

## **Guidance on Employment Contracts with Head Athletic Coaches and Related Issues<sup>1</sup>**

On October 13, 1989, the chairman of the Board of Governors referred questions about contractual commitments that had been made by some constituent institutions in connection with the employment of athletic coaches to the Committees on Personnel and Tenure and University Governance. Mr. William A. Dees, Jr., and Mr. Philip G. Carson were also named to the joint committee. The joint committee met a number of times and inquired at length into various questions of policy and law raised by the contracts. The committee examined the individual employment contracts of all the head coaches at Division I institutions, studied relevant NCAA regulations and had candid conversations and exchanges of ideas with chancellors from Division I institutions including Chancellors Hardin and Monteith. The joint committee and the separate committees also considered the questions raised with appropriate members of the staff of the general administration.

We determined that 15 of our institutions engage in some form of intercollegiate athletics and that among them they employ more than 150 head coaches. Our examination revealed, however, that the major areas of concern occur in connection with contracts with head coaches in revenue producing sports on Division I-A campuses. These sports include men's basketball and football at East Carolina University, North Carolina State University, and the University of North Carolina at Chapel Hill.

Our examination of the coaches' contracts disclosed that there have been contractual provisions in the area of buy-out clauses and the payment of damages, which have been particularly and painfully embarrassing to the institutions and to the University in the past.

The joint committee also found that the chancellors involved are acutely aware of the need for revision in their institutional policies and procedures for the hiring of athletic coaches if unwarranted expense and adverse consequences to the institutions are to be avoided in the future. We believe that the chancellors concur in our strong view that there is a necessity for a proper balance between the legitimate interest of a coach in job security and professional standing with the right of the institution to assure satisfactory job performance. Four specific areas of concern were identified as actual or potential sources of concern. These were:

1. The use of excessive buy-out and severance-payment clauses and an absence of specific provisions limiting the obligation of the institution by requiring the mitigation of damages if a coach is terminated. In this connection, there was also concern about the actual or apparent intrusion of booster clubs into the hiring, termination, and compensation of University employees.
2. The time length of coaches' contracts which sometimes include provisions for automatic roll-over extensions.
3. The absence in some cases of a requirement that a coach affirmatively assume the responsibility to reinforce and support the primacy of the institution's educational mission. In this connection, there was concern that there be no possible contractual questions or issues regarding the responsibility of the head coach for his or her compliance with University and NCAA policies and regulations.
4. The involvement of coaches with outside parties for compensated services or endorsements related to or dependent upon their status as an athletic coach at a constituent institution.

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<sup>1</sup>Adopted by the Board of Governors on February 8, 1991, as guidance and not policy.

In May 1990, we reported to the Board of Governors on a preliminary conclusion we had reached in our deliberations and a remedy that we believed would help prevent future abuses. We found major differences in practices among our institutions in the procedures followed in developing and approving contracts with head athletic coaches, and particularly in the extent of the involvement of boards of trustees. Accordingly, we concluded that the University policy should be clarified. On our recommendation, the board on May 11, 1990, adopted a resolution which explicitly defines and requires trustee participation. The resolution adopted by the Board of Governors was as follows:

Consistent with the requirements of Section I-A(2) of the 1972 resolution of Delegation of Duty and Authority to the Board of Trustees, no contract of employment between an institution and a head athletic coach or an athletic director shall be valid unless and until all terms and conditions of the contracts have been approved by the Board of Trustees.

Subsequent to adoption of the above resolution, we considered additional steps which we believe should now be taken in order to responsibly respond to the four areas of concern identified by our inquiry. We believe that the 1972 Delegation of Duty and Authority in respect to athletic matters to the institutions continues to be appropriate. Implicit in that continued delegation is, however, a requirement that the chancellors and boards of trustees of the institutions acknowledge by their future actions the existence of minimum contractual standards as a part of the policy of their institution. From our considerable deliberations and conversations, we believe that there is adequate foundation for these new standards enumerated by the Board of Governors in this report and that there has developed a collegial consensus in respect to the four standards which are broadly stated as follows:

