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The Honorable Dustin McDaniel
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DISTRICT 42

Counties:

Part Faulkner
Part Pulaski

COMMITTEES:

Education
Higher Education
Subcommittee

Vice Chairperson,
City, County and Local Affairs

Joint Committee on Energy

July 25, 2011

The Honorable Dustin McDaniel
Attorney General
State of Arkansas
323 Center Street, Suite 200
Little Rock, Arkansas 72201

Dear General McDaniel:

We are requesting your opinion on the following questions:

Questions Pursuant to Arkansas Code § 6-61-203(a)(1)(A):

Is it legal for the Arkansas Higher Education Coordinating Board to appoint a director without performing a “search and selection process?”

What are the legal criteria the Arkansas Higher Education Coordinating Board must meet to fulfill the “search and selection process” requirement?

Has the Arkansas Higher Education Coordinating Board fulfilled the “search and selection process” requirement as it pertains to the expected vote to appoint Interim Director Shane Broadway to the directorship at its next meeting?

If it is the opinion of the Attorney General that the “search and selection process” requirement has been fulfilled, please detail the search and selection regime used by the Arkansas Higher Education Coordinating Board that led the Attorney General to that conclusion.

What would be the potential legal ramifications to the State of Arkansas and/or the Arkansas Department of Higher Education if the Coordinating Board appointed a director without fulfilling the “search and selection process”

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requirement?

Is it legal for the Arkansas Higher Education Coordinating Board to appoint a director without performing a “selection process that includes substantial input, review, and recommendation from the Presidents Council?”

What are the legal criteria the Presidents Council must meet to fulfill the “substantial input” requirement?

Has the Presidents Council fulfilled the “substantial input” requirement as it pertains to the expected vote to appoint Interim Director Shane Broadway to the directorship at its next meeting?

If it is the opinion of the Attorney General that the “substantial input” requirement has been fulfilled, please detail the input offered by the Presidents Council that led the Attorney General to that conclusion as well as criteria the Attorney General used to determine if the input was “substantial.”

What would be the potential legal ramifications to the State of Arkansas and/or the Arkansas Department of Higher Education if the Coordinating Board appointed a director without the Presidents Council fulfilling the “substantial input” requirement?

What are the legal criteria the Presidents Council must meet to fulfill the “review” requirement?

Has the Presidents Council fulfilled the “review” requirement as it pertains to the expected vote to appoint Interim Director Shane Broadway to the directorship at its next meeting?

If it is the opinion of the Attorney General that the “review” requirement has been fulfilled, please detail the review regime used by the Presidents Council that led the Attorney General

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to that conclusion.

What would be the potential legal ramifications to the State of Arkansas and/or the Arkansas Department of Higher Education if the Coordinating Board appointed a director without the Presidents Council fulfilling the “review” requirement?

As 6-61-203(a)(1)(A) is written, can it be legally construed that the Presidents Council must provide “substantial” review?

If it is legally required that the Presidents Council must provide “substantial” review, has the Presidents Council fulfilled the “substantial” review requirement as it pertains to the expected vote to appoint Interim Director Shane Broadway to the directorship at its next meeting?

If it is legally required that the Presidents Council must provide “substantial” review, and it is the opinion of the Attorney General that the “substantial” review requirement has been fulfilled, please detail the review regime used by the Presidents Council that led the Attorney General to that conclusion as well as criteria the Attorney General used to determine if the review was “substantial.”

If it is legally required that the Presidents Council must provide “substantial” review, what would be the potential legal ramifications to the State of Arkansas and/or the Arkansas Department of Higher Education if the Coordinating Board appointed a director without the Presidents Council fulfilling the “substantial” review requirement?

Questions Pursuant to Arkansas Code § 6-61-203(a)(3):

Is it legal for the Arkansas Higher Education Coordinating board to appoint a director who is not “an experienced educator in the field of higher education?”

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Is it legal for the Arkansas Higher Education Coordinating board to appoint a director who does not “have relevant experience on a campus of higher education?”

As it pertains to 6-61-203(a)(3), what is the definition of “experienced?”

As it pertains to 6-61-203(a)(3), what is the legal criteria to determine whether a candidate for the Director of the Arkansas Department of Higher Education is “experienced?”

As it pertains to 6-61-203(a)(3), does Interim Director Shane Broadway meet the definition and/or legal criteria to be considered “experienced?” Please detail what led to this conclusion.

As it pertains to 6-61-203(a)(3), what is the definition of “educator?”

As it pertains to 6-61-203(a)(3), what is the legal criteria to determine whether a candidate for the Director of the Arkansas Department of Higher Education is an “educator?”

