

10-1 Board of Regents Manual: Part One: Organization and Operation

- 10-1-1 General Powers, Duties and Functions of the Board
- 10-1-2 Membership of the Board
- 10-1-3 Conflicts of Interest
- 10-1-4 Meetings of the Board
- 10-1-5 Officers of the Board
- 10-1-6 Committees of the Board
- 10-1-7 Per Diem and Mileage for Regents
- 10-1-8 Liability of Regents
- 10-1-9 Support for the Board

10-1-1 General Powers, Duties and Functions of the Board

A. **Powers of the Board.** The Board has complete power and control over the University. The powers of the Board include the following powers that the Legislature has expressly given to the Board: to sue; to make contracts; to hire the President of the System and determine his/her compensation; to determine what shall be taught and the faculty to be employed and their compensation. The title to all property belonging to the University is vested in the Board. [See N.M. Const., Art. XII, Sec. 13; § 21-1-20, NMSA 1978 Comp.; §§ 21-3-4 and 21-3-7, NMSA 1978 Comp., made applicable by § 21-3-30, NMSA 1978 Comp. For the power to contract see *Hillis v. Meister*, 82 N.M. 474, 483 P.2d 1314 (Ct.App. 1971).]

B. **Duties and Functions.** Under its broad responsibility for the management and control of the University, the Board has many specific duties and functions. Its power to control, manage, and govern the institution necessarily includes exercise of wide discretion, including discretion in what actions it takes directly and in what authority it delegates to individuals and groups within the University. The delegation by the Board of authority to individuals or groups within the University does not relieve the Board from its ultimate responsibility for the entire institution. The Board may withdraw or modify delegated authority, but not on a retroactive basis. Listed below are those duties and functions considered by the Board to be among the most important it exercises:

1. To select and appoint a System President of the University who serves as the University's chief executive officer (generally considered to be the most important task carried out by the regents).
2. To adopt policies, laws, rules, and regulations for the government of the University.
3. To evaluate periodically the mission, goals, and objectives of the University and established procedures and policies of the regents.
4. To delegate authority and responsibility deemed by the Board to be appropriate and necessary for the most effective operation of the University, with the full understanding that such delegation implies the right of the Board to withdraw or modify the delegation when it is considered wise to do so.
5. To approve, or authorize others to approve, all contracts between the University and other parties, including those contracts for services rendered, equipment and materials to be purchased, construction of buildings, and care and preservation of all University property.
6. To approve by budgeting the expenditures of all moneys.
7. To approve requests for leaves without pay and sabbatical leaves in accordance with existing policies.

8. To approve constitutions and by-laws and other governing documents (including proposed amendments) of all groups and bodies within the University operating under such documents, including amendments to the Faculty Handbook, the Professional Employees Handbook and the Support Employees Handbook.

9. To approve all degrees (including both earned and honorary degrees and medals) to be awarded by the University.

10. To borrow money, as provided by law.

11. To receive benefits and donations directly from the federal government and from private or corporate sources, to be used in ways deemed by the regents to be in the best interests of the University. [See *State ex rel. Sego v. Kirkpatrick*, 86 N.M. 359, 524 P.2d. 975 (1974).]

10-1-2 Membership of the Board

2. Membership of the Board. The Board consists of five regents, one of whom is a member of the student body of the University, no more than three of whom are of the same political party at the time of their appointment, and four of whom are qualified electors of the State of New Mexico. Appointment of the non-student members is for six years and until the regent's successor is appointed and has duly qualified. [See N.M. Const., Art. XII, Sec. 13 and Art. XX, Sec. 2 and §§ 21-3-4 and 21-3-30, NMSA 1978 Comp.] Upon the first vacancy of a position held by a non-student member, the Governor shall nominate, by and with the advice and consent of the Senate, a student member from a list as provided by the President of the University System. In making the list, the President of the University System shall give due consideration to the recommendations of the president of the student body of the University. Each regent, before entering on his or her duties, takes the oath set forth in § 21-1-19 NMSA, 1978 Comp. The Governor of New Mexico and the State Superintendent of Public Instruction are *ex officio* advisory members of the Board without the right to vote. [See § 21-1-13, NMSA 1978 Comp.]

