

Title 3 – Legal Status of the University

Chapter 1

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Section 1. Introductory Statement

The University of Nevada was created by the Nevada State Constitution. The Constitution further sets forth certain requirements concerning the University of Nevada and prescribes certain powers, duties and limitations upon the Board of Regents. Pertinent provisions of the Constitution and digests of the Nevada Supreme Court decisions interpreting some of these provisions are included in this chapter.

Section 2. Pertinent Constitutional Provisions

The following are provisions in the Nevada State Constitution which affect the University of Nevada:

- a. Article 11, Section 4 – Establishment of state university; control by board of regents.

The Legislature shall provide for the establishment of a State University which shall embrace departments of Agriculture, Mechanic Arts, and Mining to be controlled by a Board of Regents whose duties shall be prescribed by Law.

- b. Article 11, Section 5 – Establishment of normal school and grades of schools; oath of teachers and professors.

The Legislature shall have power to establish normal schools, and such different grades of schools, from the primary department to the University, as in their discretion they may deem necessary, and all Professors in said University, or Teachers in said Schools of whatever grade, shall be required to take and subscribe to the oath as prescribed in Article Fifteen of this Constitution. No Professor or Teacher who fails to comply with the provisions of any law framed in accordance with the provisions of this Section, shall be entitled to receive any portion of the public monies set apart for school purposes.

- c. Article 11, Section 6 – Support of university and common schools by direct legislative appropriation; priority of school

Article 11, Section 7 – Board of Regents: Creation; organization; appointment of members; duties. {Effective November 23, 2010, if the proposed amendment is agreed to and passed by the 2009 Legislature and approved and ratified by the voters at the 2010 General Election.}

1. There is hereby created a Board of Regents to control and manage the affairs of the University and the funds of the same under such regulations as may be provided by law.
 2. The Legislature shall provide by law for:
 - a. The organization of the Board of Regents, including, but not limited to, the number of members of the Board of Regents and the qualifications and terms of office of the members of the Board of Regents;
 - b. The appointment of the members of the Board of Regents by the Governor; and
 - c. The duties of the Board of Regents and its members.
- e. Article 11, Section 8 – Immediate organization and maintenance of state university.
The Board of Regents shall, from the interest accruing from the first funds which come under their control, immediately organize and maintain the said Mining department in such manner as to make it most effective and useful, Provided, that all the proceeds of the public lands donated by Act of Congress approved July second AD. Eighteen hundred and sixty two, for a college for the benefit of Agriculture, the Mechanics arts, and including Military tactics shall be invested by the said Board of Regents in a separate fund to be appropriated exclusively for the benefit of the first named departments to the University as set forth in Section Four above; And the Legislature shall provide that if through neglect or any other contingency, any portion of the fund so set apart, shall be lost or misappropriated, the State of Nevada shall replace said amount so lost or misappropriated in said fund so that the principal of said fund shall remain forever undiminished.
- f. Article 11, Section 9 – Sectarian instruction prohibited in common schools and university.
No sectarian instruction shall be imparted or tolerated in any school or University that may be established under this constitution.
- g. Article 11, Section 10 – No public money to be used for sectarian purposes.
No public funds of any kind or character whatever, State, County or Municipal, shall be used for sectarian purpose.

(B/R 6/09)

Section 3. Supreme Court Interpretations

The Nevada Supreme Court has had few occasions to interpret constitutional provisions relating to the University. However, such interpretations have great bearing on the authority of the Board of Regents and the manner in which the University is to be operated. The following are digests of these decisions as contained in Nevada Digests.

- a. Attorney general, who was added as ex officio member of board of regents by legislative act, was not entitled to discharge duties of regent because he was not elected to that position in manner provided by previously enacted sec. 2, ch. 37, Stats, 1887 (cf. NRS 396.040), provided for election of three members of such board, or by Nev. Art. 11, & 7, requiring legislature to provide for election of member of board. *State ex re. Mach v. Torreyson*, 21 Nev. 517, 34 Pac. 870 (1893), cited, *King v. Board of Regents*, 65 Nev. 533, at 544, 200 P.2d 221 (1948), distinguished, *State ex. Rel. Dickerson v. Elwell*, 73 Nev. 187, at 189, 313 P.2d 796 (1957).
- b. Nev. Art. 11, & 4, provides that legislature shall establish state university to be controlled by board of regents who duties shall be prescribed by law, and language of several statutes beginning 1887 that "powers and duties" of board shall be those prescribed by statutes did not establish practical construction broadening legislative authority, because where inescapable meaning of constitution is apparent from instrument itself, it is not permissible to adopt any different construction however long continued or however distinguished its authorship. *King v. Board of Regents*, 65 Nev. 533, 200 P.2d 221 (1948).
- c. Nev. Art. 11, & 4, provides that state university shall be controlled by board of regents and unquestioned right of legislature to appropriate required funds for maintaining university does not indicate that constitution does not best exclusive and plenary control in regents, because right to provide and limit funds is entirely different from administration and control of university itself. *King v. Board of Regents*, 65 Nev. 533, 200 P.2d 221 (1948).
- d. Nev. Art. 11, & 4, provides that legislature shall establish state university to be controlled by board of regents whose duties shall be prescribed by law and right of regents to control university in their constitutional, executive and administrative capacity is exclusive of such right in any other department of government, except for right of legislature to prescribe duties and for other legislative rights. *King v. Board of Regents*, 65 Nev. 533, 200 P.2d 221 (1948), distinguished, *State ex rel Richardson v. Board of Regents*, 70 Nev. 144, at 147, 261 P.2d 515 (1953).
- e. Nev. Art. 11, & 7, provides for election of board of regents to control state university, and provision of statute creating advisory board that governor appoint members from among nominees chosen by elected board did not save statute from rule that legislature in absence of express constitutional authority may not add foreign duties to or take away natural duties from constitutionally created office. *King v. Board of Regents*, 65 Nev. 533, 200 P.2d 221 (1948), cited, *Laxalt v. Cannon* 80 Nev. 588, at 592, 397 P.2d 182 (1964), distinguished, *Shamberger v. Ferrari*, 73 Nev. 201, at 206, 314 P.2d 384 (1957).
- f. Board of regents of university in exercise of its rule-making power under NCL & 7728 (NRS 396.110) could as to future employment revoke rule providing that member of staff could be dismissed only for cause and provide that any member of staff could be dismissed at the will of board of regents. *State ex rel Richardson v. Board of Regents*, 70 Nev. 144, 261 P.2d 515 (1953).

g. Rule that professor with tenure may be discharged only for cause, adopted by

- s. The Legislature may not invade the constitutional powers of the Board of Regents of the University of Nevada through legislation which directly interfaces with essential functions of the university. Board of Regents v. Oakley, 97 Nev. 605, 637 P.2d 1199 (1981).

Section 4.

, Chapter 396