



**AUDIT OF SEPARATION AND RETENTION CONTRACTS ENTERED INTO BY
PUBLIC INSTITUTIONS OF HIGHER EDUCATION**

**From The Office Of State Auditor
Claire McCaskill**

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Some contracts placed the universities at risk for nonperformance or contained provisions that appeared excessive or unwarranted compared to similar contracts in Missouri.

PERFORMANCE AUDIT



Office Of The
State Auditor of Missouri
Claire McCaskill

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While most separation and retention contracts for departing college or university officials contained reasonable provisions, some contracts placed the universities at risk for nonperformance or contained other provisions that appeared excessive or unwarranted compared to similar contracts in Missouri.

The State Auditor's Office audited separation and retention contracts for college and university officials who occupied the position of president, chancellor, vice president, or head coach of major sports. The purpose of the audit was to determine if colleges and universities were consistent in the types of contracts they entered into with these high-ranking officials. Additionally, our objective was to determine if college and university governing boards and regents properly considered their responsibilities to the institutions, students, and taxpayers when signing agreements with these departing officials.

We included all 13 Missouri (4-year degree) public institutions of higher education. We reviewed 14 contracts for departing officials at 7 of the universities during the period January 1995 through October 1999.

We concluded that most of the colleges and universities were consistent in the types of contracts they signed. Most were buyout contracts for uncompleted terms of existing contracts and these buyout contracts contained reasonable and similar provisions.

At Central Missouri State University (CMSU), a continuing employment contract subsequent to the president's resignation (worth over \$600,000) contains provisions that represent improper compensation and perquisites. These included:

- Contract language that favors the president in all disputes.
- An extended leave of absence without a stated purpose or required duties.
- Transfer of university property to the president and his wife.
- Unrestricted use of a university automobile and the right to purchase the vehicle at the end of the term for a substantial discount.
- Benefits for the president's wife who is not an employee of the university.
- Unrestricted use of the travel and expense budget.

Board officials at CMSU stated that the state of Missouri cannot attract and recruit top-level talent if it fails to recognize that the price for such talent is adequate compensation and proper reward. They stated that the ordinary prudent man might find the salary and benefits accorded the president generous, but the ordinary prudent man does not have the skills and capacities to successfully run and expand a multimillion-dollar enterprise. Instead, if fully informed, the prudent man would understand the Board's position that the benefits of retaining the president far outweigh the dollar costs. This perspective on compensation is pervasive throughout the contract provisions and is the justification for providing questionable benefits and compensation at taxpayers' expense.

At the University of Missouri-Columbia, (MU) a consulting contract worth \$500,000 with the former men's basketball coach does not contain adequate provisions to protect the university against nonperformance. There were no termination and penalty clauses. This contract also provides advance payments of up to 2 years for services not yet provided which put the university at risk if the coach does not perform his duties.

At Southeast Missouri State University (SEMO), an employment contract with the former president contains provisions for reimbursing reasonable and necessary expenses for the chancellor's spouse (who is not an employee) for travel when she participates in the event, unlimited reasonable and necessary travel expenses for the former president, and establishing residence in Ohio.

Since Boards of Governors and Regents have sole authority over compensation of university officials, these contracts demonstrate the need to exercise restraint in agreeing to terms that do not clearly state the duties to perform or may provide excessive or improper compensation or perquisites.

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CLAIRE C. McCASKILL
Missouri State Auditor

Honorable Mel Carnahan
and
Members of the General Assembly

We audited the separation and retention contracts for university and college officials in the position of president, chancellor, vice president, or head coach of major sports programs. The objective of the audit was to determine if university and college boards of governors and regents properly considered their fiduciary responsibilities to the universities, colleges, students, and taxpayers when signing agreements with these departing officials.

We concluded that most of the contracts we reviewed were properly entered into and contained reasonable provisions. However, for some contracts, we concluded that these contracts either did not contain proper clauses to protect the university or contained clauses that were extravagant or unreasonable.

A handwritten signature in cursive script that reads "Claire McCaskill".

Claire McCaskill
State Auditor

March 22, 2000 (fieldwork completion date)

The following auditors participated in the preparation of this report:

Director of Audits: William D. Miller, CIA
Audit Manager: Gregory A. Slinkard, CPA, CIA
Audit Staff: Dan Reeb

RESULTS

Some Separation and Retention Contracts Entered into with College or University Officials Contained Provisions that Appeared Excessive Compared to Similar Contracts in Missouri

Most termination and retention (post-employment) contracts for high-ranking officials of state-funded colleges or universities appeared reasonable and justified in regard to their intended purposes. However, we questioned certain provisions in some contracts reviewed because they included provisions that were not reasonable and/or they did not adequately protect the university from nonperformance.

We attributed the cause for these provisions to:

- ❑ The desire of institution officials to retain, in some capacity, the services of highly respected officials after their retirement from a position previously held with the institution.
- ❑ The relationships between the departing officials and the institutions allowed an element of trust to displace common contract provisions, influence contract negotiations, and, in one instance, provide benefits not seen in other contracts we reviewed.

These institutions are vulnerable to not receiving services contracted for and/or funds used for these contracts are not available for other purposes. In addition, these contracts could establish unfavorable precedents for future contracts.

Audit Procedure

Recent separation and retention contracts with high-ranking administrators or head coaches of major sports programs of state-funded colleges and universities have raised concerns about the value of these contracts to the institutions, their students, and Missouri taxpayers. We focused the audit on termination/separation/consultant contracts or agreements entered into with outgoing officials in the position of president, chancellor, vice president or head coaches of major sports programs.

All 13 Missouri (4-year degree) public institutions of higher education were included in the audit that covered the period from January 1995 to October 1999. Seven of the 13 institutions provided 14 contracts for review. Officials at the remaining six institutions indicated that there were not any contracts or agreements with former officials within the scope of this audit.

Role of Governing Boards of Institutions of Higher Education

In the state of Missouri, each state-funded college or university is under the general control and management of its governing board. By statute, the governing board of each individual state college or university has the power to appoint and remove the president and other employees of the college or university, assign their powers and duties, and fix their compensation. (*See Appendix IV, page 23, for applicable state statutes.*)

The state of Missouri's decentralized approach of granting sole authority on employment matters to each state institution's governing board differs from some other states, including the state of Kansas. That state has a centralized state-level board of regents that has oversight responsibilities related to the employment policies of the individual state-funded universities and appoints and establishes the salary of the university president. Because there is no direct state oversight of the governing boards in Missouri, it is very important for the governing board of each college or university to exercise a high level of fiduciary responsibility to the institution, students, and taxpayers they serve.

Benchmarks Used in Evaluating the Contracts

The Association of Governing Boards of Colleges and Universities (AGB) provides guidance for public and private college and university governing boards. AGB is a national organization providing university and college presidents, board chairs, and individual trustees of both public and private institutions with guidance needed to enhance their effectiveness. State higher education officials referred us to AGB as an organization where a governing board could obtain guidance in structuring professional services contracts for college or university officials.

AGB states that a governing board of a public college or university is held to a higher standard of decision-making than a private corporate board and few of the decisions are more closely scrutinized than executive compensation. In a 1994 survey, AGB found most contracts included provisions on salary and routine fringe benefits. We considered relevant information obtained from the AGB during the audit of these contracts. (*See Appendix V, page 24, for list of common provisions the AGB noted in presidential contracts.*)

In addition to relevant guidelines obtained from AGB, the common provisions found in the 14 contracts reviewed were considered in evaluating the individual contracts. (*See Appendix V, page 24, for list of common provisions we found in Missouri contracts.*)

Analysis of Contracts Reviewed

During the review of the provisions in the 14 contracts provided, most appeared to be reasonable and justified. In 11 of the 14 contracts, none of the provisions appeared to be unreasonable. (*See Appendix III, page 22, for list of 14 contracts reviewed.*)

Five contracts were termination contracts that did not provide retention of services for the departing college or university official. In each instance, the applicable college or university paid the administrator or head coach the remainder of their contract, either in a lump sum amount

or by continuing monthly payments up to the expiration date of the contract. The payments represented a reasonable value for the remaining portion of the contract.

Nine contracts were separation contracts where the services of the retiring/resigning administrator or head coach were retained in some capacity. Of these nine contracts, five retained the official as a consultant, three provided for the official to resume the responsibilities of a tenured professor, and one provided for the official to remain in the employ of the university (in a tenured professor status for pay purposes), with his primary duties involving consulting and fund-raising services.

A discussion of three contracts with provisions that either did not protect the university from nonperformance, or contained provisions that were excessive in comparison to similar contracts in Missouri follows.

CONTRACT WITH FORMER PRESIDENT, CENTRAL MISSOURI STATE UNIVERSITY

In December 1998, the Board of Governors of CMSU entered into a professional services contract with the president of the university, allowing him to resign as president effective August 1, 1999, and continue employment with the university performing various duties, including consulting and fund-raising. According to CMSU officials, the former president served as president of the university for 14 years prior to resigning.

The December 1998 contract replaced an employment contract entered into with the president in June 1998, in which he agreed to serve as university president for 3 additional years through June 30, 2001. According to university officials, the two primary purposes of the December 1998 contract were to maintain rapport with individuals who provide endowments to the university and to assist during the transition between university presidents.

