Revised: October 2004

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. Bills occasionally 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 state 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 general lawmaking power, so far as that does not impede the regents' ability to manage the university.

The Minnesota Supreme Court will uphold application of at least some general regulatory laws to the university if the laws promote the general welfare, apply to all similar government entities, and do not sufficiently intrude on management so as to violate autonomy.

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 Constitutional 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. The ultimate purpose of constitutional autonomy is to promote academic freedom in the university.

Tensions

Promoting professionalism and academic freedom in state universities is still as important as it was when autonomy provisions were first adopted. At the same time, the legislature has an interest in overseeing and having some impact on the portion of university—half a billion dollars per year or 30 percent of the university's budget—that comes from state appropriations. Case law and legislation reflect the effort to balance these tensions.

[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, who would need to act through the constitutional amendment process.[6]

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[2] Territorial Laws 1851, ch. 28.

[3] Minn. Const., art. XIII, § 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 Minn. v. Chase*, 175 Minn. 259, 265, 220 N.W. 951, 953-54 (1928).

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

[6] The territorial act provided that the legislature may "at any time, alter, amend, modify, or repeal this chapter." Territorial Laws 1851, ch. 28, § 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 Minn.*, 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 1908.[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 general lawmaking power, so far as that does not impede the regents' ability to manage the university.**

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

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 *Chase* 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.

[7] The autonomy principle also has been relevant in several federal court cases on the issue of whether the university shares the state's immunity from suit in federal court, which is granted by the eleventh amendment to the federal constitution. *Hoeffner v. University of Minnesota*, 948 F.Supp. 138O (D. Minn. 1996) and cases cited therein. Because the subject is of limited relevance to state legislators, it is omitted from this legal analysis.

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

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

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]

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]

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

[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 Minn.*, 499 N.W. 2d 799, 801 (Minn. 1993) (dicta).

[13] *See* footnotes 32 to 51 and accompanying text.

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.

In *Fanning v. University of Minnesota* taxpayers attempted to prevent 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]

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.

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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 State v. Board of Trustees*, 387 So.2d 89 (Minn. 1980); *Board of Regents v. Judge*, 168 Mont. 433, 543 P.2d 1323 (1975); *Board of Regents v. Exon*, 199 Neb. 146, 256 N.W.2d 330 (1977).

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 readmit the student was consistent with university rules. Implicitly, the court appeared to have 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:

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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.

[22] *Cf. Garner v. Michigan State Univ.* 185 Mich. App. 750, 462 N.W.2d 832 (1990), *appeal denied*, 439 Mich. 881, 478 N.W.2d 147 (1991) (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 Minn.* 236 Minn. 452, 54 N.W.2d 122 (1952).

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

> [*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 Minnesota Supreme Court 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 restated 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 the institution.[29] The court further noted that the proper recourse for suspected criminal conduct was to contact the county attorney.[30]

A Minnesota Court of Appeals case ruled that because of the "unique grant of authority given to the university by our constitution," an employee who alleged discrimination against her by the university when it did not renew her contract was required to exhaust administrative remedies before she could seek judicial relief for her claims.[31]

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,

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[25] *Alevizos v. Metro. Airports Comm'n*, 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.

[29] *Id.*

[30] *Id.*

[31] *Stephens v. Board of Regents*, 614 N.W.2d 764, 772 (Minn. App. 2000) *review denied* September 26, 2000.

- the conditions must make only very limited intrusions on the regents' overall management of the university, and

- the court will carefully review any conditions to ensure the least possible intrusion on the regents' authority.[32]

The principle that legislative appropriations to the university may carry conditions was first recognized in dicta in *Fanning v. University of Minnesota*.[33] 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.[34]

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 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. [35]

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.[36]

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

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

[33] 183 Minn. 222, 236 N.W. 217 (1931).

[34] *Lord*, 257 N.W.2d at 797.

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

[36] *Id.* at 802.

would be acceptable in other instances.[37] 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.[38]

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.[39]

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.[40]

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.[41] 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. . . .[42]

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[37] *Id.*
[38] *Id.*

[39] *Id.* at 803.

[40] *Id.* at 802.

[41] 338 N.W.2d 560 (Minn. 1983) *appeal dismissed* 466 U.S. 933 (1984).

[42] 338 N.W.2d at 572 (citations omitted).

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.[43]

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.[44] 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 general lawmaking power, so far as that does not impede the regents' ability to manage the university.