1. Buy-out clauses. We believe that it is acknowledged that serious problems can result from contract terms that require the payment of substantial sums of money to a coach when an institution terminates his or her employment with or without cause. Any obligation to commit substantial institutional resources or to sanction payments by others may severely limit the capacity of the institution to make needed personnel changes. Such arrangements may also be rightly viewed by the university community and by the general public as an unwise expenditure of resources. This is particularly so when the amount of the payment required by such a clause bears no clearly discernible relationship to the actual financial loss that would likely be incurred by the coach. Therefore, consistent with the need to provide job security and to recognize the legitimate financial interests of a coach who is terminated prematurely, contractual provisions to define and limit the institution's liability are deemed to be wise and necessary. These would appear to clearly encompass a limitation of the institution's financial obligation to no more than the balance of the salary the coach would have earned had he or she remained employed with appropriate provisions requiring the coach to mitigate his or her damages. In no event should the university or any party related to the university have any obligation to a coach to replace the loss of any outside compensation.
2. Length of contracts. We believe that there is an understanding that contracts of excessive length may limit the capacity of the institution to make needed personnel changes. In particular, the so-called "roll-over" contract by which the term of a contract is automatically renewed on an annual basis appear to be contrary to sound personnel policies in place at all of the institutions. University policies have a clear intent that any renewal of any contract be advertent, based upon a deliberate assessment of performance by the appropriate officer of the institution, and not inadvertent or automatic.
3. Academic values. The policy of the institution in respect to the need to foster educational values and to maintain a program of integrity should be an integral part of the contracts of all coaches. In particular, the institution's policy in reference to the recruitment and retention of qualified student athletes and the necessity that athletes progress toward a degree in a defined academic program should be addressed. The coach should have a clear obligation to contribute to the academic progress of team members under his or her supervision. In addition, the contract should clearly acknowledge that the athletic program under the direction of the coach must comply with the policies of the institution and the NCAA and that the failure of the program to so

comply may, at the option of the institution, be deemed a violation of the provisions of the coach's contract.

4. Outside compensation. Institutional interests can be affected significantly by the practice of head coaches contracting with outside parties for compensated services, especially those involving product endorsements. Employment contracts need to clearly define the rights and obligations of a coach who enters into some such outside agreements, while addressing the interests of the institution. We take note of the NCAA Bylaw 11.2.2, which provides:

11.2.2 Report of Athletically-Related Income.

Contractual agreements, including letters of appointment, between a full-time or part-time coach and an institution shall include the stipulation that the coach is required to report annually (in writing or orally) all athletically-related income and benefits from sources outside the institution through the athletic director to the institution's chief executive officer. Sources of such income shall include, but are not limited to, the following:

- (a) Income from annuities;
- (b) Sports camps;
- (c) Housing benefits (including preferential housing arrangements);
- (d) Country club memberships;
- (e) Complimentary ticket sales;
- (f) Television and radio programs; and
- (g) Endorsement or consultation contracts with athletic shoes, apparel or equipment manufactures.

We believe that this bylaw, if applied under the terms of the Board of Governors' policy on external professional activities for pay, gives satisfactory protection to institutional interests in this important area. This would mean that each request to take part in such activities as those listed above would require the coach to file a Notice of Intent. That notice should be filed with the chancellor and should require his approval. This will assure that the chancellor is in a position to monitor such activities.

In our efforts to address specific current concerns about intercollegiate athletic programs, we have not forgotten that the integrity of athletic programs depends not so much on the implication of specific rules and procedures as on the good faith of the people responsible for those programs. Without a strong and shared commitment to high standards by trustees, administrators, faculty, coaches, athletes, and others in the campus community, the policies, suggestions, and safeguards addressed by this report will be of limited benefit. Our recommendation that the delegation of responsibility for athletics be continued with the standards, enumerated by the Board of Governors in this report, is made with careful consideration given to the ultimate responsibility of the Board of Governors for the integrity of the University's athletic programs. We believe, however, that the commitment of those chancellors who are most directly involved and their unequivocal acceptance of the obligations to carry out their institutional and the board's policies and standard justifies the continued delegation of these responsibilities to all of the campuses.

In conclusion, we ask the Board of Governors to endorse these recommendations and request that the President transmit this report to each chancellor and to all members of the boards of trustees. We further recommend that the chancellors be requested to promptly forward to the President an

informational copy of each contract entered into with a head coach at the time the contract is approved by the board of trustees. The chancellor should be encouraged to consult with the President and through the President with the Board of Governors should the chancellor have any question about or desire any clarification of this board's policy in respect to matters discussed in this report.