The new contract covers the period from August 1, 1999 to November 1, 2002. The former president was allowed to take accumulated vacation leave from August 1, 1999 to November 1, 1999.

The December 2, 1998 termination and continuing employment contract contains provisions that could not be deemed reasonable or justifiable. The former president's duties in his new position appear to be substantially less than his duties as president of the university.

In discussions with the Board and in a subsequent memorandum, the Board presented their perspective on compensation for this president. They stated that the state of Missouri cannot attract and recruit top-level talent if it fails to recognize that the price for such talent is adequate compensation and proper reward. They stated that it is a public higher education industry standard to provide for adequate severance, as a way of assuring that the university president can devote his full energies to the institution and not have to worry during his employment about how he will provide for himself and his family after his obligations to the institution are satisfied.

The Board stated that at the time of the negotiations the Board consisted of six members, three of who were past chief executive officers of private corporations. With this composition they believed they were familiar with issues surrounding compensation of chief executive officers (CEO). They stated that the ordinary prudent man might find the salary and benefits accorded the president generous, but the ordinary prudent man does not have the skills and capacities to successfully run and expand a multimillion-dollar enterprise. Instead, if fully informed, the prudent man would understand the Board's position that the benefits of retaining the president far outweigh the dollar costs. This perspective on compensation is pervasive throughout the contract provisions and is the cause for providing questionable benefits and compensation at taxpayers' expense.

Contract Interpretation and Disputes

A provision of the contract states the contract is to be liberally construed and to the benefit and favor of the former president. A provision similar to this was not found in any of the other Missouri contracts reviewed. This provision puts the university at a disadvantage if disagreements were to arise over the interpretation of any of the contract provisions. For example, this provision would favor the former president if there were any disagreements regarding whether the former president and his spouse were entitled to an annual travel and entertainment expense allowance.

Contract favors President in disputes

University officials initially said the “liberally construed” provision was to cover unintended omissions from the merging of the president’s June 22, 1998 employment contract into the December 2, 1998 termination and continuing employment contract. However, the officials conceded the provision applied to the entire December 1998 contract. In response to our inquiry about this provision, the Board stated, “if omitting this language would lessen the concerns of the State Auditor, the president and the Board would likely mutually agree to strike it.” This provision should not have been a part of this contract and it should be stricken because it is not proper, not because it would lessen the concerns of the State Auditor.

Leave of Absence

The contract provided that beginning November 2, 1999, the former president would be allowed to take a 1-year paid leave of absence at his current salary rate then in force and including all other employment benefits. Although CMSU officials indicated the former president would likely be involved in activities benefiting the university during this period, he is under no legal obligation to perform any services during this 12-month period.

The purpose of the leave of absence is not disclosed in the contract provisions. Several of the contracts from other institutions included in our review include provisions allowing a paid leave of absence before the retained services were to begin. However, all of these other contracts contain a provision explaining the purpose for the leave of absence (e.g. to allow the administrator to prepare for resuming a professorship).

CMSU officials indicated this paid leave of absence dates back to a 1990 contract which included a provision stating “In the event of voluntary separation from the presidency, the President will be entitled to severance leave with 1-month’s compensation for each year of service up to a maximum of 1-year’s (12 months) salary, at the then current salary, contingent upon continued employment with the institution in another capacity.” All employment contracts with the former president since 1990 had similar provisions, including the June 1998 employment contract. When compared to contracts from other institutions,

this leave of absence (severance) provision is overly generous since we did not note a similar provision in any of the other contracts reviewed.

According to information provided by CMSU officials, the total salary and benefit costs related to this 1-year leave of absence are in excess of \$330,000.

Transfer of Property and Equipment

The contract grants the former president ownership of university-owned personal property upon severance from the university—a benefit also given to his spouse in the event of his death. The personal property includes a notebook computer, which is to be upgraded annually; all office equipment machinery, including computers and printers; and telephone equipment in use in his university office or the president’s private residence as of the date of the contract; and all cell phones in possession or use by the president, including the car phone.

President retains university property

State regulation 15 CSR 40-2.031 requires that all personal property obtained or controlled by a state institution, whether obtained by purchase, donation, or other means, are to be used for state business and not for personal benefit. Equipment valued above \$1,000 is tracked as inventory.

University officials said they allowed the equipment to be transferred as personal property to the president and his wife because they believed that the equipment would not have any value by the time the contract expired. According to the Board, these items were not to be construed as gifts, but that with the passage of time they would ultimately become “used up”. Since the notebook computer will be upgraded annually it is reasonable to assume that it would have market value. University officials also indicated that while other institutions of higher education may not include provisions of this nature in similar contracts, they contended that the granting of property items of this nature to top administrators upon their retirement is a common practice of colleges and universities in this state. Regardless of whether this is accurate, this does not justify the university’s actions in this matter.

Use of Automobile

The president was given unrestricted use of the current automobile he was driving as university president, including maintenance, fuel and lubricants, even during the first year when he is on the paid leave of absence. The president was also given the option to replace the automobile with a new model equivalent before the expiration of the contract. Upon the president’s retirement, or surrender of employment, he, or his wife in the case of his death, will be allowed to purchase the automobile from the Board for the price of the original acquisition cost, minus the sum of \$1,000 per month for each month the automobile was placed in use. Based on this provision, if a new automobile were to be purchased for \$40,000, as was the current vehicle, and provided to the former president for

President can purchase university car at discount

his use for 3 years before his retirement, it could be subsequently purchased by him upon retirement for \$4,000 (\$40,000 minus \$1,000 X 36 months). In our opinion, this is not a reasonable provision and represents additional compensation.

Use of an automobile is a common benefit afforded top officials at a college or university. Consistent procedures and safeguards are necessary when dealing with university provided fixed assets. It is questionable whether this benefit should have been continued for the president in his new role, particularly since there are no requirements for the president to perform any duties during the leave of absence. Furthermore, in our opinion, it is not reasonable or prudent to allow the president or his wife to purchase the automobile at a substantial discount.

Entertainment Expenses

The president and his wife were provided an entertainment and travel expense fund totaling \$76,968 for the first year under the contract, which was the president's 1-year leave of absence. This amount included \$19,350 for entertainment and special expenses and \$26,650 for travel by his spouse. The remainder was a "gross up" of 48 percent for tax equalization purposes and to take into account joint tax liabilities.

President's spouse receives travel expenses

University officials said \$76,968 is provided to allow the president and his spouse to carry out the fund-raising activities expected of them. It was further stated that the president's new position has an additional travel budget for the occasions when the Board would direct him to travel.

It is unclear why the Board believes such funds are necessary during a period of time in which the former president has no required duties. There are no requirements for the funds to be used for business purposes. Nor are there any requirements for the president to account for the use of these funds. According to the Board, the travel and entertainment provisions are payable on a 1-time only basis and are to be spread over the 3-year contract period. The Board stated that they assume, and the president and his wife have assured them, that the funds will be used for university purposes. While it is assumed the funds would be used as the university intended, there were no procedures or contractual safeguards to ensure the funds were used as intended. The lack of accountability for the use of university funds is not reasonable and cannot be justified. Since the spouse was not an employee of the university, is not a party to the contract, and has no official duties, it is not reasonable to conclude that paying her travel expenses is in the best interests of the taxpayers. The Board believes that the president's wife is an integral part of a team and that the expenses are justified.

No requirement to use travel funds for business

Physical Examinations

The contract provides for an annual physical examination for both the president and his wife. Additionally, although not stated in the contract, the physical examinations are to be provided by the Mayo Clinic in Rochester, Minnesota. Considering the cost of transportation and the inclusion of the spouse in this benefit, we believe this contract provision is not reasonable or prudent. CMSU officials estimated that the cost of the physical examination for the president under this contract in calendar year 2000 was \$2,000. This amount includes \$579 in travel expenses. In 1999, his expenses were \$2,800, which included \$1,053 for use of the university airplane. Although the contract provided the benefit to the spouse, she opted to pay her own expenses in 2000. This benefit is far more generous than the health benefits provided to faculty and employees of the university.

Physical exams at Mayo Clinic

There are other contract provisions ranging from investments, life insurance, and benefits for the spouse, including legal expenses, that are equally questionable. Since the spouse is not an employee of the institution, all of the benefits bestowed to her are not reasonable. These provisions are not typical of provisions found in most other State of Missouri contracts. According to information provided by CMSU, the cost of salary and benefits for the last 3 years of the new contract total over \$620,000.

Should spouse receive benefits?

CMSU Response

We, the current members of the Board of Governors of Central Missouri State University, read your judgments and characterizations of our actions in the matter of the former president's contract with a great deal of disappointment. We would like to correct several statements made in the draft which we believe are factually incorrect and to make some additional comments.

The audit report states, " The Board stated that they assumed that the President and his wife had assured that the funds will be used for University purposes... The lack of accountability for the use of University funds is unreasonable and cannot be justified". Additional criticism is implied or stated throughout the document because the Board relied on representations made by the former president, without further written contractual protections. Since we have relied on the former president to manage a multi-million dollar enterprise for us for over 14 years without incident it would be reasonable for us to believe that we could trust him to manage his travel and entertainment allowance. While serving as president, he had unilateral signature authority over many thousands of dollars. Should the Board now be faulted for placing their faith in a man who for 14 years demonstrated his integrity by impeccably serving the best interests of the institution?