10-1-3 Conflicts of Interest

A. Prohibited Financial Interests. No regent may have any direct or indirect financial interest in any contract for building or improving the University or for the furnishing of supplies or services to the University, except as permitted pursuant to the University Research Park Act, § 21-28-1 to 21-28-25, NMSA 1978 Comp. [See § 21-1-17, NMSA 1978 Comp.]

B. Prohibited Transactions. The Board follows the New Mexico Procurement Code regarding transactions with the Universities. Where the Procurement Code does not apply: no regent, either directly or indirectly, may sell to the University any kind of school books, furniture, equipment, or school supplies, sell property insurance or life insurance to any employee of the University, do any work under contract for the university, or receive any commission or profit on account of those transactions; and the Board and the regents are prohibited from being parties directly or indirectly to any such contract or transaction, provided that these provisions do not apply to contracts entered into pursuant to the provisions of the University Research Park Act. [See § 21-1-35, NMSA 1978 Comp.]

C. Governmental Conduct Act. The regents are governed by the Governmental Conduct Act, §§ 10-16-1 through 10-16-15, NMSA 1978 Comp., dealing with ethical matters, and should become familiar with it.

10-1-4 Meetings of the Board

A. Regularly Scheduled and Other Meetings of the Board. Regularly scheduled meetings of the Board are held quarterly at a University campus. [See § 21-1-14, NMSA 1978 Comp.] The president of the Board may call other meetings of the Board. Notice stating the time, place, and agenda for regularly

scheduled meetings and other meetings shall be delivered either personally or by mail or telegram or fax or telephone, at the direction of the president of the Board, to each regent at least by the time notice of the meeting is made available to the public pursuant to the Open Meetings Act Policy of the University. This provision for notice also applies to notice of working sessions of a quorum of the Board. A notice is considered delivered when deposited with the transmitting agency addressed to the regent. A waiver of notice of a meeting signed by the regent entitled to the notice is equivalent to the giving of timely notice. Attendance by a regent at a meeting of the Board constitutes a waiver of notice of the meeting, except when attendance is for the sole purpose of objecting that the meeting is not lawfully called.

B. Quorum. Three members of the Board constitute a quorum for the transaction of business. [See §21-3-6, NMSA 1978 Comp., made applicable by § 21-3-30, NMSA 1978 Comp.]

C. What Constitutes an Act by the Board. The Board may act only as a Board with each regent having one vote. The act of a majority of regents present at a meeting of the Board at which a quorum is present will be the act of the Board, unless a greater number is required by law. Individual regents are without power to act separately in connection with University business, except when one or more regents are specifically authorized to act on behalf of the Board. Whether referred to as "the Board" or as "the regents" in University documents, the meaning is the same.

D. Open Meetings Act. Meetings of the Board are governed by the Open Meetings Act, §§ 10-15-1 through 10-15-4, NMSA 1978 Comp. In order to comply with 1993 changes to the Open Meetings Act, the University adopted in 1993 a revised Open Meetings Policy. Each regent should become familiar with the University's Open Meetings Policy. The Open Meetings Policy covers such matters as which meetings are subject to the Open Meetings Act, when Board meetings are open to the public and when they may be closed, how notices of Board meetings must be given, meeting agendas, participation in Board meetings by telephone or television, emergency Board meetings, and minutes of Board meetings. If the Board delegates its policy-making authority to other organizations or committees in the University, meetings of those groups may be subject to the Open Meetings Act. [See Example 11, *Open Meetings Compliance Guide*, prepared by the Attorney General of N.M.] The Board should therefore be careful, in delegating particular activities to organizations or committees within the University, to determine the scope of authority which is vested in the delegated entity.

Making recommendations of final action to the Board would apparently not be interpreted by the New Mexico Attorney General to be subject to the Open Meetings Act. [See § 21-1-13, NMSA 1978 Comp.]

