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Missouri State Auditor

HIGHER EDUCATION

Separation and Retention Contracts of University Officials

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CITIZENS SUMMARY

Findings in the audit of the Department of Higher Education, Separation and Retention Contracts of University Officials

Background

In a prior audit report, Report No. 2000-24, we concluded while most high-ranking university officials' contracts reviewed contained reasonable provisions, some did not adequately protect the university and contained provisions that appeared excessive or unwarranted. In the current audit, we looked at the employment contracts of the four chancellors of the four University of Missouri campuses and the nine presidents of the other Missouri public 4-year institutions. We determined five of the agreements contained provisions that may not comply with state law and/or may not be in the best interest of the university.

Missouri Southern State University (MSSU)

MSSU entered a separation agreement with then-President Dr. Julio S. Leon in August 2007 which entitled Dr. Leon to a payment of \$168,518 upon his resignation with no obligation to perform any future tasks, duties or obligations for the university. Dr. Leon, who had been with MSSU for 38 years, 25 of which he was President, was also to be named "President Emeritus" and be provided a faculty office and computer in the Business School. Dr. Leon had the option of teaching part-time at the prorated compensation rate as the highest paid professor, but Dr. Leon did not exercise this option. The August 2007 agreement was a modification of Dr. Leon's existing employment contract which provided for a 6 month sabbatical at his monthly base pay upon his resignation, provided that he gave a full year's notice of his intention to resign. In addition, he would have the right to teach at a salary equal to 115 percent of the highest paid professor's salary, and, if he were terminated for any reason other than for cause, he would received his base pay for 12 months. Neither agreement explains the purpose of the contemplated post-employment payments, and MSSU did not provide an explanation upon our request.

Northwest Missouri State University (NWMSU)

NWMSU executed an employment agreement with then-President Dr. Dean L. Hubbard which entitled him to the same annual presidential salary (\$224,762) for the year after he resigned as President, but did not identify any specific duties to be performed by him during that year. In addition to the salary, Dr. Hubbard received health and accident insurance for himself and his spouse for 2 years after his resignation, and the university spent \$8,930 to relocate Dr. Hubbard to Kansas City. It is not clear whether the services Dr. Hubbard performed on behalf of NWMSU during this transition year, warranted the compensation and benefits he received. Dr. Hubbard served as President of NWMSU for 25 years. A more complete explanation of Dr. Hubbard's employment agreement is available in our recently issued audit report of NWMSU, Report No. 2011-47.

Harris Stowe State University
(HSSU)

In August 2010, HSSU entered into a contract with then-President Dr. Henry Givens, Jr. which provided he would serve as an advisor for 2 years after his resignation for \$70,000 a year, during which time he would research and write a partial history of HSSU, assist in fund raising, and provide advice on legislative matters and campus expansion projects. Dr. Givens told us this compensation would come from private or other sources, rather than university funds. In addition, Dr. Givens was provided lifetime participation in the university's medical, dental, and vision and long-term care insurance programs, and lifetime \$100,000 term life insurance, in recognition of Dr. Givens' 30 years of service and his willingness to forego other employment opportunities. Dr. Givens is also entitled to a paid partial sabbatical leave, but he said he did not expect to have time to take it.

Truman State University
(TSU)

After 5 years as President of TSU, Dr. Barbara B. Dixon expressed a desire to resign, and she and the Board of Governors entered into a separation agreement under which she received a salary of \$205,050 to serve as a consultant to the Board of Governors for a year. In addition, she was entitled to receive \$10,000 at the end of that year if she performed satisfactorily and to receive an additional 6 months of health insurance. According to TSU officials, the \$10,000 payment was paid, but payment for the additional 6 months of health insurance was not made. The only documented task or duty Dr. Dixon performed during this paid year was to document her thoughts and recommendations regarding cost saving measures.