As it pertains to 6-61-203(a)(3), does Interim Director Shane Broadway meet the definition and/or legal criteria to be considered an “educator?” Please detail what led to this conclusion.

As it pertains to 6-61-203(a)(3), what is the definition of “experienced educator?”

As it pertains to 6-61-203(a)(3), what is the legal criteria to determine whether a candidate for the Director of the Arkansas Department of Higher Education is an “experienced educator?”

As it pertains to 6-61-203(a)(3), does Interim Director Shane

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Broadway meet the definition and/or legal criteria to be considered an “experienced educator?” Please detail what led to this conclusion.

As it pertains to 6-61-203(a)(3), what is the definition of “field of higher education?”

As it pertains to 6-61-203(a)(3), what is the definition of “experienced educator in the field of higher education?”

As it pertains to 6-61-203(a)(3), what is the legal criteria to determine whether a candidate for the Director of the Arkansas Department of Higher Education is an “experienced educator in the field of higher education?”

As it pertains to 6-61-203(a)(3), does Interim Director Shane Broadway meet the definition and/or legal criteria to be considered an “experienced educator in the field of higher education?” Please detail what led to this conclusion.

As it pertains to 6-61-203(a)(3), what is the definition of “must have relevant experience on a campus of higher education?”

As it pertains to 6-61-203(a)(3), what is the legal criteria to determine “relevant experience on a campus of higher education?”

As it pertains to 6-61-203(a)(3), does Interim Director Shane Broadway meet the definition and/or legal criteria to be considered having “relevant experience on a campus of higher education?” Please detail what led to this conclusion.

What would be the potential legal ramifications to the State of Arkansas and/or the Arkansas Department of Higher Education if the Coordinating Board appointed a director who did not fit the definition and/or legal criteria of “experienced?”

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What would be the potential legal ramifications to the State of Arkansas and/or the Arkansas Department of Higher Education if the Coordinating Board appointed a director who did not fit the definition and/or legal criteria of “educator?”

What would be the potential legal ramifications to the State of Arkansas and/or the Arkansas Department of Higher Education if the Coordinating Board appointed a director who did not fit the definition and/or legal criteria of “experienced educator?”

What would be the potential legal ramifications to the State of Arkansas and/or the Arkansas Department of Higher Education if the Coordinating Board appointed a director who did not fit the definition and/or legal criteria of “experienced educator in the field of higher education?”

What would be the potential legal ramifications to the State of Arkansas and/or the Arkansas Department of Higher Education if the Coordinating Board appointed a director who did not fit the definition and/or legal criteria to be considered having “relevant experience on a campus of higher education?”

Questions Pursuant to Arkansas Code § 6-61-203(b):

Is it legal for the Arkansas Higher Education Coordinating Board to appoint a director whose “professional qualifications” are not “comparable to those in colleges and universities?”

As it pertains to 6-61-203(b), what is the definition of “professional qualifications?”

As it pertains to 6-61-203(b), what is the legal criteria to determine “professional qualifications?”

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As it pertains to 6-61-203(b), does Interim Director Shane Broadway meet the definition and/or legal criteria to be considered having the “professional qualifications” for the position of Director of the Arkansas Department of Higher Education? Please detail what led to this conclusion.

As it pertains to 6-61-203(b), what is the definition of “comparable to those in colleges and universities?”

As it pertains to 6-61-203(b), what is the legal criteria to determine a Director candidate’s “professional qualifications” are “comparable to those in colleges and universities?”

As it pertains to 6-61-203(b), does Interim Director Shane Broadway meet the definition and/or legal criteria to fulfill the requirement of having “professional qualifications” that are “comparable to those in colleges and universities?” Please detail what led to this conclusion.

What would be the potential legal ramifications to the State of Arkansas and/or the Arkansas Department of Higher Education if the Coordinating Board appointed a director who did not fit the definition and/or legal criteria of having the “professional qualifications” for the position of Director of the Arkansas Department of Higher Education?

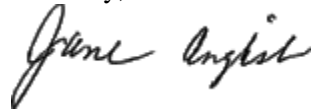
What would be the potential legal ramifications to the State of Arkansas and/or the Arkansas Department of Higher Education if the Coordinating Board appointed a director who did not fit the definition and/or legal criteria to fulfill the requirement that the Director have “professional qualifications” that are “comparable to those in colleges and universities?”

We appreciate your assistance and look forward to your response.

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Sincerely,

A handwritten signature in cursive script that reads "Jane English".

Jane English
State Representative
District 42

A handwritten signature in cursive script that reads "Allen Kerr".

Allen Kerr
State Representative
District 32