

May 26, 2004

Carolyn K. Roberts, Chair  
Florida Board of Governors  
Roberts Real Estate, Inc.  
115 Northeast 8<sup>th</sup> Avenue  
Ocala, Florida 34470

Dear Mrs. Roberts:

You have requested an opinion concerning whether state university boards of trustees may charge students a technology fee. In brief, the Office of General Counsel concludes that state universities may not charge a technology fee without Board of Governors' approval.

*Background*

H.B. 1781 (2004) sought to amend Section 1009.24, Florida Statutes, "to establish a technology fee to be expended to enhance, expand, and improve technology access and support according to technology improvement plans approved by the university's board of trustees with prior consultation with the university's student government association." The draft statute would have imposed a cap on the fee, permitted at most annual increases, required a technology fee committee at least one-half of whose members are students appointed by the student body president to approve the fee, and not required Bright Futures Scholarships to cover the fee amount as provided for in Sections 1009.534, 1009.535, and 1009.536, Florida Statutes. Id. The bill failed to pass, but one or more state university boards of trustees nevertheless seek to impose a student technology fee.

*Analysis*

State universities are entitled to charge mandatory student fees only to the extent permitted by constitution or statute. Article 9, § 7(b) of the Florida Constitution authorizes university boards of trustees to "administer each

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public university.” This provision is not self-executing. Article 9, § 7(c), Fla. Const., provides, “The board of governors shall establish the powers and duties of the boards of trustees.” On January 7, 2003, the Board of Governors listed fees that universities may charge not including a student technology fee, and provided that the listed fees comprise “the only fees that may be charged without the specific approval of the Board.”<sup>1</sup> Rule 6C-7.003, Fla. Admin. Code.

The Board of Governors acted consistent with its constitutional authority and statutory law, which has also delineated permissible state university mandatory student fees not including a technology fee. § 1009.24, Fla. Stat. Mandatory student fees approved by the Legislature are exhaustively specified and capped presumably because the Bright Futures Scholarship Program commits the Legislature to pay at least 75 percent of state university fees. §§ 1009.534(2), 1009.535(2), 1009.536(2), Fla. Stat. Additionally, the Florida Prepaid College Program commits its trustees with respect to some contracts to pay state university fees delineated in Section 1009.24(8)-(11), Florida Statutes. *See* § 1009.98(2)(b)2, Fla. Stat. Neither universities nor the Board of Governors can require the Legislature or trustees to appropriate additional funds for these programs.

Nonetheless, it has been suggested that state universities may assess a student technology fee not specifically listed in rule or statute if payment of the fees is not required as a part of registration for courses, *see* § 1009.24(3), Fla. Stat., or that state universities may charge for use of university-owned space, property, equipment and resources, *see* § 1001.74(6), Fla. Stat.; for materials and supplies consumed in the course of the student’s instructional activities, *see* § 1009.24(12)(g), Fla. Stat.; or for use of equipment, *see* § 1009.24(12)(n), Fla. Stat. None of this authority contradicts the requirement that any additional student fee not listed in 1009.24, Florida Statutes, must be optional, and does not purport to derogate from the Board of Governor’s constitutional authority to regulate the state university system. Art. 9 § 7, Fla. Const.

Sections 1001.74(6) and 1009.24(12)(g) and (n), Florida Statutes, must be viewed in *pari materia* with Sections 1009.24(1)-(11), (13)-(14), Florida Statutes, which exhaustively lists mandatory student fees and requires that all others be optional, and with Sections 1009.534(2), 1009.535(2), 1009.536(2),

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<sup>1</sup> Rule 6C-7.001, Fla. Admin. Code, specifies resident and non-resident tuition to incorporate listed fees also not including a student technology fee.

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Florida Statutes, which requires the Legislature to pay at least part of the fees of Bright Futures recipients. Section 1009.24(12)(g) expressly prohibits universities from charging for the cost of equipment replacement, repairs and maintenance. Section 1009.24(12)(n) cannot reasonably be interpreted to permit what sub-section (12)(g) disallows. No state university has explained how a student technology fee could be deemed related to specific activities, not required as a part of registration for courses, and unrelated to the cost of equipment replacement, repairs and maintenance, but if it could, statutory law does not conflict with the requirement that the Board of Governors approve the student fee as required in Rule 6C-7.003, Fla. Admin. Code.

*Conclusion*

State universities may not charge a mandatory student technology fee without Board of Governors' approval. State universities may not charge an optional student technology fee without Board of Governors' approval. Neither exists; thus, no state university may charge a student technology fee. Please let me know if we may be of any further assistance.

Sincerely,

Daniel Woodring, Esq.  
General Counsel  
Nathan A. Adams, IV, Ph.D., M.A., Esq.  
Deputy General Counsel

DW/NAA/clp

cc: All Florida University Presidents  
All Florida State University Board of Trustee Members  
All Florida University General Counsels