



The Pennsylvania Association of State Colleges and Universities

June 28, 2015

Hon. Denise J. Smyler, General Counsel  
333 Market Street, 17<sup>th</sup> Floor  
Harrisburg, PA 17101

Dear General Counsel Smyler,

In my letter to you dated May 4, 2015, I asserted that the PASSHE Board of Governors has failed since 2002 to preserve or deliver the Act 188 statutory purpose of the PASSHE system of 14 universities, “High quality education at the lowest possible cost to the students.” I also asserted that the BOG’s failure in those matters would appear to be an act by public officials that is “legally unjustified, harmful, and contrary to law,” which is the dictionary definition of “malfeasance.”

I very much appreciated your response to me in your letter dated May 11, 2015 in which you graciously provided two very positive assurances regarding my concerns:

- 1) “Please know that I plan to share your letter with those who advise the Governor on education issues.” And
- 2) “In addition, please be assured that as the Commonwealth agency principally responsible to serve as PASSHE’s legal advisor, the Office of General Counsel will continue to work with PASSHE leaders and management to assist them in performing their public responsibilities in conformity with law.”

Although I remain very encouraged by your response to my concerns regarding the BOG’s failure to perform their public responsibilities in conformity with law—generally speaking—i.e., with regard to PASSHE’s statutory purpose, I want to bring to your attention a very specific failure by the PASSHE BOG to act in conformity with law in regards to the “contracts” that are mandated by Act 188 between PASSHE on the one hand and the fourteen PASSHE presidents and the PASSHE Chancellor on the other.

Attached is an op-ed of mine published by *The Herald Standard* newspaper on October 3, 2014 entitled: “Court ruling raises questions about PASSHE contracts” which provides some details regarding the fact that PASSHE contracts are legally unenforceable in this State and, hence, perpetrate an apparent fraud.

As you will see, my op-ed raises serious doubts about the integrity of both PASSHE and PASSHE’s legal advisor, the Office of General Counsel (OGC), for deceiving the individuals it hires as presidents and chancellors into thinking they have a valid (i.e., legally enforceable) contract, when in fact they don’t.

(412) 889-9133 Phone  
(610) 647-1526 (FAX)  
[HTTP://www.PASCU.net/](http://www.PASCU.net/)

201 Elgin Court  
Chesterbrook, PA 19087  
[president@pascu.net](mailto:president@pascu.net)

I don't use the term "fraud" lightly. As you may know, many PASSHE presidents over the past thirty years—I included—gave up academic rank and lifetime tenure as faculty members and academic administrators at other universities to accept appointment as a PASSHE president, but only on the assurances from Act 188, Board of Governors' Policy and PASSHE's Office of the Chancellor that PASSHE's "contract" was in fact, a valid one as defined by *Merriam-Webster*: "a binding agreement between two or more persons or parties; especially: one legally enforceable."

Attached is a copy of a Commonwealth Court Opinion on September 29, 2014 which ruled on the non-enforceability of PASSHE's particular presidential employment contract with me. Please understand that I am not writing to you out of concern for my own personal situation, nor am I asking you to get involved in any way with my breach of contract claim which led to Commonwealth Court's opinion.

The situation with regard to PASSHE's worthless contract in my case is now in the hands of the United States District Court for the Middle District of Pennsylvania where it will eventually be sorted out. I am writing to you as a taxpayer and concerned citizen who believes PASSHE needs to stop deceiving its presidents and chancellors into thinking that they will be working under valid, enforceable contracts.

The Commonwealth Court Opinion in my case makes it clear that "no employment contract" with the State of Pennsylvania is enforceable until such time as the Legislature specifically waives its sovereign immunity with regard to "all employment contracts," not just PASSHE contracts and not just mine.

The fact that PASSHE has apparently been able not only to issue worthless contracts, but to mandate that its presidents and chancellors sign them for more than thirty years, is shocking and disgraceful.

You should also know that since 1984, and continuing to the present time, PASSHE has authorized its presidents to issue "letters of appointment" to vice presidents and deans at the fourteen universities. These letters of appointment are authorized by Board of Governors' policy 1984-14-A (copy attached) which was reaffirmed as recently as January 22, 2015. The common parlance at the fourteen PASSHE universities regarding the "letters of appointment" is that vice presidents and deans have "contracts."

During my twenty years (1992-2012) as a PASSHE president I had occasion to "non-renew" several vice presidents and deans under that BOG policy and was told by my University Counsel that the "contracts with vice presidents and deans were not enforceable" and that, if I wished, I could just terminate them and there would be nothing that they could do about it. They, and eventually the whole World, would presumably learn that their "contracts" were worthless as soon as they sued for breach of contract.

Because I believed I was entering into valid contracts with my vice presidents and deans when I signed their letters of appointment, I honored every single contract, and if necessary, by "buying them out."

When I later asked the PASSHE Chief Counsel about what my University Counsel had told me with regard to contracts with vice presidents and deans, he repeated what I had been told by my University Counsel but assured me that PASSHE contracts with presidents and chancellors were enforceable because they, unlike the contracts with vice presidents and deans, had been authorized by law, in particular, Act 188.

The Chief Counsel's false assurances about the validity of PASSHE contracts with presidents/chancellors raise the same question that arose in my op-ed: Was this deception based on malice or incompetence?

Finally, I was amazed to learn that Board of Governors Policy 1984-14-A, last amended on January 22, 2015 and downloaded from the PASSHE Board of Governors' website today, continues to promote the falsehood that all of PASSHE "employment contracts" are valid when, in fact, none of them are valid.

In conclusion, virtually all of the troubling matters cited in this letter predate the election of Gov. Wolf as well as your appointment as General Counsel. So in that sense, these matters are not a complaint against the current administration but a chance to correct the actions, or inactions, of previous PASSHE Chief Counsels who apparently knew about the deception involving some, if not all, PASSHE contracts.

But the obvious lack of integrity, if not outright fraud, associated with the continued issuance of PASSHE contracts known to be invalid should not be ignored any longer. I look forward to receiving assurances from your office that these matters are finally being addressed, since the Commonwealth Court Opinion regarding the non-enforceability of all State "employment contracts" went public nine months ago.

Please don't hesitate to contact me if you have any questions. Sincerely,



Angelo Armenti, Jr., Ph.D.  
PASCUCO Founder & President