

ADMINISTRATIVE MEMORANDUM

SUBJECT Interpretation and Application of
"Student-Employee" Exclusion from
the State Personnel Act

NUMBER 99

DATE March 15, 1978

By memorandum dated October 20, 1976, I transmitted a copy of a policy adopted on October 13, 1976, by the State Personnel Commission which reads as follows:

The employment of students by the institutions in which they are enrolled is designed primarily to constitute one type of student financial aid. Such employment usually is characterized by flexible accommodation of the student's primary involvement in educational pursuits. Thus, in terms of hours worked, scheduling of work, and required skill and productivity, such student workers are materially distinguishable from regular career employees.

Any person who during any period of enrollment as a student in a public educational institution concurrently is employed by that institution shall be considered an employee within the meaning of and subject to the State Personnel Act only if the student-employee is employed by the institution on a full-time permanent basis (as defined by regulations issued by or under the authority of the State Personnel Commission) in a permanent position established and governed pursuant to requirements of the State Personnel Commission.

Questions have arisen concerning the proper interpretation and application of this basis for excluding certain employees of The University of North Carolina from coverage of the State Personnel Act. Because these questions derive from administration of policy mandates of the State Personnel Commission promulgated in the exercise of its statutory responsibilities, the constituent institutions of The University must insure an appropriately uniform and consistent response to the directives of the Commission.

Under the State Personnel Commission policy, a person who is properly determined to be a "student-employee" is thereby excluded from the coverage of the State Personnel Act. However, a person may not be so excluded if he or she is employed (1) on a "full-time permanent basis" (2) in a "permanent position" within the classified State Personnel Act service. But the policy adopted by the State Personnel Commission does not otherwise provide a clear and definite basis for defining the class of persons (viz., "student-employee") which is the subject of the intended exclusion.

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I conclude that the policy statement necessarily accords and requires interpretive latitude within The University to determine who is a "student-employee" for the purpose there envisioned. By this memorandum, I supply the requisite basis for defining the class. In doing so, I rely on both the language of the policy and the circumstances which attended its adoption.

The quoted policy of the State Personnel Commission constitutes one section of a comprehensive instrument entitled "Policy on Hours of Work and Overtime Compensation." The particular issue addressed in the quoted section of that policy originally was the subject of a July 30, 1976, proposal to the State Personnel Commission, which read as follows:

Student Workers

Students not working in a training program are considered as employees and must be paid the same rate of pay as other employees doing similar work, including overtime premium pay for hours worked in excess of 40 per week.

In response to the request of The University, in an appearance before the State Personnel Commission on October 13, 1976, the Commission substituted the policy statement first quoted above for that which had been proposed under date of July 30, 1976.

The concern expressed by The University in support of its request for the substitution of language was that "student employment" within the higher education context is not amenable to close, detailed, and uniform regulation of the type otherwise applicable to employment within the jurisdiction of the State Personnel Commission. Of particular (though not exclusive) concern was the potentially negative impact on institutional "student financial aid" programs of the originally proposed requirement that "student workers" be compensated for their employment in the same manner and to the same extent as "other employees." Recognition of the special character of "student employment" and the corresponding inducements to treat "student-employees" differently is reflected by the policy adopted by the State Personnel Commission.

Consistent with what I perceive to be the clear spirit of the policy adopted by the State Personnel Commission and with the justifications offered by The University and accepted by the Commission in support of its adoption, I have reached the following conclusions:

1. The fact that an individual concurrently is both enrolled in the institution and employed by the institution does not, standing alone, render an individual a "student-employee" for purposes of exclusion from the State Personnel Act.

2. Classifying a person under the State Personnel Commission policy should rest on the following judgmental inquiry: Was it the primary interest, purpose, and intent of the institution in establishing its relationship with the individual to confer student status or to confer employee status?

If a person is primarily a student and his or her employment is merely incidental to student status, then that person properly is classified as a "student-employee." Conversely, if a person is primarily an employee and his or her enrollment is merely incidental to employee status, then that person properly is not classified as a "student-employee."

Although administration of this primary-status test would be simplified by the availability of an easily applied formula, the matter is not usually amenable to such treatment. Rather, the institution most often must determine from all apparently pertinent circumstances whether or not, in its judgment, the individual is a "student-employee." A listing of apparently pertinent circumstances to be considered would include, but not necessarily be limited to, the following: (1) the relative amounts of time devoted, respectively, to enrollment and to employment; (2) whether the employment was initiated before, concurrent with, or after assumption of student status; (3) whether or not the employment constitutes a form of "student aid" responsive to the individual's financial needs as a student.

The classification of individuals relative to the cited State Personnel Commission policy is simply achieved in two types of situations: the individual is not a "student-employee" if (1) he or she is an employee of the institution but is not enrolled in the institution; or (2) he or she is enrolled in the institution and, in addition, is employed by the institution on a full-time permanent basis in a permanent position within the classified State Personnel Act service. However, in all other cases in which there are concurrent enrollment and employment, the judgmental exercise prescribed above must be undertaken.



William Friday