10-1-5 Officers of the Board

A. Election of Officers. The Board annually elects a president and vice-president of the Board and a secretary and treasurer of the Board, to hold offices until their successors are elected and qualified.

B. President and Vice-President. The president (or the vice-president, during the absence, disability or failure to act of the president), presides at all meetings of the Board, and, when authorized, executes and delivers all documents issued in the name of the Board.

C. Secretary and Treasurer. The secretary and treasurer of the Board keeps and has custody of the minutes of the Board, gives all notices of Board meetings, when authorized, acting as secretary executes, attests, and delivers documents of the Board, and acting as treasurer disburses funds of the University as permitted by law, on order of the Board. The secretary and treasurer have responsibility for the care and custody of the funds of the University; however, this duty of the secretary and treasurer with respect to disbursement, care and custody of funds is delegated to the President of the University System.

D. Bond of Secretary and Treasurer. The secretary and treasurer is required to execute bonds to the State of New Mexico for not less than \$20,000, with at least two residents of the state as sureties. The

bond is required to be approved by the Governor and filed in the Office of the Secretary of State. [See § 21-3-5, NMSA 1978 Comp., made applicable by § 21-3-30, NMSA 1978 Comp.]

E. Annual Authorizations of Officers. Each year, after the election of new officers of the Board of Regents, the following authorizations are approved by the Board, such authorizations being effective until rescinded or until the next election of Board officers:

1. The newly elected officers of the Board are authorized to sign checks, drafts, and other documents on the Board's behalf.
2. The vice-president of the Board is authorized to sign for the president or the secretary and treasurer of the Board in the absence of either.
3. The president or the vice-president of the Board is authorized to execute (buy, sell, assign or endorse for transfer) certificates representing stocks, bonds or other securities now registered or hereafter registered in the name of the University.
4. The President of the University System and the Vice-President for Business Affairs of the University (Portales campus) are authorized to continue to sign contracts, grants, and other agreements that are necessary for the daily operation of the University. The President of the University System is further authorized to delegate similar authority to other administrative officers connected with various entities of the University System to execute designated contractual documents related to their respective organizations.

10-1-6 Committees of the Board

A. Functions of Board Committees. A committee of the Board may make recommendations to the Board and may exercise the authority of the Board to the extent allowed by law. A committee of the Board consists only of regents, and there must be at least two regents on the committee. The appointment by the Board of a committee of the Board does not relieve the Board or any individual regent of any responsibility imposed by law on the Board or an individual regent.

B. Audit and Finance Committee. This is a standing committee of the Board and consists of at least two regents. This committee receives the results of internal audits directly from the Internal Auditor of the University and receives the results of external audits directly from the external auditor. The committee reviews the results of the internal and external audits before the Board reviews them. The committee may perform other functions as directed by the Board.

C. Other Committees. The Board may appoint other standing and ad hoc committees of the Board.

10-1-7 Per Diem and Mileage for Regents.

Regents are not compensated for their services. They are paid per diem and mileage in connection with their attendance at meetings of the Board and of committees of the Board and for discharge of their official duties for travel in accordance with the Per Diem and Mileage Act, §§ 10-8-1 through 10-8-8, NMSA 1978 Comp. The Vice-President of the University for Business Affairs administers per diem and mileage.

10-1-8 Liability of Regents.

Regents shall not be held personally liable in any action at law based upon a claim for damages arising out of any act or failure to act of the Board. [See § 21-1-18, NMSA 1978 Comp. and §§ 44-4-1 through 44-4-29, NMSA 1978 Comp.] The University provides a defense, including costs and attorneys fees, for any regent when liability is asserted against the regent for actions not covered by the Tort Claims Act.

10-1-9 Support for the Board.

In order to facilitate the work of the Board, agendas are prepared for Board meetings, questions of the regents concerning the University are answered, and other support services related to Board matters are provided to the regents. These functions are, insofar as possible, performed by a person selected by the President of the University System who is already performing administrative responsibilities at the University.