We would like the general public to know and understand that as an informed Board, we have always tried our utmost to act in the best interests of the University, the students, and the taxpayers of Missouri. We believe that every aspect of this contract, while it may personally benefit the president, also has a tangible benefit to the University, our students, and the taxpayers.

The former president's services are worth something, although the State Auditor may disagree with us as to exactly how much. It cannot be denied, however, that if the former president were to have left this University, he could have applied his fund-raising talents to the benefit of another institution, and could have received a handsome salary for such employment. In the private sector, to prevent such a thing from occurring, a valued departing CEO would be paid a severance in exchange for a covenant not to compete so that a talent as special as the former president's could not be recruited by the competition to benefit from his expertise, monetary philanthropic connections, and beneficial relationships cultivated over 14 years.

It cannot be disputed that the former president, working as a team with his wife, was instrumental in raising in excess of \$20 million for the foundation over the last 14 years. It is also true that the former president's wife is neither an employee nor a party to the contract at issue, nor does she have official duties, but she has also, undeniably, played a large part in raising these millions. As an alumna of the institution, in her own right she has many contacts and knows many friends of the University; her unique and special qualities have opened many doors for the University.

*We believe the Auditor's conclusion that to provide the former president with funds to pay his wife's travel expenses is not in the best interests of the taxpayers is both erroneous and shortsighted, and is contrary to Rule 11 of the state travel regulations which permit payment of travel expenses to spouses and non-employees. (We refer to the State of Missouri Travel Regulations issued by the Office of Administration, which state at Rule 11: "State employees and officials may be reimbursed for travel expenses incurred for other employees or non-employees provided that the business reason necessary for doing so is indicated... Reimbursement for spouse expenses at an official business function requires a written justification pre-approved by the Commissioner of Administration. In our case, we believe that the Rule would imply Board approval should be sought, which is specifically why the former president's wife is mentioned in the contract). **STATE AUDITOR'S NOTE:** Information provided to the state auditor by the Office of Administration indicates pre-approval of spousal expenses pursuant to 1 CSR 10-11.010(11) has been limited to relocation expenses with only a few exceptions during the last 20 years.*

The Auditor's application of this unwarranted negative judgmental standard also fails to acknowledge the general presumption that a professional fundraiser of the sort that the former president could be, outside of the University, would usually be accompanied by his spouse, particularly when she can add a level of comfort to female donors and prospects. Further, a professional fundraiser would be customarily accorded telephones, office staff, transportation, and other perquisites to accomplish the task at hand. Under established audit standards, including those applied by our outside auditors, the firm of Deloitte & Touche, all these costs of fund raising are considered reasonable valid expenses of the University, despite the fact that the State Auditor has seemingly applied a contrary audit judgment and ignores the state's own rules.

The State Auditor, we believe, has disparately devoted more subjective judgmental criticism to CMSU's contract than it has to other similar documents analyzed in the audit.

For example, the former president served the University for 14 years, and was given a 3-year contract with an approximate value of \$620,000. After only 3 years of service, SEMO created the position of Chancellor and then awarded its new Chancellor a 3-year contract with a value in excess of \$700,000. Yet, the Auditor devotes more than five pages of criticism to CMSU, while SEMO, with a very similar contract, receives less than one page! Given the State Auditor's public negative judgments rendered against CMSU in the press, even before this report was completed, we feared we would not be treated objectively. We resent the fact that we have already been portrayed by the Auditor in the press as acting in an "unbelievable" fashion. However, we understand that this matter has become a political football, which is being tossed about to appease an influential member of the Senate. It is highly inappropriate for elected officials to harm CMSU in their quest to elevate their political careers or to settle personal grudges.

Benefits extended long term to the former president by this Board and prior Boards have been characterized as "questionable," "not reasonable," "overly generous since we did not notice similar provisions in any of the other contracts reviewed," and other such negative terms. It would seem that the Auditor has, in some seven plus pages of specific and general criticism, unilaterally and subjectively overridden and superimposed her judgment on more than a decade of careful judgments, negotiations, considerations, and formal actions of Central Missouri State University's Board of Governors/Regents. The fact that the Board has provided benefits to its president that other institutions have not, does not in and of itself make these benefits unreasonable, questionable, or overly generous. Each Board of Governors, by statute, has the legal right and authority to "fix the duration, terms and conditions... and compensation" of the University president, and we think it inappropriate to judge the legitimate exercise of our statutory powers on the measuring stick of what other University Boards have done.

In short, we feel that the hindsight and subjective criticism meted out to the Board of Governors for its good-faith efforts to maintain the goodwill and talents of our former president, is unfair and unwarranted, particularly when, as we shared with you, we want and need our new president to have the time to adjust to his new role and local community, and to concentrate on particular internal matters. By entering into the contract with the former president, we felt we would not lose past goodwill, our international programs could continue to flourish, our participation in charter schools could progress, beneficial philanthropic relationships could be developed and maintained, and we could call on him to provide historical information, assistance and guidance to us on other matters. We tried to balance what is important to the institution with the benefits that derived from maintaining the former president's presence at the University, and we still believe these benefits far outweigh the cost. After the next 3 years, the bottom line will prove whether or not this contract was indeed reasonable, prudent, and the best interests of the University, taxpayers, and students. We have full faith that the results will be positive and valuable for Central Missouri State University and the citizens of Missouri.

CONTRACT WITH FORMER COACH, UNIVERSITY OF MISSOURI (MU)

In April 1999, a separation and consulting contract was entered into between MU and the men's head basketball coach. According to MU officials, this individual served as head basketball coach for 32 years. The contract called for this individual to resign as head basketball coach effective April 1, 1999, and to retire as a university employee in July 1999. The contract further provided that the coach would be retained as a consultant for the university for the period from July 1999 to June 2003. The coach would no longer be an employee of the university but would operate as an independent contractor.

The contract provided for payments totaling \$945,000 to the coach. This amount included payments related to his employment contract, including \$100,000 for the relinquishment of his right to operate a basketball camp, \$195,000 for the relinquishment of some contractual annuity payments, and \$150,000 for the relinquishment of his rights related to a shoe endorsement contract. In addition, the total payments included an annual fee of \$125,000 for the consulting services, or a total of \$500,000 in consulting fees during the 4 years of the agreement. The coach is entitled to an additional annual payment of \$72,360 for health and dental benefits and pension from the university retirement system

MU officials indicated that while the duties related to the consulting services are not well defined, the coach would serve primarily as a fund-raiser for the university. Those officials indicated it is envisioned that the coach will be very involved in raising funds for cancer research and treatment and help MU develop Ellis Fischel hospital into a premier cancer center, offering comprehensive cancer treatment services. They also indicated he would likely be involved in other fund-raising efforts, including those involving the athletic department. Those officials stated that the activities of the coach have been relatively unstructured during the first year of the consulting contract; however, they indicated the activities of the coach would likely be more structured in the future.

Contractual Safeguards

The contract does not contain any contractual safeguards to protect the university's interests and to ensure that services would be provided. The contract lacks a termination clause and penalties if the coach does not perform under the contract.

Lack of termination and penalty clauses

University officials stated that if the university did not receive the services contracted for they would sue for breach of contract, which would stop any payments under the contract and allow for recovery of any funds paid out for services not performed.

The performance provisions in the contract are sufficiently vague to allow the chancellor to assign duties to the coach as needed. Since these provisions are vague, a lawsuit for nonperformance might not be successful. In our opinion, the university's chances for winning a lawsuit for breach of contract would substantially improve if there had been a

termination or nonperformance clause in the contract. In such instances, the university would be a defendant rather than a plaintiff, which would then shift the burden of proof in the lawsuit from the university to the coach.

Termination clauses are common in consulting contracts and help provide adequate protection to the university in the event of nonperformance.

Advance Payments

A provision in the contract entitles the coach to a consulting fee of \$125,000 paid in advance (during the first 10 days of July) during each year of the contract. The contract also provides that the coach has the option to receive the fees for the last 2 years of his consulting contract at the beginning of the third year of the 4-year contract. University officials said the coach negotiated the advance payments into the contract and they believed the university's acceptance of this provision resulted in a lower overall cost of the contract. Furthermore, general counsel for the university said if services were not performed the University could sue for breach of contract and recover any funds paid out for services not performed.

Coach to be paid in advance for services

As a general practice, most consulting contracts do not provide for full payment until service is performed. In our opinion, this contract provision does not provide a proper safeguard for the university if there is nonperformance. Using the court system to resolve a contract dispute can be costly and would not be necessary if the payments had not been made in advance.

MU Response

In view of the coach's remarkable 32-year career with the University of Missouri, his outstanding performance, and his proven reliability and trustworthiness, nonperformance and termination clauses, in the judgment of legal counsel, were deemed unnecessary and inappropriate. Performance provisions in the contract were left sufficiently flexible to enable the chancellor to capitalize on unforeseen development opportunities involving the coach. In the unlikely event that terms of the contract are not fulfilled, the University still has available to it sufficient legal avenues to seek redress.

