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## Excerpts from the Minutes of the Regents of the University of California, Regular Session, October 20, 1950

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### TRANSCRIBER NOTE:

This excerpt from the meeting minutes includes a list of attendees and only those sections that pertain to the loyalty oath controversy. Page numbers reflect those of the original source. Missing words, misspellings, and other typographical errors found in the original are followed by bracketed notes.

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### [Excerpts from Minutes of October 20, 1950]

San Francisco  
October 20, 1950

A meeting of The Regents of the University of California was held this day at 2:00 p.m. in 910 Crocker Building, San Francisco.

Present: Regents Ahlport, Canaday, Ehrman, Fenston, Haggerty, Hansen, Harrison, Heller, Knight, Neylan, Sprague, Sproul, Steinhart, and Dickson (14).

In attendance: Mr. Maynard Toll, Secretary and Treasurer Underhill, vice-President [sic] - Business Affairs Corley, Vice-President - University Extension Woods, Attorney Calkins, Controller Lundberg, Assistant Secretary Woolman, Engineer Weaver, Architect Evans, Mr. A. S. Atkinson and Miss Elisabeth Odle of the Secretary and Treasurer's Office, Mr. Arnold Intorf of the Vice-President - Business Affairs' Office, Mr. Maynard Morris of the Office of Public Information, Dr. N. E. Bradbury, and newspaper representatives and guests.

Regent Dickson in the Chair.

### SIGNING OF STATE OATH OF ALLEGIANCE:

1. The Chairman announced that recently the Legislature of the State of California enacted a statute prescribing an oath of allegiance for all state employees, which statute has been interpreted by the state authorities as being applicable to the University employees and to the Regents of the University. Under the circumstances, he requested that the members of the Board present stand and take the oath before a notary public. Regent Neylan stated that while he would take the oath gladly, he did not subscribe to the theory that under the statute that was prescribed for either the University employees or the Regents. The members concurred, and took the oath with this understanding.

### MINUTES OF MEETING OF SEPTEMBER 22, 1950:

2. Concerning that portion of the minutes of the meeting of September 22, 1950, having to do with the report on the "non-signers" of the new form of acceptance contract (Item 9, "Report on Non-signers" Page #222),

Regent Steinhart stated that he had indicated to the Secretary [to] bring the vote on the last two motions under this item that he was to be recorded as not voting. The minutes do not show this and he asked that they be amended accordingly. Regent Hansen then moved that the minutes of the meeting of September 22, 1950, amended as requested by Regent Steinhart, be approved.

Regent Heller seconded the motion and it was carried.

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## **APPLICATION TO THE UNIVERSITY OF THE STATE OATH OF ALLEGIANCE:**

13. Consideration was then given to a recently enacted statute (Chapter VII, Statutes of 1950) which establishes a civil defense organization, provides that all public employees become members of this organization, and prescribes a special oath of allegiance for such members. Regent Ahlport stated that since the matter of the application of this statute to the University was one of administration and involved only the Board and its Attorney, it probably could be discussed more freely if it were brought up in Executive Session. He, therefore, moved that the Regents go into Executive Session. The motion was seconded by Regent Canaday. It was Regent Neylan's thought that the matter was one of great concern to the public, and to eliminate the possibility of any misunderstanding or misinterpretation, he hoped that it would be considered in open session. Regents Knight and Ehrman concurred, Regent Ehrman adding that while there were many perplexing problems involved and there might be some value in being able to discuss them privately, he was perfectly willing to express his views on the subject in an open meeting. Regent Ahlport's motion was then voted on and defeated.

In opening the discussion, Regent Neylan informed the members that the matter was first presented to the Committee on Finance and Business Management by the Controller who had received a communication from the State Controller to the effect that, until determined otherwise by competent judicial or legislative authority, he would consider University employees to come within the purview of the statute and would reject University claims for reimbursement of salaries and wages paid to persons who had not executed the prescribed oath. Thereafter, administrative officers conferred with the state authorities and as a result the Attorney General was asked for an opinion and ruled that the University of California was included within the legislation, that the statute was enacted under the police powers of the state, and as such overrode [sic] the constitutional immunity of the Regents.

Regent Hansen felt that before continuing the discussion the Attorney should render an opinion as to the applicability of the legislation to the University. In this regard, Regent Ehrman thought that the matter of policy should be considered first. Further he stated, that there are many thorny legal points involved and he did not think the Attorney had been able in the short time available to give the matter sufficient study to present a clear-cut opinion on some of the questions. It was Regent Neylan's opinion also that the problem before the Board was one of policy. It involved questions of whether the Regents would accept an administrative interpretation of the constitutional powers of the Board, and

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whether they would honor some 10,000 contracts which have been entered in good faith with [the] University's employees.

