

10-1 Board of Regents Manual: Part One: Organization and Operation

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1. General Powers, Duties and Functions of the Board.

- A. **Powers of the Board.** The Board has complete power and control over the University. The powers of the Board include the following powers the Legislature has expressly given to the Board: to sue, to make contracts, to hire the president and determine his or her compensation, to determine what shall be taught and the faculty to be employed and their compensation. The title to all property belonging to the University is vested in the Board. [See N.M. Const. art. XII, § 13; NMSA 1978, § 21-1-20 (1921), §§ 21-3-4 (1893) and 21-3-7 (1899) made applicable by § 21-3-30 (1927). For the power to contract see *Hillis v. Meister*, 82 N.M. 474, 483 P.2d 1314 (Ct. App. 1971).]
- B. **Duties and Functions.** Under its broad responsibility for the management and control of the University, the Board has many specific duties and functions. Its power to control, manage and govern the institution necessarily includes exercise of wide discretion, including discretion in what actions it takes directly and in what authority it delegates to individuals and groups within the University. The delegation by the Board of authority to individuals or groups within the University does not relieve the Board from its ultimate responsibility for the entire institution. The Board may withdraw or modify delegated authority, but not on a retroactive basis. Listed below are those duties and functions considered by the Board to be among the most important it exercises:
- (1) To select and appoint a president of the University who serves as the University's chief executive officer (generally considered to be the most important task carried out by the Board);
 - (2) To adopt policies, laws, rules and regulations for the government of the University;
 - (3) To evaluate periodically the mission, goals and objectives of the University and established procedures and policies of the Board;
 - (4) To delegate authority and responsibility deemed by the Board to be appropriate and necessary for the most effective operation of the University, with the full understanding that such delegation implies the right of the Board to withdraw or modify the delegation when it is considered wise to do so;
 - (5) To approve, or authorize others to approve, all contracts between the University and other parties, including those contracts for services rendered, equipment and materials to be purchased, construction of buildings and care and preservation of all University property;
 - (6) To approve all University expenditures through review and approval of annual budgets;
 - (7) To approve requests for leave without pay and sabbatical leave in accordance with existing policies;
 - (8) To approve constitutions and bylaws and other governing documents (including proposed amendments) of all groups and bodies within the University operating under such documents, including amendments to the *Faculty Handbook*, the *Professional Employees Handbook* and the *Support Employees Handbook*;
 - (9) To approve all degrees (including both earned and honorary degrees and medals) to be awarded by the University;
 - (10) To borrow money, as provided by law and

