

Faculty Senate Resolution SR00-14 (Amended)
The Questionable Legality of PM-35
Adopted by the Faculty Senate May 1, 2000

The issuance of PM-35 by LSU System President Jenkins on November 22, 1999, is considered illegal because of the following reasons:

1) The Louisiana Revised Statutes (R.S. 17:3351) provide for tenure (to educators) as a protected employment status in the State of Louisiana.

2) Louisiana Court Decision Precedents:

a) A case decided by District Judge Downing (publicly reported in 1997), reaffirmed the status of academic tenure as a property right.

b) The case interpretation by Judge Plotkin (La. App. 4 Cir. 1989, LA 553 So.2d, 2009) added “The tenured status of a teacher is a legislatively-created exception to the Louisiana employment-at-will doctrine. *Thorne v. Monroe City School Board*, 5542 So.ed 490 (1989). The protection of academic freedom from arbitrary or repressive dismissal is the historic purpose of tenure and ... teacher tenure laws, noting that the laws were meant to promote good order and the welfare of the state and school system by preventing the removal of capable and experienced teachers because of political or personal whims. *Id.* at 494. Additionally, the status of tenure creates a classification that assures teachers that they will not be dismissed on the basis of their ideas or political beliefs.”

3) Court decisions from the U.S. Appellate Courts and the U.S. Supreme Court have indicated that the protections of the Fifth (“property protection”) and the Fourteenth Amendments (“due process of law”) DO APPLY to the protection of Academic Freedom and Tenure. At this time, I am searching for the best cases to use for documentation. However, my reading of numerous cases indicate that the decisions are based, wholly or in part, on the protection of private property from taking by government without due process or just compensation (the “takings” clause of the Fifth Amendment to the U.S. Constitution). These protections serve to disallow the government (or a branch of government such as a state university) to do by regulations (i.e. remove the protections of tenure) when those protections cannot be removed by legal taking (i.e. constitutional removal with due process and just compensation).

RESOLUTION: Resolved: The LSU Faculty Senate recommends the retraction of PM-35 pending the clarification of the ramifications for tenured faculty members regarding the restriction of Academic Freedom and Tenure.

Respectfully submitted,
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