At this point Regent Ehrman offered for consideration the following resolution, stating that he was presenting it in an attempt to crystallize the issue and to bring it before the Board for debate:

The Regents of the University of California, in view of the legislation adopted at the Third Extraordinary Session of the Legislature of California, entitled Chapter 7, Statutes of 1950, approved October 3, 1950, relating to an oath or affirmation of allegiance for civil defense workers and public employees, and further in

view of the provisions of Article IX, Section 9, of the Constitution of the State of California, which charges The Regents of the University of California with the administration and government of the University of California, Resolve as follows:

1. That without any waiver or relinquishment of the right to seek a judicial determination as to whether said Act or some of its provisions are inapplicable to The Regents of the University of California and/or its officers and employees for constitutional or other reasons, and in order that said officers and employees shall suffer no financial disadvantages pending such judicial determination, if one is sought to be obtained, all of the officers, employees and other persons purporting to be embraced within the terms of said Act are requested to comply therewith and to sign the oath or affirmation required by said Act.
2. That the Controller and other proper officers of the University are hereby authorized to procure all forms and documents necessary for the purpose aforesaid and to distribute the same to officers and employees of the University and to take such administrative action as may be necessary or proper in the premises, in order to secure said signatures to such oath or affirmation.
3. That the Attorney for The Regents be and he is hereby requested to render a report and opinion to The Regents on the procedures and steps which may be necessary or advisable in order to institute and prosecute such legal action as may be required for the proper performance of the Constitutional duties and obligations of The Regents in respect to the administration of the University and for a judicial determination of the application or enforcement of said Act and its provision to or on The Regents of the University of California and the officers and employees thereof.

Regent Ehrman moved that the resolution be adopted and Regent Ahlport seconded the motion.

As a suggested amendment to the resolution, Regent Fenston proposed adding a sentence to the effect that the signing of the state oath will be considered as compliance with the University's employment regulations. He thought that in view of the fact that all state employees are obliged to sign the oath, the University faculty might be willing to withdraw their objections to a loyalty test and sign this one in lieu of the present anti-Communist declaration set forth in the employment contract. Regent Ehrman stated that he had given this possibility some thought, but had considered it, unwise for the reason that there is no necessity at this time of amending the Board's action of August 25, and it might serve to prejudice the case now pending before the District Court of Appeals. That case, because of the questions involved, are so important to the University and the Regents, should be decided regardless of the State oath and then the question of compliance can be determined. Regent Neylan concurred, adding that while he agreed with Regent Fenston, that it is most desirable to seek a ground of agreement with the faculty, it is more important that nothing be done to sacrifice the independence of the University. He believed that there rested with the Regents, as trustees, a very rigid duty of maintaining that independence and he stated that if the constitutional immunity of the University can be set aside, as presently proposed by the state, a precedent shall be established which might be invoked in the future or perhaps destroy the University. Secondly, he called attention to the fact that the University of California recognized the Communist situation as far back as 1940 and through a great deal of turmoil, adopted a policy and an implementation of that policy. Subsequently, employment contracts containing the anti-Communist declaration were entered into, and in his opinion the question of assiling [sic] that contract, either impliedly or expressly, would reflect dishonor on the University and on the Regents. He was strongly of the opinion that the Regents, on the basis of an administrative interpretation of a statute, would not take advantage of such interpretation to dishonor its signature on any contract. Such action, he said, would for the first time call in question the good faith of the Regents and tend to undermine tenure at the University. While he had no objection to the officers and employees taking the oath, he stated that he would never subscribe to any policy which would involve either the sacrifice of the independence of the University or the dishonoring of its contracts.

Further commenting on the proposed resolution, Regent Ehrman called attention to the fact that it does not provide for a court determination of the matter, as the situation may be settled to such an extent that the Regents will not care to appeal to the courts. However, he thought there would be cases where employees would refuse to subscribe to the state oath and upon their refusal the test could be made. In the meantime, by virtue of the contractual relations the Regents have assumed, he believed that these payments will not be reimbursed, but he was of the opinion that the contracts should be honored whether they are reimbursed or not.

Regent Hansen questioned the points raised by Regents Neylan and Ehrman, stating that it was his understanding that compliance with police powers exercised during an emergency

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did not offend the meaning of a contract. The question of whether compliance would be a surrender of jurisdiction was quite another matter. In connection with the latter, it seemed to Regent Harrison that the matter of the independence of the University from legislative control was of very vital importance and he felt that if the Regents acquiesced to the power of the Legislature at this time, it might be used against them in the future where interference would be most harmful. If any employee wants to sign the oath, he believed that the University should do everything to aid him, but he did not believe it should be compulsory. He recalled that the Board in April agreed to withdraw the loyalty oath and provided for an anti-Communist declaration in the employment contracts, and he did not want to see anything done which would restrict the freedom of the employees with respect to that contract.