The University is confident that the coach will continue to fulfill his obligations to the University of Missouri-Columbia in a satisfactory manner.

CONTRACT WITH FORMER PRESIDENT, SOUTHEAST MISSOURI STATE UNIVERSITY (SEMO)

On July 1, 1999, the Board of Regents for SEMO entered into a new contract with the then sitting president of the university. The new contract established the position of chancellor and called for the president to assume duties as chancellor (reporting to a new president of SEMO). This contract provides the chancellor an annual salary and annuity benefits of \$95,000 and \$23,000, respectively, for the period from July 1, 1999 to June 30, 2001. He is also entitled to the other fringe benefits offered to faculty members of that institution and he is provided a vehicle owned by the University foundation (a private entity with a separate board of governors) for business uses. The chancellor’s contract is automatically renewable on an annual basis. The primary responsibilities of the chancellor are to raise funds for the university and to oversee development of a major campus addition to be built on land donated to the university. Unlike the other two contracts discussed in this report, there were termination clauses in the contract that would provide for removing the chancellor for nonperformance.

Residence

According to the president, the chancellor had decided to move back to Ohio when he made his decision to resign from the presidency. In order for SEMO to continue benefiting from his abilities to raise funds, lobby the U.S. Congress, and work with federal organizations they agreed to the relocation. The SEMO Board of Regents contends that the location of the chancellor’s primary residence is not important in the success of performing his duties and believes the results related to this contract have been very effective thus far. According to the president, the chancellor has been involved in raising about \$3 million this year for the university, with other donations/funding pending of over \$18 million for fiscal year 2001.

Distant location

In our opinion, the distant location, out of state, for a current employee of the university to perform duties that could be performed on campus gives the impression that the chancellor is irreplaceable and more valuable than other university employees who would not be afforded the same opportunity. It also creates some additional costs for the university. These would include travel expenses between the remote location and the university—expenses that would not be incurred if the chancellor had stayed on campus. This travel would occur approximately 12 times per year.

Travel and Entertainment Expenses

The contract does not list specific dollar amounts for travel and entertainment expenses but requires reimbursement of reasonable and necessary expenses incurred in the performance of his duties as approved by the university. The contract does not place any limits on the maximum amount of expenses. The SEMO Board of Regents indicated the contract did not

specifically include a limit on the expenses because at the time the contract was entered into, the university did not have a good estimate of what those expenses might be. However, the current president indicated an annual budget has been established in the amount of \$25,000 from university funds and \$5,000 from foundation funds to monitor and control the level of these expenses. In addition, although not specified in the contract, the chancellor is required to submit documentation to support any expenses claimed and that documentation is reviewed and approved by the president prior to any reimbursement payments. These internal controls help in managing the contract but would have been better placed as a contract provision.

Among the listed acceptable expenses are country club fees and travel and entertainment expenses for his spouse when she is participating in the event involved. According to the current president, the country club fees are paid by the foundation and are not paid from taxpayer or other university funds. He stated that belonging to such an organization is an effective means of obtaining donations for the university and reducing the overall tuition costs of the students. Regarding the country club dues, it is not relevant that the foundation is paying for them. The university is obligated through the contract to pay for the dues since the foundation is not a party to the contract.

The president also indicated that in the higher education environment, the involvement of a spouse in fund-raising efforts can be very beneficial and that has been the case in certain instances involving the chancellor's spouse. The president stated that the chancellor's wife does not routinely travel with him, but if she does travel and it does not benefit the university, her expenses are not reimbursed. We remain of the opinion that since she is not an employee and not a party to the contract, she should not be paid travel expense.

SEMO Response

Residence

On May 18, 1999, the Board of Regents received the resignation from the President of the University due to personal reasons. Since the President was just completing the first year of a 3-year contract, this resignation created several problems for the University.

- 1. The President was given a 3-year contract because the following major initiatives at the University would be undertaken during that 3-year period:*

The development of the Polytechnic Institute and the construction of the \$8 million Polytechnic building. This is the major expansion of our technical education program which is identified in the Statewide Post-Secondary Technical Education Plan and our Mission enhancement efforts approved by the Coordinating Board for Higher Education and funded by the Governor and General Assembly. Funding for the building will be 80% State and 20% University with private and Federal funding for equipping the laboratories.

The development of the \$36 million River Campus facility which will house the School for the Visual and Performing Arts. This facility requires renovation of 50,000 square feet of an historic building and the addition of 100,000 square feet of new facilities to accommodate the academic programs, performing center, and regional museum. Funding for this project will be approximately 50% State, 25% City, and 25% University.

A \$25+ million capital campaign was initiated to raise private funding for the River Campus (\$12 million), the Polytechnic building and equipment (\$3 million), and other projects such as scholarships, athletic facilities, and facility enhancements.

- 2. The Provost (Chief Academic Officer) resigned to take the position of President at the University of North Dakota.*
- 3. Two vacancies in the University Advancement area had occurred or were eminent which would negatively impact the success of the capital campaign, thus negatively impacting the Polytechnic Institute and River Campus projects.*

A President's leadership and fundraising efforts are vital to successful initiatives and capital campaigns. Major changes to the executive leadership can cause major donors to reconsider their financial support and major initiatives to lose momentum or fail completely. Consequently the Board of Regents had to determine in short order what actions to take to fill the President's position, and to plan for the successful continuation of the \$25 million capital campaign and completion of the Polytechnic and River Campus projects.

The Board decided to promote the Executive Vice president (eight years at the University) and employ the resigning President as the Chancellor for the Development of the River Campus and Polytechnic Institute due to his cultivation of private, corporate, and Foundation donors. The base salary of the President was reduced from \$138,250 to \$95,000, and the contract stipulated that the Chancellor could reside in Ohio which was the only terms on which the Chancellor would agree. This would not be a deterrent to responsibilities for the Chancellor since major and potential contributors to the University are located in Florida, Texas, Arizona, California, New York, Ohio, and Illinois as well as in Missouri, and since travel to Washington D.C. was necessary to work with Federal departments and the Missouri delegation to Congress to obtain Federal grants and appropriations. If the Chancellor had resided in Missouri, he would have had to do extensive traveling from the campus.

The Board of Regents believes it has fulfilled its fiduciary responsibilities and that the Chancellor's contract was in the best interests of the University, the students, and the taxpayers. There are adequate provisions to monitor the progress of the Chancellor and terminate the contract if performance is not adequate. As mentioned in the report, the Chancellor has been very successful raising funds to date (\$3 million) and the next year looks even better (\$18 million).

Travel and Entertainment

The University agrees that the current contract does allow for the reimbursement of expenses provided by the Foundation and that the University could then be liable if the Foundation does not provide for those expenses. Consequently, the Chancellor's contract will be amended to remove such expense provisions.

University policy and procedures provide that all employees may get reimbursed for reasonable and necessary expenses. Since the Chancellor is a University employee, the contract provision regarding reasonable and necessary expenses was probably not needed.

All employees and departments are restricted by budgets established by the University. We believe that the established budget limits and the regular University approval process as noted in the report provides prudent budgetary controls and use of funds and do not put the University at risk.

Governing Boards and University Officials Placed Undue Reliance on Trust as an Element of Negotiations.

A major theme in the contracts discussed in this report relates to the retention of services of key individuals to serve their respective universities in some capacity with salaries and perquisites commensurate to CEOs in the private sector. Meanwhile these corporate type packages lack the basic safeguard protections that a business contract would require. In many cases, these contracts did not have specific duties assigned to the official, did not have nonperformance provisions such as termination clauses, and did not set limits on expenses or require the official to account for expenses.

All of the contracts were silent as to whether they were publicly or privately funded. Our audit determined that all of the contracts were funded with public funds with the exception of three provisions in two contracts. The use of automobiles at CMSU and SEMO and the payment of country club dues at SEMO were privately funded from the foundations that support those universities.

In our opinion, the past services the former president provided to CMSU and the high regard the Board had for this individual had an undue influence on the negotiations related to the new contract and the awarding of benefits not seen in other contracts.

While the Board may trust that the president and his wife will use the funds in a way beneficial to the university, the contract does not require this and, according to the liberal interpretation clause, any dispute over the matter could be found in favor of the president.

As justification for the Board decisions on these benefits, the Board cited a publication from the American Association of State Colleges and Universities called Board and President: Facilitating the Relationship. According to this publication, “The Board assures the president that it recognizes the high risk, total immersion nature of the position, and from the outset of the relationship, the Board provides a graceful way out of the position and into a next career move without fear of financial debilitation. If the president has a spouse the Board determines what role if any the spouse is to have.” Our concern with this approach is that it lacks balance. In our opinion, the Board must be cautious in interpreting the provisions of this publication to ensure that “next career” transition assurances do not include unnecessary expenses and perquisites that are funded by the taxpayers.