- (11) To receive benefits and donations directly from the federal government and from private or corporate sources to be used in ways deemed by the Board to be in the best interests of the University. [See *State ex rel. Segó v. Kirkpatrick*, 86 N.M. 359, 524 P.2d. 975 (1974).]
- 2. Membership of the Board.** The Board consists of five (5) regents, one (1) of whom is a member of the student body of the University, no more than three (3) of whom are of the same political party at the time of their appointment and four (4) of whom are qualified electors of the state of New Mexico. Appointment of the non-student members is for six (6) years and until the regent's successor is appointed and has duly qualified. [See N.M. Const. art. XII, § 13, art. XX, § 2 and NMSA 1978, §§ 21-3-4 (1893) and 21-3-30 (1927).] Upon the first vacancy of a position held by a student member, the Governor shall nominate, by and with the advice and consent of the Senate, a student member from a list as provided by the president of the University. In making the list, the president of the University shall give due consideration to the recommendations of the president of the student body of the University. Each regent, before entering on his or her duties, takes the oath set forth in NMSA 1978, § 21-1-19 (1889). The Governor of New Mexico and the state Superintendent of Public Instruction are *ex officio* advisory members of the Board without the right to vote. [See NMSA 1978, § 21-1-13 (1889).]
- 3. Conflicts of Interest.**
- A. Prohibited Financial Interests.** No regent may have any direct or indirect financial interest in any contract for building or improving the University or for the furnishing of supplies or services to the University, except as permitted pursuant to the University Research Park Act, NMSA 1978, § 21-28. [See NMSA 1978, § 21-1-17 (1999).]
- B. Prohibited Transactions.** The Board follows the New Mexico Procurement Code regarding transactions with the University. Where the Procurement Code does not apply: no regent, either directly or indirectly, may sell to the University any kind of school books, furniture, equipment or school supplies; sell property insurance or life insurance to any employee of the University; do any work under contract for the University or receive any commission or profit on account of those transactions; and the Board and the regents are prohibited from being parties directly or indirectly to any such contract or transaction, provided that these provisions do not apply to contracts entered into pursuant to the provisions of the University Research Park Act. [See NMSA 1978, § 21-1-35 (1999).]
- C. Governmental Conduct Act.** The regents are governed by the Governmental Conduct Act, NMSA 1978, § 10-16, dealing with ethical matters, and should become familiar with it
- D. Waiver of Conflict of Interest.** A regent may request a waiver in order to bid on items of University business once the conflict of interest is disclosed. The regent shall present in writing and orally a disclosure of the business interest or dealing for review by the Audit and Finance Committee of the Board of Regents. The disclosure shall be reflected in the Board of Regents minutes. A "Resolution Waiving Potential Conflict of Interest" shall then be introduced for consideration of the Board. The regent requesting the waiver shall abstain from voting on this resolution. If the resolution is approved, the regent receiving the waiver shall refrain from participating in any aspect of the procurement procedures for the goods or services for which he or she is bidding, including any discussion of the bids or any vote on a bid's acceptance.
- 4. Meetings of the Board.**
- A. Regularly Scheduled and Other Meetings of the Board.** Regularly scheduled meetings of the Board are held quarterly at a University campus. [See NMSA 1978, § 21-1-14 (1889).] The president of the Board may call other meetings of the Board. Notice stating the time, place and agenda for regularly scheduled meetings and other meetings shall be delivered either personally, by mail, by telegram, by fax or by telephone at the direction of the president of the Board to each regent at least by the time notice of the meeting is made available to the public pursuant to the Open Meetings Act policy [AGP&P, 10-4-4] of the University. This provision for notice also applies to notice of working sessions of a quorum of

the Board. A notice is considered delivered when deposited with the transmitting agency addressed to the regent. A waiver of notice of a meeting signed by the regent entitled to the notice is equivalent to the giving of timely notice. Attendance by a regent at a meeting of the Board constitutes a waiver of notice of the meeting, except when attendance is for the sole purpose of objecting that the meeting is not lawfully called.

- B. **Quorum.** Three (3) members of the Board constitute a quorum for the transaction of business. [See NMSA 1978, § 21-3-6 (1893), made applicable by § 21-3-30 (1927).]
- C. **What Constitutes an Act by the Board.** The Board may act only as a Board with each regent having one (1) vote. The act of a majority of regents present at a meeting of the Board at which a quorum is present will be the act of the Board, unless a greater number is required by law. Individual regents are without power to act separately in connection with University business, except when one (1) or more regents are specifically authorized to act on behalf of the Board. Whether referred to as "the Board" or as "the regents" in University documents, the meaning is the same.
- D. **Open Meetings Act.** Meetings of the Board are governed by the Open Meetings Act, NMSA 1978, § 10-15. In order to comply with 1993 changes to the Open Meetings Act, the University adopted in 1993 a revised Open Meetings policy. Each regent should become familiar with the University's Open Meetings policy. The Open Meetings policy covers such matters as which meetings are subject to the Open Meetings Act, when Board meetings are open to the public and when they may be closed, how notices of Board meetings must be given, meeting agendas, participation in Board meetings by telephone or television, emergency Board meetings and minutes of Board meetings. If the Board delegates its policy-making authority to other organizations or committees in the University, meetings of those groups may be subject to the Open Meetings Act. [See Example 11, *Open Meetings Compliance Guide*, prepared by the Attorney General of N.M.] The Board should therefore be careful, in delegating particular activities to organizations or committees within the University, to determine the scope of authority which is vested in the delegated entity.

