by any other University Faculty member (GR X.B.3.b; SR 1.4.4.2.B.1)

- (7) have the same entitlement to request the privilege of the floor at any University Senate meeting, as is possessed by any other member of the University Faculty (GR IV)

In addition, under University Senate Rules (SR), these academic administrators, including Dept. Chairs,

- (8) are included in the count of the number of regular full-time faculty in their college for the purpose of the annual apportionment of elected seats to the colleges for Senate elections (SR 1.2.2.1.A)
- (9) have the same status as any other tenured faculty member of their college, in their ability to nominate members of their College Faculty to the slate of candidates for election of Faculty Senators, insofar as their College's Faculty Rules may provide for such submission of nominations (SR 1.2.2.1.B)
- (10) have the same status as any other member of the University Faculty, in their ability to submit a petition nominating a University Faculty member as a candidate in a Faculty Trustee election (SR 1.5.2.A)
- (11) have the same status as any other member of the University Faculty, in signing their vote on a petition to have a matter brought before the elected Faculty Senators that is statutory a matter under the jurisdiction of the elected Faculty Senators (SR 1.2.3)
- (12) upon the end of their administrative term of office, are eligible for election to the University Senate and its policy-making councils (e.g., there are currently several former dept. chairs/dean among the 94 elected Faculty Senators) (SR 1.2.2.1)

Issues of Note:

1. The University Senate Rules on election of faculty representation to the Presidential Search Committee prescribe that those eligible to vote/serve are the same as those faculty members eligible to vote/serve in University Senate elections. However, the Presidential Search Committee is not an educational policy-making body, and is not uniquely a 'faculty activity' within the meaning of the above cited state laws. Hence, it could be reasonably posited that there is no reason in statutory educational policy-making for Department Chairs or even Deans to be ineligible for election to the Presidential Search Committee.

2. The solution to the abuses of the 50% rule, i.e., to utilize instead the nature of the administrative duties of the academic administrative office as the basis to define Departments Chairs as ineligible in Faculty Trustee and Faculty Senator elections, could be argued as 'imprecise' in a similar way that the abuses of the 50% rule made the 50% rule imprecise. That is, in the cases of abuse of the 50% rule, some Department Chairs with actually 50% or more time assigned to administrative duties escaped being identified as such and retained an election eligibility that they should not have held. In the case of the current policy, in which all Department Chairs are ineligible, even those with truly less than 50% of their time devoted to academic administration are being made ineligible, even though they would be eligible under the intent of the 50% rule.

References Cited

¹ This law is currently codified at [KRS 164.240](#). (At its original independence, UK was known as "A & M College")

² This law is codified as KRS [164.210](#)

³ Board of Trustees Minutes 08/05/1912; 03/01/1915

⁴ 04-01-1941 Minutes of the Board of Trustees

⁵ This law is codified as [KRS 164.220](#)

⁶ January 13, 1986 Oral History Interview with Professor Thomas Clark by William Cooper

⁷ 06-04-1941 Minutes of the University Senate.

⁸ 04-06-1943 Minutes of the Board of Trustees

⁹ This law is codified as [KRS 164.131](#)

¹⁰ Letter to Chair of Election Committee 04/04/60

¹¹ Lexington Herald 05/24/60

¹² Opinion of the Attorney General [OAG 04-006](#)

¹³ Board of Trustees Governing Regulations Section [IV](#)- "The University Senate"

¹⁴ Board of Trustees Governing Regulations Section [VII.B](#) - "Administrative Organization"

¹⁵ Board of Trustees Governing Regulations Section [II](#) - "University Governance"

¹⁶ Minutes of the Senate Council, [10/06/08](#)

¹⁷ Minutes of the Senate Council, [11/08/08](#)

¹⁸ Human Resources Policies and Procedures Section [4.0](#) - "Employee Status"

¹⁹ Does not include persons appointed to academic bodies by the President in the President's capacity as Chair of the Senate, e.g., Academic Area Advisory Committees, Senate Advisory Committee on Privilege and Tenure, University Appeals Board, etc., nor intradepartmental posts such as Directors of Graduate/Undergraduate Studies, Associate Chair or Division Chief.

²⁰ University Senate, Senate Health Care Colleges Council, Senate Graduate Council, Senate Undergraduate Council [03/02/2011](#) Davy Jones, Chair, Senate Rules and Elections Committee