

HERALD-Standard

Court ruling raises questions about PASSHE contracts

By Dr. Angelo Armenti | Posted: Friday, October 3, 2014 2:00 am

It is well-known that Act 188 requires Pennsylvania State System of Higher Education (PASSHE) chancellors and presidents to sign employment contracts prior to beginning their employment with PASSHE. In fact, Section 20-2006-A: Powers and Duties of the Board of Governors, includes the following two powers and duties:

(1) “To employ the chancellor to serve at the Board’s pleasure under fixed term or contract of fixed duration of not longer than five (5) years” (Emphasis added), and

(2) “To appoint from the list submitted by the chancellor, pursuant to Section 2005-A(4), presidents of the constituent institutions to serve at the Board’s pleasure under fixed terms or contracts of fixed duration.” (Emphasis added)

In addition to the requirements of Act 188, Board of Governors’ Policy 1984-14-A: Terms and Conditions of Employment of Senior Policy Executives, provides the following two provisions:

A.1. Appointment and Term: “The Board may award or extend a president’s contract for a period not to exceed three years in consultation with the chancellor and council of trustees.” (Emphasis added.)

A.6. Termination: “In the event the president’s appointment is terminated by Board action, the president shall be paid all compensation and benefits under the terms of the contract.” (Emphasis added)

By way of context, note that Merriam-Webster defines a “contract” as “a binding agreement between two or more persons or parties; especially: one legally enforceable.”

The Commonwealth Court Decision of Sept. 29, concluded that the “contracts”—mandated by Act 188 and Board of Governors’ Policy from the beginning of the PASSHE system of 14 Universities on July 1, 1983 until the present time—are neither binding nor legally enforceable since the Pennsylvania legislature has not waived sovereign immunity with regard to employment contracts.

PASSHE presidents, I among them, who believed based on PASSHE assurances that they enjoyed the protection of a binding and legally enforceable contract, were deceived—either wittingly or unwittingly. Witting deception implies PASSHE malice; Unwitting deception implies PASSHE incompetence.

Trust is known to be based on two things: character and competence. Malice implies a lack of character; Incompetence implies a lack of competence. The inescapable conclusion: PASSHE is not to be trusted.

But because “contracts” are a legal matter, as the Commonwealth Court decision just revealed, the reason PASSHE cannot be trusted could be a matter of PASSHE getting “bad legal advice.” That wouldn’t change the fact that PASSHE—as currently constituted—cannot be trusted, it would only raise questions about the sort of legal advice that PASSHE has been receiving.

As it happens, PASSHE is not permitted to have independent legal counsel. By law, according to the Commonwealth Attorneys Act, PASSHE must receive its legal advice from the Office of General Counsel, which reports directly to the Governor of the Commonwealth. All PASSHE attorneys—from the Chief Counsel who advises the Chancellor, Board of Governors, and the Commission of Presidents, to the University Counsel who advise each of the 14 Universities—are paid by the PASSHE system and PASSHE universities, but report instead to the Office of General Counsel.

Clearly, based on the recent Commonwealth Court decision, PASSHE has been operating with bad legal advice with regard to the validity of its mandated contracts with chancellors and presidents.

But just as clearly, PASSHE received flawed legal advice from the attorneys provided by the Office of General Counsel. That fact alone calls into question the competence of the attorneys in that office.

But the additional fact that the deception perpetrated on the chancellors and presidents has gone on for 30 years or more, raises the question of potential malice in that office. In particular, Were chancellors and presidents purposely deceived into thinking they enjoyed the protections of a valid contract?

A rational conclusion regarding the recent Commonwealth Court decision invalidating the employment contracts of PASSHE chancellors and presidents is threefold:

- 1) PASSHE is not to be trusted;
- 2) Legal advice from the Office of General Counsel is not to be trusted; and
- 3) Since the Office of General Counsel reports directly to the governor, and the governor sits on the PASSHE Board of Governors, what if anything does the governor intend to do to restore the damaged credibility of both entities—in view of PASSHE’s legally invalid employment contracts?

By Dr. Angelo Armenti was the president of California University from 1992 until 2012.