In its most recent case interpreting constitutional autonomy, the Minnesota Supreme Court distinguished the regents' special managerial function from the legislature's general lawmaking power and ruled that the university is subject to general laws that do not impede the regents' management function. In *Star Tribune v. University of Minnesota Board of Regents*[45] the issues were (1) whether the Data Practices Act and Open Meeting Law apply to the regents in the process of selecting a new university president, and (2) if so, whether that violated the university's constitutional autonomy. The court ruled that the regents are subject to the Data Practices Act and the Open Meeting Law provisions governing disclosure of finalists for the position of university president. It found that application of these two laws to the presidential search process satisfies the standards in *Lord* for valid regulation of the university and protects the public's right to be informed. The court seemed especially concerned to avoid reasoning or a result that would make the university in effect a fourth branch of government.[46]

In *Star Tribune* the court settled some issues of statutory construction and constitutionality that had been left open by earlier decisions:

> **A statute need not expressly name the university or its regents in order to apply to them.** If the statute uses a term that would be commonly understood to include the university or its regents, the court will find that the law applies to them, unless the university or the regents are expressly exempted.[47] Further, the court refused to

[43] *See, e.g. San Francisco Labor Council v. Regents of Univ. of Cal.,* 26 Cal. 3d 785, 608 P.2d 277, 163 Cal. Rptr. 460 (1980) (invalidating application of prevailing wage law to university); *Board of Regents v. Judge*, 168 Mont. 433, 543 P.2d 1323 (1975) (invalidating statutory limit on percentage increases in university president's salary).
[44] Territorial Laws 1851, ch. 28, § 9.

[45] 683 N.W.2d 274 (Minn. 2004).

[46] *Id.* at 289.

[47] *Id.* at 280-281.

sharply distinguish between the terms "university" and "regents." Implicitly, it found that the two would generally be considered synonymous when used in a statute.[48]

The legislature is not limited to regulating the university only by putting conditions on an appropriation. The court noted that this is merely "the most obviously permissible legislation."[49] It cited with apparent approval an earlier case where it had noted several generally applicable laws not tied to appropriations that were found to cover the university without expressly naming it.[50]

The court explained that following *Lord*, it upheld application of the Data Practices Act and Open Meeting Law to the presidential search process because:

- doing so promotes the general welfare by making government information accessible to the people,
- the statutes apply to all state and local government agencies, not just the university, and
- the statutes do not affect internal management but rather govern public access to information.[51]

[48] *Id.* at 280.

[49] *Id.* at 285.
[50] *Id.* at 286 (citation omitted).

[51] On this point the court may have been influenced by the fact that most public universities, including many that have constitutional status, are subject to open records and open meeting laws in their presidential searches. *See*, 683 N.W.2d at 286.

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,
- 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. All citations in the text are to Minnesota Statutes.

Case law has varied over the years on whether it is necessary to name the university expressly in any statute that is intended to apply to it.[1]

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[1] In early cases, the courts generally concluded that the university fell within the definition of such terms as "state agency," or "state institution," unless it was expressly excluded. Later case law suggested 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 most recent case indicates that a statute will be interpreted to cover the university if it (1) uses a term that would be commonly understood to cover the university, and (2) does not expressly exclude the university. *Star Tribune v. University of Minnesota Board of Regents*, 683 N.W.2d 274 (Minn. 2004).

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." 175 Minn. 259, 262, 220 N.W. at 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 Minn.*, 432 N.W.2d 189 (Minn. Ct. App. 1988 (*review denied*) January 25, 1989, (assumes without deciding that regents are covered by the Open Meeting Law); *City of Minneapolis Comm'n on Civil Rights v. University of Minn.*, 356 N.W.2d 841 (Minn. Ct. 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. *Chase* at 274-275, 220 N.W. at 957.

Later 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 Minn.*, 499 N.W.2d 799 (Minn. 1993). 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. . . .[T]he University, which is itself a constitutional arm of the state, would not be bound by the Veterans Preference Act unless explicitly named. *Id.* at 802.

Requirements and Prohibitions

1. Academic and Research

Regents and other boards of post-secondary education institutions must develop course guides for use by institutions with frequent student transfers. **§ 135A.08**

2. Financial; Real Property

The Legislative Auditor and the Department of Finance shall audit university financial records as resources permit. **§§ 3.971; 137.0251**

Income from the permanent university fund is to be used for endowed chairs; half the funds for such chairs must come from nonstate 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**

The university and the Minnesota State Colleges and Universities Board (MNSCU) are required to develop budget priorities and share them with the executive and legislative branches. They are requested to consider statutory criteria for bonding request priorities. **§ 135A.034**

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**

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. **§ 137.31**[2]

Elsewhere in the decision, the court suggested that even without naming the university expressly, a statute might 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." *Id.* at 802 (quoting the Open Meeting Law) (emphasis omitted).

Most recently, the Minnesota Supreme Court declined to require that a statute expressly name the university if it is meant to cover the university. *Star Tribune v. University of Minnesota Board of Regents* 683 N.W.2d 274 (Minn. 2004). Instead the court considered the commonly understood meaning of terms used in the statute and looked at whether the university was expressly excluded from the law.

