

Government Administration and Elections Committee

March 3, 2014

Public Hearing

Testimony

By

**Richard F. Orr, Esq.
General Counsel
University of Connecticut**

Co-Chairs, Ranking Members, and Members of the Government Administration and Elections Committee, thank you for allowing me to submit written testimony today on Raised bill 271, *An Act Concerning the State's Authority to Purchase and Receive Donations of Real Property*.

First and foremost, I would like to thank the Committee for its long-term support of the University of Connecticut and for raising this bill.

The University supports Raised Bill 271 which, in section 2, reaffirms that UConn has the authority to purchase or acquire for the state and may dispose of or exchange any land or interest directly. The University has had this authority since the initial UCONN 2000 legislation was enacted in 1995, now codified as 10a-109d(7) and 4b-21. However, there were questions as to (i) whether approval of other agencies was required and (ii) whether this authority was contingent on whether the General Assembly was in session. The Attorney General reached the conclusions in two formal opinions (attached) which were issued on October 17 and 23, 2013 that the University had the authority to purchase, dispose of, or exchange land without the approval of other agencies and the University had that authority regardless of whether the General Assembly was in session.

However, we believe there is a benefit to having the authority clearly stated in the plain statutory language which is more readily accessible than Attorney General opinions.

We urge the Committee to vote affirmatively on this legislation. Please do not hesitate to contact me if you have any questions or need additional information.

Thank you again for your continued support of the University of Connecticut.

GEORGE C. JEPSEN
ATTORNEY GENERAL



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Office of The Attorney General
State of Connecticut

October 17, 2013

Susan Herbst
President
University of Connecticut
Office of the President
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Dear President Herbst:

By letter dated October 10, 2013 you have inquired as to the authority of the University of Connecticut ("UConn") to acquire or dispose of real estate. In particular you note that the Auditors of Public Accounts have raised a question as to whether UConn is required to have such real estate transactions pre-approved by the State's Office of Policy and Management ("OPM") and the State Properties Review Board ("SPRB"). For the reasons that follow, you are advised that such preapproval is not legally required.

Section 4b-21(a) of the Connecticut General Statutes provides in pertinent part that:

[w]hen the General Assembly is not in session, the trustees of any state institution, the State Board of Education or the Commissioner of Correction may, subject to the provisions of section 4b-23, purchase or acquire for the state, through the Commissioner of Public Works, any land or interest therein if such action seems advisable to protect the state's interest or to effect a needed economy, and may, subject to the provisions of said section, contract through the Commissioner of Public Works for the sale or exchange of any land or interest therein belonging to the state except that The University of Connecticut may purchase or acquire for the state

and may dispose of or exchange any land or interest
therein directly.

(Emphasis added). The language emphasized above was contained in P.A. 95-230, §34.¹

In addressing your inquiry we are guided by a basic tenet of statutory construction, namely, that when statutory language is "plain and unambiguous, we need look no further than the words themselves because we assume that the language expresses the legislature's intent." State v. White, 204 Conn. 410, 421 (1987) (internal quotations omitted); State v. Parra, 251 Conn. 622 (1999).

The starting point for analysis then is the statutory language. "In the construction of the statutes, words and phrases shall be construed according to the commonly approved usage of the language" Conn. Gen. Stat. §1-1(a). The Connecticut Supreme Court has advised that "[t]o ascertain the commonly approved usage of a word, it is appropriate to look to the dictionary definition of the term." State v. Rivera, 250 Conn. 188, 200 n. 12 (1999); Marchesi v. Board of Selectman of the Town of Lyme, 309 Conn. 608, 616 (2013).

The statutory language at issue contains two terms critical to this analysis. The first is the word "except," which has been defined as meaning "but for ... not including; other than; otherwise than" Black's Law Dictionary 501 (5th ed. 1979).² Thus the import of the word "except" is to exempt UConn from the statute as it pertains to the acquisition and disposition of real estate.

The second word that must be construed is "directly." The same source defines "directly" as "[i]n a direct way, without anything interfering; not by secondary, but by direct means." Black's Law Dictionary 414 (5th ed. 1979)

The plain and ordinary meaning of the words chosen by the legislature compels the conclusion that the 1995 amendment to Section 4b-21(a) authorizes UConn to transfer real estate without the involvement of OPM or SPRB. This conclusion is buttressed by the principle that "statutes must be construed, if possible, such that no clause, sentence or word shall be superfluous, void or insignificant" State v. Gibbs, 254 Conn. 578, 602 (2000); In re Justice W., 308

¹ Conn. Gen. Stat. § 4b-23 contains the state facility plan, and sets forth the respective roles of OPM and the SPRB in the handling of covered state property transactions.

² Black's Law Dictionary has been cited authoritatively by the Connecticut Supreme Court. See Nizzardo v. State Traffic Commission, 259 Conn. 131, 162-163 (2002).

Conn. 652, 662 (2012). A contrary conclusion would render the action of the legislature in enacting Section 34 of Public Act 95-230 meaningless.