This contract also raises concerns about compliance with the Missouri Constitution. The granting of university-owned property to the former president upon his retirement and providing various benefits to his spouse may violate Article III, Section 38(a) of the Missouri Constitution, which prohibits the granting of public funds to private individuals. In addition, it appears the extent of the compensation package provided in this contract may have, at least in part, been given to the former president for past services to the university. If so, this may violate Article III, Section 39(3) of the Missouri Constitution, which prohibits the granting of extra compensation after the

services have been provided. The Board believes that there would not be a violation of the constitution because they do not consider any of the compensation and benefits as remuneration for past services, gifts, or extra compensation. Our concern is that many of the provisions of the contract are provisions from prior employment contracts that carried more responsibilities than the current contract.

According to university officials from CMSU and MU, they trusted the officials to perform the duties they expected even when there were no provisions in the contracts to ensure the duties would be performed.

It is our opinion; the lack of termination and penalty clauses in the MU contract that were discussed earlier in the report were not built into the MU contract because the representatives of the governing board trusted that the coach would perform as intended by the university.

At SEMO, there were termination clauses in the contract that would provide for removing the chancellor for nonperformance. However, although there were internal controls to ensure expenses were proper, these internal controls were not a part of the contract and that could put the university at risk if there were disputes over expenses. The university president stated that since the chancellor is an employee of the university, normal university policies would apply.

Conclusion

We concluded that the majority of separation and retention contracts for the officials included in the scope of our audit were entered into properly. The contracts identified in this report as exceptions demonstrate the need for governing boards to closely adhere to their fiduciary responsibilities for the universities, students, and taxpayers. Regardless of how well the officials under contract perform; there are (i) vulnerabilities built into those contracts that could have been avoided, (ii) benefits that should not have been provided, (iii) additional costs that did not have to be incurred, and (iv) failures to delineate with sufficient specificity the duties to be performed. Since the boards of governors and regents in the State of Missouri have sole responsibility for their respective universities, it is incumbent upon them to ensure that only reasonable compensation and perquisites are granted to departing officials who are retained for other duties.

APPENDIX I

OBJECTIVE, SCOPE AND METHODOLOGY

Objective

The purpose of the audit was to determine if colleges and universities were consistent in the types of contracts they entered into with presidents, chancellors, vice presidents, or head coaches. Additionally, our objective was to determine if college and university governing boards and regents properly considered their responsibilities to the institutions, students, and taxpayers when signing agreements with these departing officials.

Scope and Methodology

We requested separation/ termination/consulting contracts from all 13 Missouri (4-year degree) public institutions of higher education. Seven of the 13 institutions responded by sending a total of 14 contracts falling within the audit criteria. The remaining six institutions indicated they did not have any contracts or agreements that met the audit criteria.

We reviewed past state audits of public colleges or universities in Missouri, all applicable Missouri state statutes and the Missouri constitution to determine what authority the board of governors of these institutions have to enter into such contracts and what authority or oversight the state of Missouri has in the matter.

Once the contracts were received, they were reviewed and all key provisions were scheduled. A benchmark of provisions expected to be found in a professional services contract for a high-ranking college or university official was established using information obtained from the AGB and from a review of the 14 Missouri contracts.

The benchmark provisions and general contract management practices were used to distinguish between contract provisions that appeared to be standard practice and contract provisions that appeared to differ from standard practices. Those contracts with questionable provisions were subjected to further review. We interviewed members of the governing boards and/or high-ranking university officials to determine their rationale for entering into the contracts we questioned.

The audit was made in accordance with applicable generally accepted government auditing standards and included such tests of the procedures and records as were deemed appropriate under the circumstances.

APPENDIX II

LIST OF COLLEGES AND UNIVERSITIES CONTACTED

In September 1999, we sent a letter to the 13 Missouri (4-year degree) public institutions of higher education requesting any termination/separation/consulting contracts or agreements the institution had entered into since January 1, 1995, with top outgoing officials of the institution, including the positions of president, chancellor, vice president and head coaches of major sports programs. The following is a list of the 13 institutions and their response:

Name	Response
Central Missouri State University	sent contract(s)
Harris Stowe University	no contracts met audit criteria
Lincoln University	sent contract(s)
Missouri Southern State College	sent contract(s)
Missouri Western State College	no contracts met audit criteria
Northwest Missouri State University	no contracts met audit criteria
Southeast Missouri State University	sent contract(s)
Southwest Missouri State University	sent contract(s)
Truman State University	no contracts met audit criteria
University of Missouri-Columbia	sent contract(s)
University of Missouri-Kansas City	sent contract(s)
University of Missouri-Rolla	no contracts met audit criteria
University of Missouri-St. Louis	no contracts met audit criteria

APPENDIX III

LIST OF CONTRACTS REVIEWED

Seven of the 13 institutions contacted responded by sending 14 contracts matching the criteria of our request letter. The following is a list of the parties to the contract and the nature of the agreement:

Institution	Official	Nature of Agreement
Central Missouri State University	Retiring President	Termination and continuing employment contract
Missouri Southern State College	Retiring Vice President	Consulting contract
Missouri Southern State College	Resigning Coach	Termination contract
University of Missouri System	Retiring President	Termination contract
University of Missouri-Columbia	Retiring Coach	Termination and consulting contract
University of Missouri-Kansas City	Resigning Chancellor	Termination and continuing employment contract
University of Missouri-Kansas City	Resigning Vice Chancellor	Termination and consulting
University of Missouri-Kansas City	Resigning Executive Vice Provost and Executive Dean	Termination and continuing employment contract
University of Missouri – Columbia	Resigning Chancellor	Termination and continuing employment contract
Southwest Missouri State University	Resigning Coach	Termination contract
Southwest Missouri State University	Resigning Coach	Termination contract
Southeast Missouri State University	Resigning Vice President	Termination and consulting contract
Southeast Missouri State University	Resigning President	Retention of Services
Lincoln University	Resigning President	Termination contract

APPENDIX IV

BACKGROUND

We reviewed applicable Missouri state statutes to determine the authority the governing boards of these institutions had to enter into such contracts and what oversight responsibilities the Department of Higher Education might have related to such contracts. In the state of Missouri, each state-funded college or university is under the general control and management of its governing board. By statute and the Missouri constitution the governing board of each individual state college or university has the power to appoint and remove the president and other employees of the college or university, assign their powers and duties and fix their compensation. The applicable statutes regarding the boards' authority are as follows:

MO Const. Art IX Sec 9 (a) and RSMo 172.010 provides that a university (Missouri University) is hereby instituted in this state, the government whereof shall be vested in a board of curators.

Section 174.120, RSMo 1994, provides that each state teachers college shall be under the general control and management of its board of regents.

Sections 172.300 and 174.140, RSMo 1994, provide that the governing board of each institution may appoint and remove, at discretion, the president, deans, professors, instructors and other employees of the state college or university, may fix the duration, terms and conditions of their offices and compensation; may enter into agreements for and make contributions to both voluntary and statutory retirement plans as the board of governors deem proper for persons employed by the state college or university.

The Department of Higher Education currently does not have any oversight responsibilities regarding the compensation provided to top officials of colleges and universities.

APPENDIX V

BENCHMARK PROVISIONS

In 1994, the Association of Governing Boards of Universities and Colleges (AGB) surveyed 350 member institutions and collected more than 150 college/university presidential contracts. According to the AGB survey, most contracts referenced salary and routine fringe benefits. Some contracts mentioned tenure, sabbaticals, deferred compensation and extra insurance. More detailed contracts dealt with termination, including procedures covering the possibility of a president's long-term illness, arrangements for spouses and outside employment or post-presidential employment.

The AGB found the following provisions in presidential contracts:

- Statement of duties
- Salary level, including when and how salary will be adjusted
- Fringe benefits
- The use of housing and a car
- Deferred compensation, if applicable
- Arrangements for tenure and a sabbatical
- An entertainment allowance
- Terms of termination
- Performance evaluation
- Post-presidential employment

In addition to reviewing the guidelines provided by the AGB, we examined the provisions included in the 14 contracts we reviewed during this audit. The following contract provisions were found in 2 or more of the 14 contracts reviewed.

- Compensation level (salary or fees) for retained services
- Payout under remaining portion of employment contract
- Provision stating duration of contract
- Statement of duties
- Arrangements for tenure and annual leave
- Retirement benefits (state or the college/university retirement plan)
- Use of college/university-owned automobile
- Use of college/university owned property
- Use of college/university-owned residence
- Moving expenses
- Entertainment allowance
- Special privilege to attend university sporting events and other amenities
- Designation of third party beneficiary in the event of death

APPENDIX VI

CENTRAL MISSOURI STATE UNIVERSITY CONTRACT

PROFESSIONAL SERVICES CONTRACT

This contract is entered into on this 2nd day of December, 1998 by and between the Board of Governors of Central Missouri State University (hereinafter referred to as "the Board") and Dr. Eddie Mayes Elliott (hereinafter referred to as "Dr. Elliott") for the express purpose of setting forth the Board's and Dr. Elliott's mutual understandings about

A) The nature, terms, salary and conditions of Dr. Elliott's continued employment with the Board;

B) The specific benefits, perquisites, privileges, and other compensation payable to Dr. Elliott under this Contract; and

C) The special considerations which will be extended to Dr. Elliott's spouse, Sandra Elliott ("Mrs. Elliott") under this Contract.