Missouri State University
(MSU)

Dr. Michael T. Nietzel resigned as President of MSU after 5 years. Dr. Nietzel's contract entitled him to become a tenured professor in the Department of Psychology at an annual salary of \$160,423, which is approximately \$68,000 more per year than the highest paid faculty member in the department. In addition, Dr. Nietzel's contract with MSU entitled him to a semester of leave at his new full salary rate or 1 year off at one-half pay; Dr. Nietzel chose to take one semester off and was compensated \$80,211 for his paid leave of absence during the fall of 2010. During at least part of this time, Dr. Nietzel served as an unpaid advisor to the Governor on higher education matters. A more complete explanation of Dr. Nietzel's contract is available in Report No. 2010-125, *Missouri State University*, issued in October 2010.

Because of the limited objective of this review, no overall rating is provided.

Separation and Retention Contracts of University Officials

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Missouri State Auditor

Honorable Jeremiah W. (Jay) Nixon, Governor
and
Members of the General Assembly
and
Dr. David R. Russell, Ph.D., Commissioner
Department of Higher Education
Jefferson City, Missouri

We have performed an audit of separation and retention contracts of university officials. Objectives of this audit were to determine whether:

1. Public universities have entered into separation and retention contracts with top university officials which are in compliance with the Missouri Constitution and contain provisions that are in the best interest of the institution.
2. Section 173.003, RSMo, has been effective in eliminating questionable provisions contained in separation and retention agreements.

During the audit, we determined some of the agreements reviewed included reasonable and standard provisions and practices. However, we determined (1) some recent agreements may not be in compliance with the Missouri Constitution and/or may not be in the best interest of the institution, and (2) Section 173.003, RSMo, has not been completely effective in eliminating questionable provisions contained in separation and retention agreements.

We conducted our audit in accordance with the standards applicable to performance audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform our audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides such a basis.



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Separation and Retention Contracts of University Officials

Introduction

Background

The Missouri Department of Higher Education (MDHE), headed by a coordinating board, carries out various planning, budgeting, and other administrative responsibilities related to the state's system of higher education. Each state-funded college or university is under the general control and management of its governing board. Under state law¹, the governing board of each institution has the authority to appoint and remove the president and other institution employees, assign powers and duties, and fix compensation. The MDHE has no approval or oversight responsibilities regarding the compensation provided to top officials of the state's colleges and universities.

In Report No. 2000-24, *Audit of Separation and Retention Contracts Entered Into by Public Institutions of Higher Education*, issued in April 2000, the State Auditor's Office (SAO) reported the results of an audit of separation and retention contracts for college and university presidents or chancellors, and other high-ranking officials. The objectives of that audit were to determine if colleges and universities were consistent in the types of contracts they entered into with high-ranking officials and determine if the college and university boards properly considered their fiduciary responsibilities when entering into agreements with departing officials.

That audit concluded most of the contracts reviewed contained reasonable provisions; however, some contracts did not properly protect the university from risk of nonperformance and/or contained provisions that appeared excessive or unwarranted. Subsequent to the release of our prior audit, in 2000 the General Assembly passed legislation which was incorporated in Section 173.003, RSMo, which states:

"Retirement, severance, and associated salary continuance policies and plans of approved public institutions...shall be applied uniformly, consistently and fairly to all similarly situated officials and employees of ...public institutions; and no employee or official shall be singled out for retirement or severance benefits which are inconsistent with the formally adopted policies and plans of such approved public institution."

¹ Article IX, Section 9(a), Missouri Constitution, and Section 172.010, RSMo, provide that a university (the University of Missouri) is hereby instituted in this state, the government whereof shall be vested in a board of curators. Also, Section 174.120, RSMo, provides that each state teachers college shall be under the general control and management of its board of regents. Further, Sections 172.300 and 174.140, RSMo, provide the governing board of each institution may appoint and remove, at its discretion, the president and other employees of the state college or university and may fix the terms, conditions, and compensation of their employment.