Regent Ahlport stated that he would withdraw his second to Regent Ehrman's motion if the resolution was intended to mean that, pending a determination of the applicability of the act to the University, the Regents would take the risk of paying those who do not sign. He believed that all citizens elect not to follow the laws of the state at their own risk, and it seemed to him that by paying salaries, the Regents would be abetting employees in flouting the state's authority. He felt that only those who have complied with the state law should be paid. Regent Ehrman pointed out that the resolution does not cover this matter one way or the other, nor does it prejudice any future action which the Regents may wish to take in respect to compensation. Concerning this point, Regent Haggerty thought that the resolution should be more explicit and that it should specifically provide that those who do not sign will receive their pay pursuant to the contracts previously entered into. He brought up another question having to do with those people who have resigned and who have been authorized severance pay. He wondered if the action of the state would nullify that.

Regent Neylan felt that if the University employees had not made a declaration of Communism, it would be a different matter, but here is a situation where the University acted first, and now he could not conceive of the Regents in good conscience, short of judicial determination, refusing to pay salaries.

Referring to the Regents' requirement of an anti-Communist declaration, Regent Knight stated that those opposing it had stated that the faculty's objection was based on the claim that it impaired academic freedom. He was surprised that in considering the state oath, which in his opinion was much more severe, there was no suggestion that it might violate academic freedom. Several members objected to this statement, and Regent Steinhart called attention to the fact that the action taken before was based on a policy determined by the Regents, while the oath now under consideration involved a policy determined by the state. He did not feel that there was any inconsistency in voting against the Regents' requirement of anti-Communist declaration and in voting in favor of Regent Ehrman's resolution. Regent Hansen added that one of the main objections to the Regents' requirement was the fact that the faculty was singled out from other officers of the state.

Commenting further on Regent Ehrman's resolution, Regent Harrison informed the members that under the state statute an officer must be designated to receive and hold the oath, and he proposed that the resolution be amended to specifically designate the Controller as the person with whom the oath should be filed. This was satisfactory to Regent Ehrman. In addition, Regent Steinhart suggested that the paragraph numbered 3 be

amended to read "\*\*\*such legal action as may be required for the proper performance of the constitutional duties and obligations of the Regents in respect to the administration of the University, and/or for a judicial determination of the application or enforcement of said act\*\*\*." Regent Ehrman had no objection to this amendment.

Referring to Regent Fenston's suggestion that the signing of the state oath be accepted as compliance with the University's employment regulations, Regent Heller thought that it should be given consideration, since much of the objection to the Regents' anti-Communist declaration was based on the fact that the University employees felt they were being singled out and discriminated against. He asked the Attorney if such action would affect the present law suit. The Attorney stated that in his opinion it might very well prejudice the suit.

The resolution proposed by Regent Ehrman as amended by Regents Harrison and Steinhart, was then voted on and adopted. Regents Ahlport, Canaday, Ehrman, Fenston, Haggerty, Hansen, Harrison, Heller, Knight, Neylan, Sprague, Sproul, Steinhart, and Dickson (14) voting "aye"; voting, "no," none. As adopted the resolution read as follows.

The Regents of the University of California, in view of the legislation adopted at the Third Extraordinary Session of the Legislature of California, entitled Chapter 7, Statutes of 1950, approved October 3, 1950, relating to an oath or affirmation of allegiance for civil defense workers and public employees, and further in view of the provisions of Article IX, Section 9, of the Constitution of the State of California, which charges The Regents of the University of California with the administration and government of the University of California, Resolve as follows:

1. That without any waiver or relinquishment of the right to seek a judicial determination as to whether said Act or some of its provisions are inapplicable to The Regents of the University of California and/or its officers and employees for constitutional or other reasons, and in order that said officers and employees of the University shall suffer no financial disadvantages pending such judicial determination, if one is sought to be obtained, all of the officers, employees and other persons purporting to be embraced within the terms of said Act are requested to comply therewith and to sign the oath or affirmation required by said Act.

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2. That the Controller and other proper officers of the University are hereby authorized to procure all forms and documents necessary for the purpose aforesaid and to distribute the same to officers and employees of the University and to take such administrative action as may be necessary or proper in the premises, in order to secure said signatures to such oath or affirmation.

3. That the attorney [sic] for The Regents be and he is hereby requested to render a report and opinion to The Regents on the procedures and steps which may be necessary or advisable in order to institute and prosecute such legal action as may be required for the proper performance of the Constitutional duties and obligations of The Regents in respect to the administration of the University and for a judicial determination of the application or enforcement of said Act and its provision to or on The Regents of the University of California and the officers and employees thereof.