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

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**

3. Health and Safety

The university is subject to the Bleacher Safety Act. **§ 16B.616**

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

Government units engaged in mosquito abatement are directed to cooperate with the university. **§ 186.14**

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

The university is a participant in the fetal alcohol syndrome campaign. **§ 145.9266**

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**[3]

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**[4]

4. Personnel

The university is an employer for purposes of the following:

- re-employment insurance law **§ 268.052, subd. 3**
- workers' compensation law **§§ 176.011, 176.611**[5]

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[3]*Cf. Regents of Univ. of Cal. v. Superior Court*, 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).

[4]*Cf. Student Gov't Ass'n 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).

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

- public employee labor relations law **§ 179A.03**[6]

The university is included with other state agencies in a statute on paying employee life insurance premiums. **§ 43A.30**

Nonacademic university employees must receive pay comparable to classified state employees. **§ 137.02**[7]

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**[8]

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

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**[9]

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[6] *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. University of Neb.*, 203 Neb. 4, 277 N.W.2d 529 (1979). Both of these cases upheld the application of the public employee labor relations law to the university where the state constitution included a provision on the state role in labor relations or a public employee's right to bargain.

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

[8] *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).

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

The university is a state agency for purposes of the Data Practices Act. **§ 13.02**[10]

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**

Component of the university are participants in an institute of telecommunications technology applications and education. **§ 15.97**

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

The university is a participant in the agricultural product certification program. **§ 17.1025**

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**

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

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**

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[10] Upheld in *Star Tribune v. University of Minnesota Board of Regents*, 683 N.W.2d 274 (Minn. 2004).

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

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**

The regents are requested to apply for a federal Area Health Education Center Program grant and, if awarded, operate such a program. **§ 137.42**

The regents are requested to establish a substitute physician demonstration project for rural areas. **§ 137.43**

The regents are requested to submit a budget plan for specified expenditures from the medical education endowment fund. **§ 137.44**

Exemptions

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

- provisions affecting review of expenditure of federal funds and acceptance of such funds **§§ 3.3005; 16B.31**[12]
- the Administrative Practices Act **§ 14.03**[13]

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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*, 442 So.2d 598, 601 (La. Ct. App. 1983), *cert. denied*, 444 So. 2d 1223 (La. 1984) (board's power to adopt regulations for internal university management without legislative consent makes it exempt from Administrative Procedures Act).

- 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 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**

The university is requested to establish online connections and collaborate with the North Star service. Legislative and executive offices are required to make online information service available through North Star. **§ 16E.07, subd. 5**

The regents are requested to develop a student hazing policy. The MNSCU board is required to develop such a policy. **§ 135A.155**

The university is encouraged to develop standards on nonvisual technology access to include in technology contracts. State agencies, local government units, and MNSCU are bound by Department of Administration standards on this topic. **§ 16C.145**

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 of Univ. Of Cal., 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**
Board of Regents of University of Michigan v. Auditor General, 132 N.W. 1037 (Mich. 1911) (explaining significance of university's constitutional status).

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).

Florida — *See Florida Public Employees Council 79, AFSCME*, 871 So.2d 270 (Fl. App. 2004) upholding board of governors in designating boards of trustees as university employers after Florida voters ratified a constitutional autonomy provision to take effect January 1, 2003).

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 by, 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 Haw. 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,* 65 Idaho 88, 139 P.2d 467 (1943) (constitution prevents legislature from restricting regents' employment decisions) (cited in *State v. Continental Casualty Co.,* 121 Idaho 938, 829 P.2d 528 (1992)).
Louisiana	**La. Const. Art. VIII, §§ 5-7** *See Student Gov't Ass'n 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(2)(a)** *See Board of Regents 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 v. Exon,* 199 Neb. 146, 256 N.W.2d 330 (1977) (legislature may not: subject university revenues to appropriation power, control manner of giving university employee raises, impose certain controls on construction, 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).
North Dakota	**N.D. Const. Art. VIII, § 6** *See Petersen v. North Dakota University System,* 678 N.W.2d 1631 (N.D. 2004) (effect of university system's constitutional status on challenge to dismissal of tenured faculty).
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 Given It Minimal Practical Effect

Alaska	**Alaska Const. Art. VII, § 3** *See University of Alaska v. National Aircraft Leasing,* 536 P.2d 121 (Alaska 1975) (despite constitutional autonomy, university is part of the state educational system) (followed in *Carter v. Alaska Pub. Employees Ass'n,* 663 P.2d 916 (Alaska 1983)).
Colorado	**Colo. Const. Art. IX, § 12** *See Uberoi v. University of Colo.,* 686 P.2d 785 (Colo. 1984) (regents' discretion can be limited by clear legislation).
Mississippi	**Miss. Const. Art. VIII, § 213A** *See 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, § 9(a)** *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 ex rel. Sego v. Kirkpatrick,* 86 N.M. 359, 524 P.2d 975 (1974) (nonstate funds are not subject to legislative appropriation).
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).
Utah	**Utah Const. Art. X, § 4** *See First Equity Corp. v. Utah State Univ.,* 544 P.2d 887 (Utah 1975) (university corporation exists solely as convenient tool for state governance of the institution).

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