

SOUTH DAKOTA BOARD OF REGENTS

Budget and Finance

AGENDA ITEM: 6 – D

DATE: July 31 – August 1, 2024

SUBJECT

Revised BOR Policy 4.1.7 – Political Activity (First and Final Reading)

CONTROLLING STATUTE, RULE, OR POLICY

BOR Policy 4.1.7 – Political Activity

BACKGROUND / DISCUSSION

In February 2024, the South Dakota Supreme Court issued an opinion in *In Re the Request of South Dakota Governor Kristi Noem*, which concerned the interpretation of the South Dakota Constitution and state laws regarding state legislator’s interest in state or county contracts. In this [opinion](#), the South Dakota Supreme Court overruled *Pitts v. Larson*, a long-standing holding that a legislator’s employment contract with South Dakota State University’s Cooperative Extension Service was void because employee payments were authorized by the state’s general appropriation bill from the corresponding calendar year, which informed the current version of BOR Policy 4.1.7.

In overruling *Pitts*, the Court held:

“Our holdings in *Asphalt Surfacing* and *Pitts*, which equated general appropriation for ordinary and current expenses with legislative authorization to enter into specific contracts, are contrary to well-established constitutional limits on general appropriation legislation set out in Article XII, § 2 and our cases. These holdings expressed in *Asphalt Surfacing* and *Pitts* are, therefore, overruled.

Our answer to the Governor’s restated question whether Article III, § 12 prohibits all contracts between legislators and the State is: No, it does not. The contract restriction stated in Article III, § 12 is not a categorical bar on all contracts funded by the State. Instead, it prohibits a legislator, or former legislator within one year following the expiration of the legislator’s term, from being interested, directly or indirectly, in contracts that are authorized by laws passed during the legislator’s term. The purpose and effect of

(Continued)

DRAFT MOTION 20240731_6-D:

I move to (1) waive the two-reading requirement of By-Laws Section 5.5.1.; (2) approve the first and final reading of the proposed revisions to BOR Policy 4.1.7, as presented.

general appropriation legislation is restricted to simply allocating money to fund state government; it does not, itself, authorize specific contracts relating to ordinary or current expenses.”

2024 S.D. 11, ¶¶ 63-64.

BOR Policy 4.1.7 currently requires that employees elected to the South Dakota Legislature must resign from state employment no later than the beginning of their term in office. Given that *Pitts* was overruled, a system employee could participate in elected office with the state legislature in general but would still be held to the constitutional limitation of being not being interested, directly or indirectly, in contracts authorized by laws passed during the legislator’s term and for one year after leaving office. Revision of the current language in BOR Policy 4.1.7 regarding the circumstances in which a system employee can seek elected office is therefore warranted.

IMPACT AND RECOMMENDATIONS

The proposed revisions to BOR Policy 4.1.7 remove the prohibition to system employees serving in the South Dakota State Legislature in general. It preserves all other existing requirements necessary to maintain the functions of employment, including ensuring that employees make sufficient arrangements to ensure their duties are performed. The proposed revisions still require employees who seek to hold such elected office to comply with all other applicable requirements of BOR policy or South Dakota law, including, but not limited to, conflict of interest provisions.

Board staff recommends approval.

ATTACHMENTS

Attachment I – Proposed Revisions to BOR Policy 4.1.7 (Political Activity)

SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Political Activity

NUMBER: 4.1.7

A. PURPOSE

To describe the parameters applicable to employees of the Board of Regents engaging in political activity.

B. DEFINITIONS

None

C. POLICY

1. Employees of the Board of Regents shall not be obligated, by reason of their employment, to contribute to any political funds or collections or render political service. Employees refusing to contribute such funds or to render political service may not be removed or otherwise disciplined or prejudiced for such refusal.
2. Employees of the Board of Regents shall not use their official authority or influence to coerce the political action of a person or group.
3. Provided the following activities do not (a) occur during work hours or (b) involve the use of Board information and communication technology systems, Board services or Board property in any manner that is not available to the public and paid for at the rate offered to the public, employees of the Board of Regents may:
 - 3.1. Take an active part in political management, political campaigns, or other activities with the purpose of influencing the nomination or election of a candidate, or for the petitioning of a ballot question or the adoption or defeat of any ballot questions or state law; and;
 - 3.2. Seek and hold compatible elective political office. Employees, both during any election campaign and during the term of any part-time office, ~~other than that of state representative or senator,~~ to which the employee may be elected, are required to make specific arrangements with the president, superintendent and his/her designee to assure that the employee's regular duties are performed. Employees elected to a full-time public office are entitled to leave without pay consistent with 1.7.4 of the Board of Regents Policy Manual. ~~Under current South Dakota Supreme Court interpretation of section 12, article III, of the South Dakota Constitution, employees elected to the South Dakota Legislature must resign from state employment no later than the beginning of their term in office.~~ Employees elected to compatible elective political

office must comply with all applicable BOR and institutional policies, South Dakota laws and administrative rules, and judicial decisions.

4. Employees of the Board of Regents enjoy all rights of free expression accorded them under state and federal law. Nevertheless, employees, especially faculty and professional staff members, should remember that the public may judge their institution or the Board by their public statements. Accordingly, unless they have been authorized to make an official statement on behalf of their institution or the Board, employees should make every effort to indicate that they are not speaking or writing as institutional or Board representatives. At a minimum, employees who identify their institutional affiliation should advise the public that the views that they express represent their own private or professional opinions, not those of their institution or of the Board, and that these opinions are given in their individual capacities or as private consultants.

Faculty members should, additionally, observe those standards set forth in the Board's policies on academic freedom, BOR Policy 1.6.1, ~~and the agreement with the Council of Higher Education.~~

FORMS / APPENDICES:

None

SOURCE:

BOR Aug. 1979, p. 1126; SDCL §§ 3-6-26 through 3-6-27, 3-6A-14(6), 3-6A-15, 13-49-14 through 13-49-14.1; Revised BOR March 1992; BOR October 2010; BOR December 2018; BOR August 2024.