WHEREAS Dr. Elliott entered into a contract with the Board to render professional services as Chief Executive Officer of Central Missouri State University for a three year term commencing July 1, 1998 and ending June 30, 2001, which provided for an annual review of compensation and benefits, and for other perquisites; and

WHEREAS Dr. Elliott tendered his resignation as Chief Executive Officer of Central Missouri State University effective August 1, 1999, which the Board formally accepted at its regular meeting on October 28, 1998; and

WHEREAS Dr. Elliott has provided faithful and dedicated leadership to the Central Missouri State University for the past fourteen years and has earned and is therefore entitled to certain benefits upon the cessation of his duties as Chief Executive Officer (hereinafter referred to as "post-CEO service"), and

WHEREAS the Board desires to retain the services and goodwill of Dr. Elliott as a special consultant,

NOW, THEREFORE, BE IT RESOLVED AND AGREED AS FOLLOWS:

A. Post-CEO Service

1. This Professional Services Contract dated December 2, 1998 is effective on the 1st day of August, 1999 and as of that date shall supercede the Professional Services Contract entered into between the parties on June 22, 1998. It is fully intended by the parties that the Professional Services Contract dated June 22, 1998 shall remain in force and effect until July

31, 1999, but nothing contained herein shall be construed or interpreted to nullify or diminish any post-CEO service stipulated benefit vesting upon Dr. Elliott's retirement or resignation from service as Chief Executive Officer due or payable to Dr. Elliott or his spouse Sandra Elliott (Mrs. Elliott) under said Contract dated June 22, 1998 or pursuant to any other document or agreement negotiated with the Board. The applicable post-CEO service provisions of the Professional Services Contract dated June 22, 1998 are hereby expressly incorporated by reference and made a part of this Contract, and it is both parties' expressed intention that all provisions of this Contract be liberally construed and to the benefit and favor of Dr. Elliott.

2. It is acknowledged by the parties that Dr. Elliott is a tenured Professor of Physical Education and Professor of Higher Education and that effective August 1, 1999 he is entitled to exercise the rights set forth in the Faculty Guide, in addition to other rights and benefits stipulated to within this Contract.
3. Effective August 1, 1999, Dr. Elliott shall hold the additional title of "President Emeritus and Distinguished University Fellow" with all customary and traditional rights appertaining thereto.
4. Dr. Elliott will continue on full payroll status using sixty (60) working days and five personal days and be considered as an active employee at the University system from the period starting August 1, 1999 and ending November 1, 1999. On November 2, 1999, Dr. Elliott shall commence a paid one year leave of absence at his current salary rate then in force and effect, including any usual and customary cost of living increases extended to Central Missouri State University employees, and including all other employment benefits such as sick leave and vacation accrual as herein stipulated, and as are currently in force and effect at the time said leave commences, and such other benefits as may be usually and customarily extended to Central Missouri State University employee during said leave.
5. Upon the expiration of Dr. Elliott's leave of absence on November 1, 2000, Dr. Elliott is entitled to the issuance of, and will be issued, a two year full time academic year employment agreement providing full employment benefits and salary placement at the top of the full professor salary maximum rate of pay then in effect at that time, including annual cost of living increments. The nature of this employment commitment shall be duties as assigned by the Board, consulting support for the Board and the University, fund raising for the renovation of Selmo Park, University Liaison for charter schools, legislative support for state and federal teacher initiatives, outreach support for implementation of the statewide mission and/or graduate instruction as appropriate. In addition, Dr. Elliott shall be given an active leadership role in the maintenance and development of international relationships and contacts in furtherance of Central Missouri State University's International Studies Program, and international sites. At all times during the academic year, Dr. Elliott's employment activities shall constitute full time faculty employment to ensure full time retirement credit under MOSERS. Upon Dr. Elliott's completion of these two years of academic employment,

additional contracts for additional academic employment may be negotiated by mutual agreement of the parties.

B. Benefits, perquisites, privileges, and other compensation

1. The Board will provide on an annual basis, for the duration of this Contract, the sum of \$15,000 plus ten per cent of Dr. Elliott's annual salary, paid over twelve monthly installments, for retirement investment purposes. Of this amount, the sum of \$9500 or the maximum allowable under the current tax codes will be paid out on a "pre-tax" basis to a qualified tax sheltered annuity; the remainder will be remitted to TIAA-CREF on an "after-tax" basis.

2. For the duration of this Contract, on an annual basis, Dr. Elliott shall be paid an additional twenty (20) per cent of his base salary in twelve monthly installments for the purpose of purchasing additional discretionary retirement investments; these payments will be taxable earnings as shown on the earnings record of the W-2 form.

3. The Board shall maintain in force and effect the insurance policy referred to as "long term care" , or provide a suitable equivalent, until Dr. Elliott reaches the age of 65, or until his retirement, whichever is later. Dr. and Mrs. Elliott own this policy. In addition, the Board will provide Dr. Elliott with an additional monetary adjustment (a "gross up") for so long as the policy is in effect which will compensate him for his tax liability for the value of the insurance premiums paid out on his behalf.

4. The Board will keep in force and effect, or provide a suitable equivalent, the term life insurance policy in the amount of \$250, 000 covering Dr. Elliott, until he reaches the age of 65 or retires, whichever is later.

5. For the duration of this Contract, and for so long as he shall remain an employee, the Board shall provide Dr. Elliott with the use of an automobile, including maintenance, fuel and lubricants therefor. Dr. Elliott will keep the automobile he currently is using on the effective date of this contract, and will, at his option, be entitled to replace the automobile with a new model equivalent one time before October 31, 2002. If, at any time, Dr. Elliott should choose to retire or otherwise surrender his employment with the Board, Dr. Elliott will be permitted to purchase the automobile provided for his use from the Board, for the price of the original acquisition cost, minus the sum of one thousand (\$1000) dollars per month for each month the automobile was placed in use. In the event of Dr. Elliott's death, Mrs. Elliott shall be afforded the opportunity to purchase the automobile under these same terms.

6. At all times while Dr. Elliott is performing services under this Contract, he shall be provided with a suitable office on campus with an annual operating budget of \$15,000, which will be reviewed by the Board for sufficiency on an annual basis. In addition, secretarial support will be provided (outside of the annual operating budget), a computer with current up to date software

compatible with other University equipment and software, printer, facsimile machine, telephone, and such other office equipment as Dr. Elliott may deem necessary. All equipment shall be upgraded annually, and shall from time to time be serviced, repaired, and if necessary, replaced. In addition, the Board shall provide Dr. Elliott with an additional \$10,000 budget to provide discretionary support to the International Program, and such additional funds as he deems necessary for secretarial support. In addition, the desk, chair, and such other complementary office furnishings as are found in the Office of the President at the time of Dr. Elliott's leave will be moved to the new office, where they will remain for his use until such time as they are permanently transferred to the University Archives.

7. All office equipment and machinery, including computers and printers and telephone equipment, in use in Selmo Park or at Dr. Elliott's private residence as of the date of this Contract, shall remain in the possession of, and for the use of Dr. Elliott, and shall from time to time be serviced, repaired, and if necessary, replaced, until Dr. Elliott's duties to the Board and the University cease. Upon Dr. Elliott's severance from the University, all equipment herein described shall become his personal property.

8. All cell phones in possession or use by Dr. Elliott at the time this Contract commences, including the telephone in the automobile provided for Dr. Elliott's use, shall remain with Dr. Elliott, and the Board shall pay all reasonable charges incurred for their use. Upon Dr. Elliott's severance from the University, all telephone equipment herein described shall become his personal property, and thereafter, he shall assume all responsibility for charges incurred.

9. The Board shall purchase a notebook computer for Dr. Elliott's use prior to his leave which will be upgraded annually, and shall from time to time be serviced, repaired, and if necessary, replaced by the Board for the duration of this Contract. Upon Dr. Elliott's severance from the University, the notebook computer shall become his personal property.

10. All amenities, services, benefits and perquisites customarily provided to retired presidents and board members, such as Board of Governors parking stickers, admission tickets to all campus events, library privileges and the like, shall be provided to both Dr. Elliott and Mrs. Elliott. In addition, passes for two guests will be provided, for all campus events, concerts, theater productions, and lectures. Whenever possible, Dr. and Mrs. Elliott will be accorded box seats at the Walton Football Stadium.

11. For the one year period commencing August 1, 1999, the Board shall provide Dr. Elliott with the sum of \$19,350.00 for entertainment and special expenses, and the additional sum of \$26,650.00 for travel by Mrs. Elliott, for a total of \$45,000.00, which will be "grossed up" 48% and augmented to the total sum of \$76,968.00 for tax equalization purposes and to take into account joint tax liabilities. At the close of tax years 1999 and 2000, the gross up and equalization will be recalculated and augmented if necessary to ensure the Elliotts receive the full amount of this benefit. These amounts will be paid as taxable income and will be shown on the earnings record of the W-2 form. The Board encourages the travel and participation of Mrs. Elliott in all Dr. Elliott's endeavors.

12. Dr. Elliott and Mrs. Elliott will each be entitled to an annual physical exam at University expense until age 65, or until President Elliott retires, whichever is later.

13. Upon Dr. Elliott's retirement from full-time employment with the Board, the Board will pay the cost of health insurance premiums for Dr. Elliott and Mrs. Elliott until both parties are eligible for Medicare. In the event of Dr. Elliott's death, the Board will continue to pay Mrs. Elliott's health insurance premiums until she becomes eligible for Medicare.

