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OPINION NUMBER 98-323

**22-B - EDUCATION - Colleges & Other Institutions
of Higher Learning**
90-A-1 - PUBLIC FUNDS & CONTRACTS

LSA-R.S. 17:3218 **LSA-R.S. 17:3351(A)**
LSA-R.S. 24:513 **LSA-R.S. 39:1481 et seq.**
LSA-R.S. 17:3354

Mr. E. Joseph Savoie
Commissioner of Higher Education
Louisiana Board of Regents
150 Third Street, Suite 129
Baton Rouge, LA 70801-1389

Dear Commissioner Savoie:

- 1) Higher Education management boards have the authority to employ independent CPA's to perform examinations of university financial transactions or accounts.
- 2) Higher education management boards, in exercising a reasonable degree of delegation of management authority to the institutions under their control, have the authority to allow institutions under their supervision to employ independent CPA's to conduct financial and accounting examinations.
- 3) Higher education institutions have the unilateral authority to employ independent CPA's to conduct financial and accounting examinations.

This office is in receipt of your recent opinion request regarding the authority of the higher education management boards and their institutions to employ independent certified public accounting firms to perform certain financial examinations. Specifically, your request raises the following issues:

- (1) Do the management boards have the authority to employ independent CPA's in accordance with the procurement laws of the state to perform examinations of university financial transactions or accounts, provided they are not intended to substitute for the financial examinations required by law of the Legislative Auditor?
- (2) Do higher education management boards, in exercising a reasonable degree of delegation of management authority to the institutions under their control, have the authority to allow institutions under their supervision to employ independent CPA's in accordance with the procurement laws of the state to conduct financial and accounting examinations, provided they are not intended to substitute for the financial examinations required by law of the Legislative Auditor?

(3) Do higher education institutions, for purposes of effectively discharging their own responsibility to insure appropriate and sound financial management of their operations, have unilateral authority to employ independent CPA's in accordance with the procurement laws of the state to conduct financial and accounting examinations, provided they are not intended to substitute for the financial examinations required by law of the Legislative Auditor?

In response to your request, I direct your attention to LSA-R.S. 17:3354, which provides:

(A) Any board may from time to time cause to be made an independent audit of the financial transactions and accounts of its university system or of any college or university therein.

(B) For the performance of an independent audit a board shall employ auditors who have no financial interest in the activities of its university system and who are under no contract of employment or retainer with the university system or any department or division of the state government for purposes other than independent audit. At least one responsible member of the auditing firm or group selected shall be qualified to practice as a certified public accountant.

(C) Upon completion of an independent audit, a complete and detailed report of the findings and recommendations of the auditors shall be printed by the board and copies thereof transmitted to the governor and the legislative auditor. The expense of the audit and report shall be borne by the university system out of appropriations.

(D) Nothing herein contained shall be construed to eliminate the necessity of an audit required by law to be made by any public auditing agency.

This statute authorizes higher education management boards to have independent audits of its university system or any of the institutions within its system. The clear wording of the statute indicates that the independent audit does not eliminate the necessity for any audit required by law. In accordance with the provisions of LSA-R.S. 17:3354, the management boards have the authority to employ independent CPA's to perform examinations of university financial transactions or accounts.

Concerning your second question, I direct your attention to LSA-R.S. 17:3351(A), which states, "each management board as a body corporate shall have authority to exercise all power to direct, control, supervise and manage the

institutions of higher education under its control." In *Baker v. Southern University*, 604 So.2d 699 (La. App. 1st Cir. 1992), the court interpreted this grant of authority to include the power to delegate appointing authority to the president of a university system. In accordance with LSA-R.S. 17:3351(A) and the jurisprudence interpreting it, the authority to employ independent CPA's given in LSA-R.S. 17:3354 may also be delegated by the management boards to institutions under their control. Therefore, higher education management boards, in exercising a reasonable degree of delegation of management authority to the institutions under their control, have the authority to allow institutions under their supervision to employ independent CPA's to conduct financial and accounting examinations.

Lastly, in response to the third issue raised, I direct your attention to LSA-R.S. 17:3218 which provides:

The corporate authority, internal and otherwise, vested in the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, the Board of Supervisors of Southern University, and the Board of Trustees for State Colleges and Universities to supervise and manage the university system under the jurisdiction of each, extends to all the colleges and universities, branches, centers of learning, or extensions of such university now existing or hereafter established.

This provision extends the corporate authority of the higher education management boards to supervise and manage to each institution under their control. Further, in *State ex rel. Bourgeois v. Board of Supervisors of Louisiana State University and Agricultural and Mechanical College*, 17 So.2d 25 (La. 1944), the court stated that the president of a state university has the authority to conduct all affairs of the university, subject to the board of supervisor's review. The affairs of a university include financial management. Subject to the control and supervision of the management board, a president has the authority to take the necessary steps to conduct the financial management affairs of the university. The authority to employ an independent CPA would be within the responsibility to conduct the financial management affairs of the university. Therefore, it is the opinion of this office that higher education institutions have the unilateral authority to employ independent CPA's, in the absence of any board policy to the contrary. This authority must be exercised in accordance with the state procurement laws, LSA-R.S. 39:1481 et seq.

In conclusion, it is the opinion of this office that higher education management boards have the authority to employ independent CPA's to perform examinations of university financial transactions or accounts, higher education management

boards may delegate the authority to employ independent CPA's to the institutions under their control, and higher education institutions have the unilateral authority to employ independent CPA's to perform examinations of university financial transactions. The examinations performed by the independent CPA's do not substitute for the audits required to be performed by the legislative auditor in LSA-R.S. 24:513.

Should you have any further questions, please contact this office.

Very truly yours,

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