4. That the Controller of the University be designated as the officer of the University to receive and hold the oath forms.

Explaining his affirmative vote, Regent Hansen stated that it was not his intention to authorize the payment of salaries to those employees who do not sign the oath. Regent Harrison, on the other hand, stated that he voted "aye" with the understanding that it would not preclude the Regents from paying such salaries, and Regent Knight said that his vote was with the distinct implication that these employees would be paid. Regent Neylan's vote was with the understanding that the University will not dishonor any of its contracts, and the President announced also that he was not voting to impair in any way the contracts the Regents have entered

into with their employees.

Regent Ehrman then offered a motion that a Committee be appointed by the Chair, or the Committee on Finance and Business Management, be authorized and empowered to deal with cases in regard to payment of salaries as and when they arise and are presented to such Committee by the Controller. He explained that the special cases referred to pertain to those persons who are on leave or away for other reasons and whose signatures are not readily available. Regent Steinhart felt that the powers of the Committee should be broad enough to include all problems that might arise in connection with the payment of compensation, and upon a re-reading of the motion, it was determined that such powers would be included.

Regent Ahlport was opposed to encouraging anybody to disobey the law and he felt that by paying those people who have not signed the oath the Board would be abetting them in violating the law, which in itself would be as unlawful as violating the present employment contracts. If the statute is found to be a valid exercise of the police power of the state and the Regents are prevented from fulfilling the contract, it will not be a violation. In the meantime, he felt very strongly that nothing should be done to flout the law of the state. Regent Hansen concurred, adding that if the Controller is authorized to make salary payments, and it is later determined that the statute is applicable to the University, there would be the possibility of a personal liability resting on the Regents. Regent Ahlport then offered a substitute motion that the Regents, without prejudice, and without conceding the validity of the act, instruct the Controller that he shall pay salaries and wage only to those who have complied with the state act. Regent Steinhart felt that this was a recognition of the fact that the statute applies to the University, while the previous resolution was with understanding that its application is a matter for later determination. For this reason he was opposed to the motion. Regent Neylan also was in opposition to the motion. He stated that the Regents cannot accept at face value what they conceive to be an invasion of the legal rights of the Board or the independence of the University. Any such invasion has to be challenged, otherwise the Regents would be unfaithful to their trust. He called attention to other legislation which was enacted in connection with the civilian defense program and read portions of these acts which he believed in effect discounted the entire constitutional government of the State of California. There was no doubt in his mind that the Legislature would have to be called into session to clarify the situation. Regent Ahlport agreed, but stated that would apply only to the validity of the act and not to its application to the citizens of the state as long as it is an act.

Regent Ehrman called attention to the fact that a mid-monthly payroll was due the following day and another on Monday the 23rd. He felt that the Regents must meet these payrolls, stating that the extent to which the State Controller will reimburse the University cannot be determined until it is known how many of the employees have signed the oath required under the statute. He thought it would be deplorable if the University's funds were not paid back in full, but in such event he was willing to trust the Legislature to enact legislation reimbursing the Regents.

The Chairman then called for a vote on Regent Ahlport's substitute motion, and it was defeated. Regent Hansen asked that he be recorded as not voting, and Regent Canaday requested that he be recorded as voting "aye".

Discussion then turned on Regent Ehrman's original motion that a Committee be authorized and empowered to deal with cases in regard to payment of salaries as and when they arise and are presented to the Committee by the Controller. Concerning this matter, the Controller stated there were many problems involved which may make it necessary for a Committee with emergency power to act without delay. He mentioned particularly the matter of pension rights and what the failure to comply with the law might do with regard to pension contributions. Also, he commented on a section of the act which provides for the deferment of signatures of those people on authorized leave, and stated that it might

become necessary for a Committee of the Regents to declare that certain people are on authorized leave. It was suggested by Regent Heller that the Committee on Finance and Business Management be specifically named as the Committee to handle these problems, and with this amendment the motion was carried. Regents Hansen and Canaday requested that they be recorded as not voting.

### **SPECIAL MEETING OF BOARD:**

14. In the light of the action above taken with regard to the application to the University of the state oath of allegiance, Regent Neylan moved that the Regents be called into special session on Friday, October 27, at 2:00 p.m., in 910 Crocker Building in San Francisco, to deal with the problem as it may then exist. The motion was seconded and unanimously carried.

Then the Regents went into Executive Session, it first being announced that the matters to be discussed in Executive Session had no bearing on the application of the state oath to the University.

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And then the Regents adjourned.