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MEMORANDUM

October 25, 2021

SUBJECT: Textbook transparency bill
(Work Order No. 32-LS1062\A)

TO: Senator Robert Myers
Attn: Dawson Mann

FROM: Noah Klein 
Legislative Counsel

The bill draft you requested is attached.

Because the draft requires that the university disclose charges for required instructional materials, it raises an unanswered constitutional question. It is not clear whether the legislature may direct the university to do something that is not required of other state entities.

Article VII, secs. 2 and 3 of the Alaska Constitution provide:

Section 2. State University. The University of Alaska is hereby established as the state university and constituted a body corporate. It shall have title to all real and person property now or hereafter set aside for or conveyed to it. Its property shall be administered and disposed of according to law.

Section 3. Board of Regents of University. The University of Alaska shall be governed by a board of regents. The regents shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session. The Board shall, in accordance with law, formulate policy and appoint the president of the university. He shall be the executive officer of the board.

Interpreting these sections, the Alaska Supreme Court has recognized "the degree of constitutional as well as statutory autonomy the University clearly possesses."¹ The court nonetheless concluded that the university is "subject to some executive and legislative

¹ *Univ. of Alaska v. Nat'l Aircraft Leasing, Ltd.*, 536 P.2d 121, 124 (Alaska 1975).

control" and is an "instrumentality of the state itself."² Thus, in different decisions the court has found the university subject to open meetings,³ public records,⁴ and wage discrimination laws.⁵

The legislature has specifically directed the university in other statutes; it is thus likely that the draft is constitutional.⁶ However, I have not identified an opinion evaluating legislation specifically directing the university, but not directing any other state agency, to take certain action. Thus, it is not clear whether such a directive infringes on the university's autonomy.

Please call with any questions or concerns.

NIK:mjt
21-379.mjt

Attachment

² *Id.*

³ *Univ. of Alaska v. Geistauts*, 666 P.2d 424, 427–28 (Alaska 1983).

⁴ *Carter v. Alaska Pub. Emps. Ass'n*, 663 P.2d 916, 919–21 (Alaska 1983).

⁵ *Brown v. Wood*, 575 P.2d 760, 767 (Alaska 1978).

⁶ *See, e.g.*, AS 14.40.040.