C. Special considerations accorded Mrs. Elliott.

1. Title or ownership to any personal property which might vest with Dr. Elliott under this Contract will vest with Mrs. Elliott in the event of Dr. Elliott's death.

2. Should Dr. Elliott die while this Contract is in effect, Mrs. Elliott will be afforded reasonable access to University staff and shall be provided with legal counsel to assist her in settling all affairs arising out of this Contract. In addition, she will be provided with assistance in physically transporting, at Board expense, any and all personal property to the location of her choice.

3. In the event of Dr. Elliott's death, Mrs. Elliott shall be entitled to receive all amenities, services, benefits and perquisites customarily provided to retired board members, including parking stickers, admission tickets to all campus events, and such other benefits as Dr. Elliott was entitled to under Section B (10) of this Contract.

D. Other provisions

1. The Board and Dr. Elliott have amicably agreed that in the event a new President of the University has not taken office by August 5, 1999, Dr. Elliott may, at his option, elect to stay on as Chief Executive Officer for a period of time to be mutually agreed upon ("extension of CEO services"). In that event, the effective date of this Contract shall be the first day after Dr. Elliott's extension of CEO services ends. During the period, if any, Dr. Elliott's CEO services are extended, the terms, conditions, and benefits as set forth in the Professional Services Agreement dated June 22, 1998 shall govern, save that the annual compensation and benefits review shall take place at the time said services are extended.

2. In the event that Dr. Elliott's services as CEO are extended by the Board, all dates stipulated in this Contract shall be revised by mutual agreement to reflect the continuation of services and the spirit and intent of this Contract.

3. This Contract shall be governed by, construed and interpreted in accordance with the laws of the State of Missouri. Any action under this Contract shall be brought in Johnson County, Missouri.

4. This Contract shall be modified or amended by mutual agreement of the parties, in writing, either by express amendment or modification or by means as recorded in the Minutes of the Board of Governors of Central Missouri State University.

5. Should any provision or provisions of this Contract become illegal, invalid, null or void by force of law or other means, the remaining provisions of this Contract shall remain in force and effect.

IN WITNESS WHEREOF, the parties have executed this agreement on this 2nd day of December 1998.

THE BOARD OF GOVERNORS OF
CENTRAL MISSOURI STATE UNIVERSITY

By: Lynn A Harmon
Mr. Lynn Harmon

Maxine Jaeger
Mrs. Maxine Jaeger

Allan Browder
Mr. Allan Browder

Nicke B. Foster
Mrs. Nickie B. Foster

John W. Lenox
Mr. John W. Lenox

Robert E. Harmon
Mr. Robert E. Harmon

DR. EDDIE MAYES ELLIOTT:

Eddie Mayes Elliott

APPENDIX VII

UNIVERSITY OF MISSOURI CONTRACT

INDEPENDENT CONTRACTOR AGREEMENT AND RELEASE

THIS INDEPENDENT CONTRACTOR AGREEMENT is entered into between THE CURATORS OF THE UNIVERSITY OF MISSOURI, a public corporation of the State of Missouri (hereinafter referred to as "University"), and NORMAN E. STEWART (hereinafter referred to as "Stewart").

WITNESSETH:

WHEREAS, the parties entered into an Employment Agreement dated December 3, 1992; and

WHEREAS, the parties entered into an Amendment of said Employment Agreement, dated April 30, 1996; and

WHEREAS, the parties entered into a Second Amendment of said Employment Agreement, dated October 14, 1996; and

WHEREAS, the parties entered into a Third Amendment of said Employment Agreement, dated July 3, 1997; and

WHEREAS, the parties now desire to enter into an Agreement and Release for the purpose of rescinding the above-described Employment Agreement and all amendments thereto, and setting forth new agreements and understandings between them regarding their relationships.

NOW, THEREFORE, in consideration of the above premises and the individual and mutual promises of the parties hereinafter set forth, it is hereby agreed between the parties hereto as follows:

1. Stewart agrees to resign and shall be deemed to have resigned as the Head Men's Basketball Coach at the University of Missouri-Columbia on the execution date of this Agreement and Release. Stewart will remain a full-time employee of the

University until June 30, 1999 at his current annual salary. His duties during this period will be set by the Athletic Director of the University of Missouri-Columbia.

2. Stewart will retire as an employee of the University on July 1, 1999, at which time he will be entitled to receive an annual retirement benefit payment from the University, to be paid in equal monthly installments, less appropriate deductions and withholdings, pursuant to the University of Missouri Retirement, Disability and Death Benefit Plan ("Plan"). Stewart will also be entitled to receive any other benefits set forth in the Plan.

3. University agrees to pay Stewart the amount of One Hundred Thousand Dollars (\$100,000.00) on August 1, 1999, in exchange for the relinquishment by Stewart of his right to operate at any time during the term of this Agreement (date of execution through June 30, 2003) a basketball camp as set forth in his Employment Agreement dated December 3, 1992, and as amended by the Second Amendment to said Employment Agreement dated October 14, 1996; provided, however, that Stewart will be permitted to operate a basketball camp as set forth in his Employment Agreement dated December 3, 1992, and as amended by Second Amendment to said Employment Agreement, with said Second Amendment dated October 14, 1996, during the summer of 1999, but not at any time thereafter during the term of this Agreement (date of execution through June 30, 2003) in the State of Missouri. Stewart will transfer all equipment used by him in the operation of said basketball camp to the University on August 1, 1999, and he will provide the University with a list of all past camp participants and any prospective camp participants at that time.

4. University agrees to pay to Stewart the amount of One Hundred Ninety-five Thousand Dollars (\$195,000.00) on July 1, 1999, in exchange for the relinquishment by

Stewart of his right to receive the annuity payments called for in paragraph "Fourth" of the Second Amendment to his Employment Agreement dated October 14, 1996 and the relinquishment of any other rights Stewart might have under the Employment Agreement as amended prior to the date of this Agreement and Release. All appropriate deductions will be withheld from these payments (meaning this payment and any other annuity payments made in calendar year 1999) as required by law.

5. University agrees to pay to Stewart Seventy-five Thousand Dollars (\$75,000.00) in the year July 1, 2000-June 30, 2001, said payment to be payable on July 1, 2000, and Seventy-five Thousand Dollars (\$75,000.00) in the year July 1, 2001-July 30, 2002, said payment to be payable on July 1, 2001, in exchange for the relinquishment by Stewart of his right to receive the payments set forth in paragraph "Fourth" of the Third Amendment to his Employment Agreement, dated July 3, 1997, and the relinquishment of any other rights Stewart might have under the Employment Agreement as amended prior to the date of this Agreement and Release.

6. It is agreed that the University will retain Stewart as a "Special Consultant to the Chancellor of the University of Missouri-Columbia" for the period July 1, 1999 to June 30, 2003. Stewart's services shall be to provide consultation for the method and process of accomplishment and final results of development projects and participation in said projects for the University of Missouri-Columbia. In exchange for his consulting services, Stewart will be paid an annual fee of One Hundred Twenty-five Thousand Dollars (\$125,000.00) to be paid annually in advance (for example, the payment for July 1, 1999 through June 30, 2000 to be made during the first ten (10) days of July 1999). At Stewart's option, he will be entitled to receive the payment due for the period July 1, 2002 to June 30, 2003 during the first ten (10) days of July 2001. It is agreed that in

providing these services to the University, Stewart is serving in the capacity of an independent contractor and not as an employee of the University. Stewart agrees that he is not serving in the capacity of an employee of the University in providing these services and will be solely responsible for the payment of any taxes due and owing in connection with his receipt of the consulting fees set forth herein, and will indemnify and hold the University harmless and reimburse the University for any amounts it may be required to pay as a result of a determination that the University should have carried out appropriate employee withholding and of Stewart's failure to meet his tax obligations in connection with the fees paid to him hereunder.

7. It is agreed that if Stewart dies before the payments are made to him as called for in paragraphs 3, 4, 5 and 6 of this Agreement and Release, these payments will be made to such individuals designated by Stewart, and who will provide any remaining services to be provided under this Agreement and Release at the times said payments are designated to be paid herein. The University reserves the right to obtain a policy of insurance on the life of Stewart in order to fund the payments called for in paragraphs 3, 4, 5 and 6 of this Agreement and Release.

8. Stewart agrees that except as otherwise provided herein, the University is released from any and all of its obligations to him as set forth in the Employment Agreement, dated December 3, 1992, the Amendment to said Employment Agreement, dated April 30, 1996, the Second Amendment to said Employment Agreement, dated October 14, 1996, and the Third Amendment to said Employment Agreement, dated July 3, 1997, and the University has no further obligations to Stewart except as otherwise set forth herein.

9. The parties agree that this Agreement and Release can be supplemented

or amended by the mutual agreement of the parties or their respective representatives reduced to writing.

IN WITNESS WHEREOF, the undersigned have executed this Agreement and Release on the 1 day of April, 1999.