Separation and Retention Contracts of University Officials Introduction

Scope and Methodology

Our audit focused on the employment contracts of the chancellors of the four campuses of the University of Missouri system and the presidents of the other nine 4-year public institutions. The 13 public 4-year institutions included:

- University of Missouri-Columbia
- University of Missouri-Kansas City
- University of Missouri-St. Louis
- Missouri University of Science and Technology (formerly the University of Missouri-Rolla)
- Lincoln University (in Jefferson City)
- Harris Stowe University (in St. Louis)
- Truman State University (in Kirksville)
- Northwest Missouri State University (in Maryville)
- Southeast Missouri State University (in Cape Girardeau)
- Missouri State University (in Springfield)
- Missouri Southern State University (in Joplin)
- Missouri Western State University (in St. Joseph)
- University of Central Missouri (in Warrensburg)

To determine whether the contracts with these university officials were in compliance with the Missouri Constitution and/or in the best interest of the institution, we reviewed the related policies and contracts covering the period from fiscal year 2005 through fiscal year 2010. As part of our audit, we considered related matters reported in recent SAO university audits involving former and current presidents and chancellors.

To determine the effectiveness of Section 173.003, RSMo, we reviewed relevant policies and procedures and discussed provisions of the statute with MDHE and institution officials. We also reviewed other relevant statutory and constitutional provisions to determine the authority granted institution governing boards and any oversight responsibilities of the MDHE. We also communicated with various institution officials, including members of the governing boards in some instances, to determine the reason(s) for certain actions and/or to obtain an explanation for certain contract provisions.

Separation and Retention Contracts of University Officials

Management Advisory Report

State Auditor's Findings

Contract Provisions

The governing boards of some public 4-year universities provided separation and retention compensation and benefits to current or outgoing top-ranking officials which may not comply with the Missouri Constitution and/or may not be in the best interest of the institution. In addition, legislation passed after our 2000 audit has not been completely effective in limiting or controlling questionable severance, separation, and retention contracts with top outgoing university officials.

University contracts

Our review of the employment contracts of presidents and appointment letters of chancellors of the 13 public 4-year institutions disclosed many separation or retention provisions that appeared reasonable and/or represented standard practices in the event the official resigned or terminated. Those contracts generally provided for no further compensation or benefits beyond the effective date of the official's resignation. If terminated without cause, the contracts generally provided the official with severance payments of salary and benefits ranging from 6 to 12 months (or the time remaining on the contract, whichever was less). For three of the four campuses of the University of Missouri system, the appointment letters indicated the respective chancellors were considered administrative "at-will" appointments and no severance payments were contractually provided in the event of termination.

However, the governing boards of 5 of the 13 public 4-year institutions entered into contracts with institution presidents which included provisions that may not comply with the Missouri Constitution and/or may not be in the best interest of the institution.

Missouri Southern State University

In August 2007, the Board of Governors of Missouri Southern State University entered into a separation agreement with then University President Julio S. Leon. According to the agreement, Dr. Leon had expressed a desire to resign as President of the university. The agreement noted he had served with distinction in that position for 25 years and as an employee for a total of 38 years (he was previously a professor and dean).

According to the August 2007 agreement, the President's resignation was effective September 1, 2007. The agreement provided that no later than December 31, 2008, on a date or dates to be determined by Dr. Leon, the university would pay him, or his estate should he be deceased, \$168,518 (his annual base salary as President) less withholding tax and any other deductions required by law or authorized by the President. This payment was not contingent upon the performance of any tasks, duties or obligations. The agreement also stated that Dr. Leon would be named "President Emeritus" by resolution of the Board of Governors and be provided a faculty office and computer in the Business School.

Under the terms of the agreement, the outgoing President could also elect to teach part-time beginning in the fall semester of 2008. If he elected to teach,



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his compensation would be prorated based upon the number of hours actually worked as compared to the number of hours worked by the highest paid full-time professor. University officials indicated Dr. Leon did not exercise this option.

This agreement indicated it was a modification of the President's existing employment contract. That July 2006 contract provided that Dr. Leon could resign as University President and be relieved of his duties at the end of any fiscal year, providing he had given a full year's notice of his intention to resign. In such event, he would be entitled to a 6 month sabbatical at his monthly base pay and at the end of the sabbatical, he would have the right to return to the university as a professor at a salary equal to 115 percent of the highest paid professor then employed at the university. The July 2006 contract also provided that if the President's employment was terminated for any reason, except for cause, the university would pay him the base salary for the next 12 months.

