

STATE UNIVERSITIES:  
JUNIOR COLLEGES:  
SCHOOLS:  
COORDINATING BOARD FOR  
HIGHER EDUCATION:  
CONFLICT OF INTEREST:

The positions of member of the Coordinating Board for Higher Education and board member of a Missouri junior college district or trustee or regent of a state university are incompatible and one person may not hold both positions at the same time.

OPINION NO. 193

July 26, 1974

Honorable Claude R. Blakeley, Jr.  
Representative, 139th District  
602 West Broadway  
Webb City, Missouri 64870



Dear Representative Blakeley:

This official opinion is in response to your request for a ruling on the following question:

"Can a trustee or board member of a Missouri Junior College or State University serve on the new Coordinating Board for Higher Education, serving in both capacities simultaneously?"

The Coordinating Board for Higher Education is created in Section 6 of the Omnibus State Reorganization Act of 1974, Senate Bill 1, 77th General Assembly, First Extraordinary Session (1974). The Board consists of nine members appointed by the Governor with the advice and consent of the Senate, and the Board acts as the head of the Division of Higher Education and has supervisory and review authority over the various public institutions of higher education in this state.

The answer to your question turns on whether membership on the Coordinating Board is incompatible with membership on the governing board of a junior college, college, or university. This office recently issued an opinion holding that the positions of director of a special school district and director of a six-district which is a component part of that special district are incompatible and one person may not hold both positions at the same time. Opinion No. 16, Mallory, March 20, 1974, copy enclosed. In that opinion, we applied the following four-part test in determining incompatibility:

Honorable Claude R. Blakeley, Jr.

"Two offices are intrinsically incompatible at common law when:

- (a) One is subordinate to the other;
- (b) One has supervisory powers over the other;
- (c) One audits the other's accounts; or
- (d) One has power to appointment, or power of removal over the other." Id. at 2-3

In applying this test to the problem you pose, we see that the Coordinating Board has extensive supervisory powers over the various public institutions of higher education in this state. Subsection 2 of Section 6 of the Reorganization Act lists nine specific duties of the Coordinating Board. The first of these is that the Coordinating Board "shall have approval of proposed new degree programs to be offered by the state institutions of higher education;" the third states that "no new state supported senior colleges or residence centers shall be established except as provided by law and with approval of the coordinating board for higher education." Other duties include review of appropriation requests, the establishment of admission guidelines, the establishment of policies and procedures for institutional decisions relating to residence status, the establishment of guidelines to promote and facilitate the transfer of students, and the collection of information and data from the institutions of higher education.

In exercising these duties, the Coordinating Board members will be acting as "super-trustees" with regard to many of the functions of the institutions. If a member of the Board had an institutional commitment to a particular university or junior college because he or she was a member of the institution's governing board, he or she could not review and supervise that institution's performance or goals impartially as a member of the Coordinating Board. Under the test quoted above, membership on the two boards is clearly incompatible.

The legislature has provided the Coordinating Board with an "advisory committee" made up of representatives from eighteen junior colleges, colleges and universities across the state. These advisors have no vote, but their presence will assure that the Coordinating Board has full knowledge of the problems facing the institutions it regulates.

Honorable Claude R. Blakeley, Jr.

CONCLUSION

It is, therefore, the opinion of this office that the positions of member of the Coordinating Board for Higher Education and board member of a Missouri junior college district or trustee or regent of a state university are incompatible and one person may not hold both positions at the same time.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Richard E. Vodra.

Very truly yours,

A handwritten signature in cursive script, appearing to read "John C. Danforth".

JOHN C. DANFORTH  
Attorney General

Enclosure: Op. No. 16  
3-20-74, Mallory