THE CURATORS OF THE
UNIVERSITY OF MISSOURI

By: Richard L. Wallace

Title: Chancellor, University of Missouri - Columbia

Approved as
to legal form
N. E. Stewart

Norman E Stewart
NORMAN E. STEWART

APPENDIX VIII

SOUTHEAST MISSOURI STATE UNIVERSITY CONTRACT

EMPLOYMENT AGREEMENT

THE BOARD OF REGENTS FOR SOUTHEAST MISSOURI STATE UNIVERSITY (herein called "Employer"), and DALE NITZSCHKE, presently residing at Wildwood, Cape Girardeau, Missouri 63701, (herein called "Chancellor") agree:

1) **EMPLOYMENT.** In consideration of the mutual promises contained in this agreement, and of the salary and other compensation to be paid, Employer hereby employs Chancellor to serve as the Chancellor of Southeast Missouri State University, and Chancellor accepts such employment, on the terms set out in this Agreement.

2) **TERM.** The term of this Agreement shall begin on July 1, 1999 and end June 30, 2001. Thereafter, this agreement shall be automatically renewed from year to year unless otherwise terminated as provided herein.

3) **DUTIES.** Chancellor is employed to serve as the Chancellor of Southeast Missouri State University. He shall perform all duties which may be required by law and the provisions of this agreement, and all duties incident to the office of Chancellor for the Development of the River Campus and Polytechnic Institute of the University, together with such other duties as may be properly assigned to him. He shall devote substantially his entire time, attention and energies to the duties of his office. Chancellor may devote reasonable amounts of time for personal, charitable and professional activities provided that such activities do not interfere with the performance of duties under this agreement. Chancellor shall not render services of any professional nature to or for any other person or entity (either with or without compensation) without the prior consent of Employer.

4) **COMPENSATION.** For all services rendered by Chancellor he shall be compensated as follows:

A) Salary:

1) For the period beginning July 1, 1999 and ending June 30, 2001, Chancellor shall be paid an annual salary of \$95,000.00.

2) Salary shall be paid in equal periodic installments in accordance with normal pay-roll procedures of Employer and is subject to withholding of taxes and other items required by law or allowed by University policy.

B) "Fringe" Benefits: Chancellor shall be entitled to all "fringe" compensation benefits offered to faculty members at Southeast Missouri University, including, without limitation,

life insurance programs, health, medical and hospitalization insurance, sick leave, disability, deferred compensation programs, I.R.C. Section 403, 457, or 125 programs, and similar benefits, but excluding sabbatical leave, except as such benefits may be limited by other provisions of this agreement.

C) Annuity. Employer shall purchase for Chancellor's benefit, and maintain in full force and effect during the period of Chancellor's employment as Chancellor, through TIAA-CREF or such other entity as Chancellor may designate, an annuity contract, to be owned by Chancellor, at a premium cost of \$23,000.00 per year, paid on a quarterly basis. Chancellor is responsible for any taxes which may be due as a result of this annuity.

S) WORKING FACILITIES, EXPENSES, AND OTHER CONDITIONS OF EMPLOYMENT.

A) Automobile. An automobile for the business use of Chancellor, including all service and maintenance of the automobile, will be provided at no expense to Chancellor. Liability protection for Chancellor in the use of the automobile in his duties as Chancellor is provided by the Legal Expense Fund of the State of Missouri, up to limits of \$100,000.00 per individual and \$1,000,000.00 per incident. Liability protection for personal use will be provided through commercial liability insurance with limits not less than \$100,000 per person and \$500,000.00 per incident. Any personal use is subject to the restrictions of the Internal Revenue Code.

B) Office and Staff. Chancellor will be provided with a private office at the Cape Girardeau campus of Employer, secretarial staff and other facilities and services as may be suitable and necessary for the proper performance of his duties.

C) Expenses. Employer shall pay, or shall reimburse Chancellor for, reasonable and necessary expenses incurred in the performance of his duties, including country club fees and dues and membership fees in professional, service, and social organizations as approved by Employer. Reimbursable travel and entertainment expense shall include spousal expense when Chancellor's spouse is participating in the event involved.

D) Residence.

1) Chancellor will be based in Milford, Ohio, with duties also in Washington, D.C., and in Cape Girardeau, Missouri. Employer will provide reasonable furniture and equipment for Chancellor's use as a supplemental office facility at Chancellor's residence in Milford, Ohio.

2) Employer shall pay for or reimburse Chancellor for reasonable residential expenses associated with his work in Washington, D.C.

While in Cape Girardeau, Missouri, Employer shall provide a place of residence for Chancellor at the residence known as "Wildwood". In addition to occupancy by Chancellor, Employer shall be permitted to use the residence (or allow its use, as may be appropriate), excluding the private apartment provided for Chancellor if Chancellor is in residence, for entertainment of visitors in the interest of the University, faculty events, and other events and purposes appropriate for the purposes of the University. Employer will provide reasonable furniture and furnishings at Wildwood, and will maintain the residence and surrounding grounds in good condition.

6) **VACATIONS AND HOLIDAYS.** Chancellor shall not be entitled to the same holidays and vacation afforded the faculty and staff of the University during the period of employment. Chancellor may sell all accrued but unused vacation time which he may have back to the University on June 30, 1999.

7) **EVALUATION.** Chancellor shall be subject to the evaluation procedures of the University and as may be required by state law. At least annually, as the parties may agree, the parties shall mutually evaluate the status of the University and its goals and long range plans.

8) **TERMINATION.** This Agreement may be terminated as follows:

A) **Death.** The death of Chancellor shall terminate this agreement. In such event, Chancellor's surviving spouse, or if there is no surviving spouse, Chancellor's estate, shall be paid Chancellor's salary for the full month in which Chancellor's death occurs.

B) **Resignation.** Chancellor may resign his employment by tendering his written resignation to Employer not less than thirty (30) days prior to the effective date of resignation.

C) **Non-renewal.** This agreement shall be automatically renewed from year to year, following the expiration date hereof, upon the terms contained herein, unless either party gives notice to the other party of intent not to renew. Notice of non-renewal shall be given in writing not later than 3 months prior to the applicable expiration date.

D) **Termination without cause.** Employer may terminate Chancellor's employment as Chancellor without cause at any time upon 30 days notice. In the event of such termination, however, Chancellor shall continue to be employed in the position of a full professor in an appropriate department at a salary equal to the then current average salary paid full professors at the University, for the period of time necessary for Chancellor to become 100% vested under the Missouri State Employees Retirement System. Termination resulting from inability (if reasonable

accommodation cannot be made) to perform substantially all the duties of Chancellor, due to illness or accident, shall be considered termination without cause. In such event, if Chancellor is also unable to perform substantially all the duties of a full professor (if reasonable accommodation cannot be made) Chancellor shall be entitled to the benefits afforded by the sick leave and disability policies of the University, and no other benefit or payment.

E) Termination for cause Employer may terminate this agreement for the following causes:

- 1) Conviction of a felony or misdemeanor.
- 2) Non-compliance with policies established by the Board of Regents.
- 3) Incompetence in the performance of Chancellor's duties.

In the event of termination for cause, Chancellor shall be notified in writing of the grounds for termination, and, within fifteen days after receipt of such notice, may request a hearing before the Board of Regents. A hearing shall be held within fifteen days after receipt of such request. The hearing shall be a closed hearing, unless Chancellor requests a hearing in an open session of the Board of Regents. At such hearing, Chancellor may be represented by counsel, and may present such evidence as Chancellor may desire, either documentary or oral, to support Chancellor's position. The decision of the Board of Regents following such hearing shall be final and binding on all parties.

F) Termination by operation of law. This agreement shall be automatically terminated as of the effective date of any legislative action terminating the existence of the University as an independent educational entity of the State of Missouri.

9) WAIVER OF BREACH. The waiver by either party of any breach of any provision of this agreement by the other party shall not operate or be construed as a waiver of any subsequent breach.

10) ENTIRE AGREEMENT. This agreement constitutes the entire agreement between the parties, and there are no other understandings, agreements, or representations between the parties, express or implied.

11) GOVERNING LAW. This agreement shall be deemed to have been executed in the City of Cape Girardeau, Missouri, and is to be construed as a Missouri contract and in accordance with the laws of Missouri.

12) **NON-ASSIGNABILITY.** This agreement is a contract for personal and professional services, and the benefits of the agreement shall not be pledged or assigned in any way by Chancellor.

13) **NOTICES.** Any notice required to be given under the terms of this Agreement shall be in writing, and either delivered personally to the other party or mailed, by certified mail, return receipt requested, addressed as follows:

To Chancellor:

Dr. Dale Nitzschke, Chancellor
Southeast Missouri State University
One University Plaza
Cape Girardeau, Missouri 63701

To Employer:

President of the Board of Regents
Southeast Missouri State University
One University Plaza
Cape Girardeau, Missouri 63701

IN WITNESS WHEREOF, The Parties have executed this Agreement in duplicate this 30th day of June 1998.

THE BOARD OF REGENTS FOR SOUTHEAST
MISSOURI STATE UNIVERSITY

By Donald L. Dickerson
Donald L. Dickerson, President

Attest:

Abraham A. Fulton
Secretary

"EMPLOYER"

Dale Nitzschke
Dale Nitzschke

"CHANCELLOR"