The purpose of the \$168,518 payment in the August 2007 agreement or the 6 month sabbatical (at full pay) in the July 2006 employment contract were not disclosed in either document. In November 2010, we asked board officials why the university believed these provisions were in the best interest of the university. In response, the board's attorney acknowledged our request letter, but provided no explanation other than to note the agreement speaks for itself. Considering the former President was under no legal obligation to perform any services for this compensation, it is not clear why the university agreed to these contract provisions.

Northwest Missouri State University

As similarly reported in Report No. 2011-47, *Northwest Missouri State University*, issued in September 2011, in July 2004, the Northwest Missouri State University Board of Regents and then President Dean L. Hubbard executed an employment contract which covered a 6-year period ending June 30, 2010. The contract indicated Dr. Hubbard intended to retire as the university's President after June 30, 2009, and it provided that if the board was successful in finding a suitable replacement by that date, the former President would be employed by the university to serve in a transition role during the year ended June 30, 2010. Dr. Hubbard did subsequently step down as University President effective July 1, 2009, after serving in that position for 25 years. The former President then subsequently served in a transition role for a year as provided by the contract.

The employment contract approved by the Board of Regents in 2004 provided the former President's salary during the transition year was to be no less than the salary paid him during the last year he served as President of the university. As a result, the former President received a salary of \$224,762 during the transition year (his base salary as President). The 2004 employment contract did not specify duties to be performed by the former President during the transition year, but provided he would perform such



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duties as outlined by the new President and approved by the Board of Regents.

The Board of Regents hired a new President who assumed the duties of that position effective July 1, 2009. During the transition year the former President submitted monthly activity reports to the new University President which summarized activities he had been involved in on behalf of the university. While some of the activities appeared to benefit the university directly, others did not. Some of the activities reported included:

- Teaching at least two classes, one class for NWMSU and a graduate-level class for an out-of-state university
- Performing statistical and financial analysis for the university
- Seeking additional grants and external funding
- Writing an education-related blog and/or articles for the Kansas City Star
- Serving on a higher education-related foundation board
- Speaking at various engagements

The new President indicated a primary benefit of the former President's services/activities during the transition year was to help maintain and/or build current and future relationships between outside parties (particularly donors) and the university's new leadership.

In addition to the salary paid during the transition year, the 2004 employment contract provided the former President would receive hospitalization, major medical, travel risk, and long-term disability insurance during the transition year and for a year following the transition year. In addition, the contract provided the university would provide health and accident insurance for the former President's dependents (his wife) during this 2-year period. The insurance and other benefits cost the university \$30,140.

The 2004 employment contract also provided the university would 1) pay for suitable housing for the former President during the transition year if the former President lived in Maryville, and 2) pay all necessary moving and relocation expenses in vacating the university-provided home. When the former President retired in July 2009, he was not required to live in Maryville. As a result, the university incurred costs of \$8,930 to move the personal property and furnishings of the former President to his new place of residence in Kansas City.



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While it is apparent the former President provided some services to the university during the transition year of his contract, it is not clear to what extent those services benefited or assisted the university's new leadership or whether the services justified the salary and benefits provided.

Harris Stowe State University

In January 2009, the Board of Regents of Harris Stowe State University entered into a new employment contract with President Henry Givens, Jr., who had served in that position for approximately 30 years. According to the contract, Dr. Givens was to be employed as President of the university for a period of 12 months commencing on January 1, 2009, at a salary of \$209,634, and then be subsequently employed as a consultant commencing on July 1, 2010, for a period of 3 years. The agreement also provided for a partial sabbatical leave during the 2009-2010 fiscal year at the same salary and benefits he received as President. The agreement also provided Dr. Givens would be named "President Emeritus of the Institution" upon his retirement.

According to the contract, he was to receive compensation of \$95,000 during each of the 3 years he was to serve as consultant and his duties would include the following.

- Research and write the history of Harris Stowe State University from 1979 to the present
- Advise the regents on legislative matters
- Assist in fund raising
- Advise on campus expansion projects

The contract also provided that in recognition of the President's willingness to forego other employment opportunities and the President's 30 years of distinctive service, the university would provide the President lifetime participation in the university's medical, dental, and vision insurance programs, lifetime long-term individual care insurance, and lifetime term life insurance in the amount of \$100,000. The cost of these benefits in fiscal year 2009 was \$19,167.