This reading of the statute is consistent with the history and circumstances surrounding the passage of Public Act 95-230 as a whole, commonly referred to as "The UConn 2000 Act" ("Act"). UConn's powers under the Act, as set forth in Conn. Gen. Stat. §10a-109d(a), are extremely broad. The statute provides that UConn, in order to carry out the purposes of the Act, is authorized to design, and construct buildings (subsection 6), notwithstanding any other provision of law, and to acquire or dispose of real or personal property (subsection 7). The breadth of the Act, and the clear legislative intent to provide a high degree of autonomy to UConn, is consistent with the plain language of the amendment to Section 4b-21(a). While upon initial examination there appears to be a redundancy given the authorization to engage in real estate transactions set forth in Conn. Gen. Stat. § 10a-109d(a)(7) and the authority to acquire or dispose of real estate set forth in Conn. Gen. Stat. § 4b-21(a), as amended, closer scrutiny reveals that the two statutes are compatible and complementary. The former statute is limited by the phrase "[i]n order to otherwise carry out its responsibilities and requirements under Sections 10a-109a to 110a-109y" (the statutory codification of the Act), while the second statute, Conn. Gen. Stat. §4b-21(a), contains no such limitation. Thus, while Conn. Gen. Stat. §10a-109d(7) establishes UConn's autonomy regarding UConn 2000 related real estate transactions, Conn. Gen. Stat. § 4b-21(a) extends such autonomy beyond UConn 2000 related real estate transactions.

The legislative history of Public Act 95-230 confirms this conclusion. During the floor debates in the House of Representatives, a state representative specifically raised the issue of the exclusion of the SPRB from the process of reviewing land transactions at the University of Connecticut.

REP. SAN ANGELO: (131st)

Thank you, Mr. Speaker. I rise in support of UCONN 2000, but I have some questions. And through you, to Representative Schiessl, if I may.

SPEAKER RITTER:

Please proceed.

REP. SAN ANGELO: (131st)

Thank you. Representative Schiessl, I have some concerns with regard to the power that we are going to be giving the University of Connecticut with regard to conveying land and who is going to be reviewing all these projects? I know that the Property Review Board is in here to some degree, but could you explain to the chamber, please, who is going to be reviewing these purchases of land? Who is going to be reviewing the construction now that DPW is not going to be involved?

SPEAKER RITTER:

Representative Schiessl.

REP. SCHIESSL: (60th)

Thank you. These projects- I have addressed the issues of control and oversight, but the primary responsibility for managing and overseeing these projects really lies with the Board of Trustees and these projects have received great attention from the officials at the University of Connecticut who would, I suppose, act and carry out the functions that have traditionally been carried out by groups like the DPW and the State Properties Review Board. It is essentially being done in-house, for the most part, subject to the oversights laid out in this bill.

Through you, Mr. Speaker

SPEAKER RITTER:

Representative San Angelo, you still have the floor, sir,

REP. SAN ANGELO: (131st).

Thank you, Mr. Speaker. That, frankly, is probably one of my largest concerns about this particular

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legislation.

*I think that we do need a little bit more oversight
than what this particular bill calls for.*

House Proceedings, May 10, 1995 (Emphasis added).

It is clear from the remarks of Representative San Angelo that the House was aware of the removal of SPRB oversight from UConn land transactions. Yet no effort was made to amend the legislation. Moreover, the final language of Conn. Gen. Stat. §4b-21(a), as amended, unlike Conn. Gen. Stat. Conn. Gen. Stat. §10-109d(a), did not limit the real estate transactional authority to UConn 2000 projects.

It is therefore our opinion, based upon the language utilized by the legislature and basic principles of statutory construction, that UConn is authorized to acquire or dispose of land or any interest in land without the approval of OPM or the SPRB.

Very truly yours,



GEORGE JEPSEN
ATTORNEY GENERAL

cc: R. Orr, General Counsel

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ATTORNEY GENERAL



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Office of The Attorney General
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October 23, 2013

Susan Herbst, President
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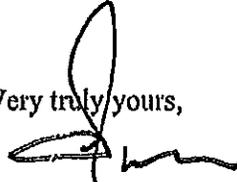
Dear President Herbst:

In a follow up letter to this Office's formal opinion dated October 17, 2013, you have inquired whether the conclusion of that opinion -- that Conn. Gen. Stat. § 4b-21(a) empowers the University of Connecticut ("UConn") to acquire or dispose of land or interests in land without preapproval of the State's Office of Policy and Management ("OPM") and the State Properties Review Board ("SPRB") -- is confined to situations when the General Assembly is not in session. Additionally you ask whether UConn in any such circumstances must seek approval from certain joint standing committees of the General Assembly for such transactions.

As reflected in the opinion's discussion of the meaning of the term "directly" in § 4b-21(a), the purpose of the UConn 2000 Act (P.A. 95-230), and the relevant legislative history, please be advised that in our opinion UConn's authority to acquire or dispose of land or interests therein is not contingent on the General Assembly being out of session. In particular, UConn's independent authority to acquire or dispose of real estate is explicitly set forth in Conn. Gen. Stat. § 10a-109d(7) with respect to UConn 2000 projects. The exception covering UConn contained in Conn. Gen. Stat. § 4b-21(a), passed as part of the UConn 2000 Act, extended such autonomy to non-UConn 2000 projects. For the same reasons, relevant joint standing committees of the General Assembly need not be consulted. However, consistent with the final sentence of Conn. Gen. Stat. § 4b-21(c), the State Treasurer should continue to sign such instruments to ensure compliance with federal tax laws insofar as lands or

interests in land to be disposed of may have been acquired with the proceeds of tax exempt bonds.

Very truly yours,

A handwritten signature in black ink, appearing to read "G. E. Jensen", written over the closing phrase "Very truly yours,".

GEORGE E. JENSEN
ATTORNEY GENERAL