5. Officers of the Board.

- A. **Election of Officers.** The Board annually elects a president of the Board, a vice president of the Board and a secretary and treasurer of the Board, to hold offices until their successors are elected and qualified.
- B. **President and Vice President.** The president (or the vice president, during the absence, disability or failure to act of the president) presides at all meetings of the Board and, when authorized, executes and delivers all documents issued in the name of the Board.
- C. **Secretary and Treasurer.** The secretary and treasurer of the Board keeps and has custody of the minutes of the Board; gives all notices of Board meetings, when authorized; acting as secretary executes, attests and delivers documents of the Board and acting as treasurer disburses funds of the University as permitted by law, on order of the Board. The secretary and treasurer has responsibility for the care and custody of the funds of the University; however, this duty of the secretary and treasurer with respect to disbursement, care and custody of funds is delegated to the president of the University.
- D. **Bond of Secretary and Treasurer.** The secretary and treasurer is required to execute bonds to the state of New Mexico for not less than \$20,000, with at least two (2) residents of the state as sureties. Bonds are required to be approved by the Governor and filed in the Office of the Secretary of State. [See NMSA 1978, § 21-3-5 (1893), made applicable by § 21-3-30 (1927).]
- E. **Annual Authorizations of Officers.** Each year, after the election of new officers of the Board, the following authorizations are approved by the Board, such authorizations being effective until rescinded or until the next election of Board officers:

- (1) The newly elected officers of the Board are authorized to sign checks, drafts and other documents on the Board's behalf.
- (2) The vice president of the Board is authorized to sign for the president or the secretary and treasurer of the Board in the absence of either.
- (3) The president or the vice president of the Board is authorized to execute (buy, sell, assign or endorse for transfer) certificates representing stocks, bonds or other securities now registered or hereafter registered in the name of the University.
- (4) The president of the University and the vice president for Business Affairs of the University are authorized to continue to sign contracts, grants and other agreements necessary for the daily operation of the University. The president of the University is further authorized to delegate similar authority to other administrative officers connected with various entities at the University to execute designated contractual documents related to their respective organizations.

6. Committees of the Board.

- A. **Functions of Board Committees.** A committee of the Board may make recommendations to the Board and may exercise the authority of the Board to the extent allowed by law. A committee of the Board consists only of regents, and there must be at least two (2) regents on the committee. The appointment by the Board of a committee of the Board does not relieve the Board or any individual regent of any responsibility imposed by law on the Board or an individual regent.
 - B. **Audit and Finance Committee.** This is a standing committee of the Board and consists of at least two (2) regents. This committee receives the results of internal audits directly from the internal auditor of the University and receives the results of external audits directly from the external auditor. The committee reviews the results of the internal and external audits before the Board reviews them. The committee may perform other functions as directed by the Board. [See AGP&P, 10-7.]
 - C. **Other Committees.** The Board may appoint other standing and *ad hoc* committees of the Board.
7. **Per Diem and Mileage for Regents.** Regents are not compensated for their services. They are paid per diem and mileage in connection with their attendance at meetings of the Board and of committees of the Board and for discharge of their official duties for travel in accordance with the Per Diem and Mileage Act, NMSA 1978, § 10-8. The vice president for Business Affairs administers per diem and mileage.
 8. **Liability of Regents.** Regents shall not be held personally liable in any action at law based upon a claim for damages arising out of any act or failure to act of the Board. [See NMSA 1978, § 21-1-18 (1941).] The University provides a defense, including costs and attorneys' fees, for any regent when liability is asserted against the regent for actions not covered by the Tort Claims Act.
 9. **Support for the Board.** In order to facilitate the work of the Board, agendas are prepared for Board meetings, questions of the regents concerning the University are answered and other support services related to Board matters are provided to the regents. Insofar as possible, a person selected by the president of the University and already performing administrative responsibilities at the University shall perform these functions.

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