In August 2010, a new contract was entered into between the Board of Regents and Dr. Givens which provided that he continue to serve as President through June 30, 2011, at a salary of \$210,000, and then serve as an advisor for 2 years commencing on July 1, 2011. The contract provides Dr. Givens will perform duties similar to those in the previous contract and will receive annual compensation of \$70,000 for his advisory services. Under this new contract, Dr. Givens will still receive the partial sabbatical and lifetime health, long-term care, and life insurance benefits provided in the earlier contract. In May 2011, Dr. Givens told us the compensation he would receive as an advisor to the board would be paid from private or other sources rather than from university funds. In addition, he indicated he would



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likely not have time to take the paid sabbatical as provided for in the January 2009 and August 2010 contracts.

While it appears the President will provide some services to the university during the 2-year consultant period, it is not clear if those services will justify the compensation to be paid or lifetime benefits of health, long-term care, and life insurance to be provided at university expense.

Truman State University

In September 2008, the Board of Governors of Truman State University entered into a separation agreement with then University President Barbara B. Dixon. According to the agreement, Dr. Dixon had expressed a desire to resign from employment with the university and the President and board desired to maintain an amicable relationship and resolve any and all issues pending or that might arise. Dr. Dixon had served as President for over 5 years and her employment contract was not due to expire until June 30, 2009.

Dr. Dixon resigned effective October 15, 2008, and as provided by the agreement continued employment with the university serving in the role of consultant to the Board of Governors for a period of a year. During this period, the former President received a total salary of \$205,050, her base salary as President. The agreement also provided that if at the end of the 1 year period the board determined the former President had performed satisfactorily, an additional \$10,000 would be paid into a deferred compensation account, and the university would pay health insurance costs for 6 additional months. According to university officials, the \$10,000 payment was paid to the former President, but payment for 6 additional months of health insurance was not made.

The agreement did not require the former President to perform any specific tasks, duties, or obligations while serving as consultant to the board. However, it indicated Dr. Dixon might be requested to attend various mutually agreed upon university functions and activities, and to assist in fundraising, the search for a new President, and such other activities as the board may deem appropriate. The agreement did not require Dr. Dixon to live in Kirksville (the site of the university). Based on discussions with university officials, the only documented task or duty the former President performed during the 1 year period she served as a consultant was to document her thoughts and recommendations regarding actions that might be taken as cost saving measures.

The previously existing August 2006 employment contract did not obligate the university to pay any further salary or benefits beyond the effective date of the President's resignation. If the university chose to terminate the contract without cause, Dr. Dixon could either retain a tenured professor position at an annual salary of 60 percent of the President salary or elect to



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resign her tenure, in which case, the university would be required to pay her "liquidated damages" in an amount equal to 6 months of her annual salary.

University officials told us the board and the former President had disagreed on the direction to take the university, and since the university was in the midst of a capital campaign they wanted to avoid negative publicity, Dr. Dixon agreed to resign from her position as President. Because of these circumstances and to avoid future issues, the board entered into the resulting separation agreement with the former President. However, considering the limited duties the former President was asked to provide as consultant, it is not clear whether the decision by the Board of Governors to compensate her (at her base salary) for an additional year was appropriate.

Missouri State University

As similarly reported in Report No. 2010-125, *Missouri State University*, issued in October 2010, that university's contract with former President Michael T. Nietzel included a tenure and retreat clause. Under this clause, the former President was granted the option to retreat to a tenured professorship within the Department of Psychology and be compensated 60 percent of his current salary as President. The contract also provided the option to take a leave of absence for either the first academic semester at full pay or for the first academic year at 50 percent pay, either option would be paid at the reduced salary.

In November 2009, then President Nietzel announced his intentions to resign from his position as President and on April 1, 2010, became an unpaid advisor to the Governor regarding matters related to higher education. Effective July 31, 2010, the former President resigned and went on a leave of absence from the university for one semester at full pay. Dr. Nietzel had served as President of the university since 2005. After the paid leave of absence, which included the fall semester of 2010, the former President returned to the university to accept a professorship at 60 percent of his President's salary.

The former President's fiscal year 2010 contract stated his annual compensation would be \$267,372. Therefore, the former President was compensated at the rate of \$160,423 (60 percent of his President's salary) annually as a faculty member, which is approximately \$68,000² more than the highest paid faculty member in the Department of Psychology, for assuming teaching duties equal to other tenured professors. The former President was also compensated \$80,211 (50 percent of his new tenured professor salary) for the paid leave of absence during the Fall 2010 academic semester.

² ($\$267,372 \times 60\% = \$160,423 - \$92,240 = \$68,123$) \$92,240 represents the highest compensation paid to a faculty member of the Department of Psychology during the year ended June 30, 2010.



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The purpose of the leave of absence and the tenure and retreat clause was not disclosed in the contract provisions. Although the President might have been involved in activities benefiting the university during the leave of absence, he was under no legal obligation to perform any services. In addition, the salary paid to the former President when he assumed his new professorship duties appears to have been excessive.

Legal compliance

In three of the instances discussed above, the President had served in that position for an extended period (ranging from 25 to 31 years), and it appears the related separation and/or retention compensation and benefits paid to those individuals may have been provided, at least in part, in appreciation for past service. While it is understandable the respective boards would appreciate and might want to recognize the past contributions of a long-term president in a monetary way, it does not appear legal to do so. Article III, Section 39, Missouri Constitution³, prohibits the payment of compensation for services previously rendered.

Effectiveness

The legislative intent of Section 173.003, RSMo, could not be readily determined because its provisions are ambiguous and not clearly applicable to top university officials. As a result, most of the 4-year public institutions have not formally adopted plans and policies specifically addressing severance, separation, and/or retention payments or benefits for top university officials, with only two (Missouri State University and Southeast Missouri State University) having done so.

If the intent of Section 173.003, RSMo, was to limit or control questionable severance, separation, and retention contracts with top outgoing university officials, the examples cited in this report would indicate that statute has not been completely effective in doing so.

Recommendations

1. The MDHE work with the governing boards of the state's public colleges and universities to help ensure the terms of employment or separation contracts entered into by those boards with current or outgoing top officials only include separation and/or retention provisions that comply with Article III, Section 39, Missouri Constitution and does not constitute additional compensation for services previously rendered. Such provisions should be clear as to their purpose and intent and identify the specific duties or services, if any, to be performed by the official after stepping down as the institution's chief executive officer. Any additional compensation should be reflective of the services performed after leaving office.

³ Attorney General's Letter No. 114, 1987 to Jacob, determined this section of the constitution applies to any government agency which derives its power and authority from the constitution and laws of this state. This would include public colleges and universities.



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2. The General Assembly review the matters discussed in this report, and determine whether additional legislative changes are needed to limit severance, separation, and retention compensation and other benefits to outgoing top university officials.

Auditee's Response

1. *The MDHE provided the following response:*

As we noted in our prior discussion and emphasize again here: this department simply has no authority over an institution's personnel decisions. By constitution and statute in the case of the University of Missouri System and by statute in the case of the other public institutions, their governing boards are vested with complete authority in these matters. See e.g., MO Constitution, Article IX, Section 9(a); Sections 172.300, 174.120 and 174.140 RSMo. Not only is this division of authorities very clear, the MDHE would have no basis for substituting its judgment for that of the governing board in determining what matters of compensation are reasonable in a given circumstance. Those boards have command of the facts and extenuating circumstances and are charged with the fiduciary responsibility to act in the institutions' best interests. Moreover, they have their own legal counsel to ensure that all contractual provisions are in compliance with applicable law. In sum, the coordinating role of the department should not be extended to areas that are not contemplated by our statutes and fall under the exclusive purview of the institutional boards.

Auditor's Comment

We are not suggesting the MDHE has authority over an institution's personnel decisions. However, according to Section 173.030(2), RSMo, it is the MDHE's responsibility to make recommendations for policy changes to the governing board of any public higher education institution in the state when such action is deemed by the coordinating board to be in the best interests of the institutions and/or the general requirements of the state.