

**SENATE BILL 1221**

**A SENATE STATE EDUCATION COMMITTEE HEARING**

**October 13, 2011**

**TESTIMONY OF KEITH O. BARROWS**

Good morning. My name is Keith O. Barrows. I would like to thank Chairman Piccola Chairman Dinniman and the members of the Education Committee for the opportunity to speak with you today regarding Senate Bill 1221 which proposes to provide for relationships between institutionally related foundations and Pennsylvania's state owned universities, commonly referred to as the "Higher Education Modernization Act."

I am the Executive Director of the Lock Haven University Foundation and I am appearing today on behalf of the Pennsylvania Foundation Association, a private organization comprised of private, non-profit Foundations ("University Foundations") supporting the public universities that comprise the Pennsylvania State System of Higher Education ("PASSHE Universities").

From the perspective of the University Foundations, it is important that the relationship between the University Foundations and the state owned universities be clarified and constituted in a manner that protects the legal and corporate independence of the University Foundations while allowing for an appropriate level of cooperation between the entities. There is a long standing history of support, cooperation and joint effort between the University Foundations and the PASSHE Universities, with many of the Foundations being formed and incorporated prior to the formation of PASSHE.

The University Foundations were created to provide a private vehicle to solicit and manage donations from the private sector for the direct benefit of PASSHE Universities. Each Foundation is dedicated to a different PASSHE University. Like all non-profit corporations, the Foundations have a specific purpose as outlined in their bylaws and articles of incorporation. For University Foundations, that purpose is to raise money for the benefit of Pennsylvania's public universities. While the corporate purpose and mission of the Foundations necessarily

requires that the Foundations will work for the benefit of their designated public University, the Foundations remain private entities. Each University Foundation is managed by an independent Board of Directors. The day to day management of the Foundation is typically handled by the Foundations' Chief Executive Officer and staff. The Foundations are represented by their own privately retained counsel and not by state-paid PASSHE attorneys.

The legal relationship between University Foundations and PASSHE Universities is defined as that of independent contractors pursuant to a written agreement titled as a "Memorandum of Understanding." The Memorandum of Understanding does not dictate how the Foundations operate; to the contrary, the Foundations manage and control their own day to day operations. In some cases, as is the case at the Lock Haven University Foundation, the University and Foundation have also entered into a Service Purchase Contract. Those contracts generally provide that the University contracts with the Foundation for its fundraising services. In exchange for the fee, the Foundation typically agrees to provide fundraising services and management to the University. In all cases, the Foundation provides the University with annually audited financial statements and financial reports indicating how much direct and indirect support the Foundation provides to the University, and also detailing how much support the Foundation provides to the University through other third-parties.

Apart from the foregoing, because the Foundations are private businesses, they also maintain their own business records which reflect the daily operations of the Foundation. These business records include board of director's meeting minutes, executive committee meeting minutes, tax records, internal policies and procedures and correspondence with vendors directly hired by the Foundation.

Private non-profit Foundations play an important role in promoting the educational goals of Pennsylvania's State Universities. Private Foundations provide a vehicle for the private sector to support State Universities without having to directly contribute to the State, which is an attractive option for many donors. Likewise, private Foundations can offer donors some protection regarding their private financial information, which is at risk of exposure when

directly contributing to the State. In brief, the private status of University Foundations is important and every effort should be taken to protect that status.

The Higher Education Modernization Act is intended to allow university employees to work in conjunction with the Foundations. One of the goals of the Higher Education Modernization Act is to establish the permissible roles or functions a State University employee may perform at an affiliated Foundation without having to define the Foundations as a public entities. The Act seeks to remedy current interpretations of the Adverse Interest Act and Ethics Act, which prohibit University employees from working with the Foundations in any way.

The current interpretation of the Adverse Interest Act to apply to PASSHE employees has negatively affected University Foundations and PASSHE Universities ability to raise charitable funds for the benefit of the Universities, programs or students. Rather than promoting the public good through efficient use of time and resources, the current and interpretation of the Adverse Interest Act as applied to University Foundations and PASSHE Universities negatively impacts the public's ability to secure low-cost higher education by restricting cooperative fundraising efforts with University leadership. I respectfully suggest that negative impacts on low-cost higher education should be avoided, and I strongly urge your support of this Act to remedy the situation.

Senate Bill 1221 also contains important provisions regarding the legal relationship between the University Foundations and PASSHE Universities that will help to maintain the legal, fiscal, and operational independence of the University Foundations. That independence is vital to the mission of the University Foundations because it provides the basis for their tax exempt status under both federal and state law, the maintenance of endowments for student scholarships, and the support of new programs and initiatives at the PASSHE Universities. If at some point in the future it became the law of the land that the University Foundations were owned, controlled by, or even unduly influenced by the State, PASSHE, or a PASSHE University, the independence of the Foundations could be legally challenged, and the activities previously mentioned could be called into question. The proposed legislation provides for some

protection for the proposition that the University Foundations are independent entities and will remain so, a critical point for the University Foundations.

It is my hope that the foregoing information sheds some light on the important role that private University Foundations play in this State, along with their PASSHE Universities. The Foundations wish to protect the integrity of their operations and preserve the interests of these important private vehicles that ultimately support the public good.

Thank you for your time and attention today. I am prepared to answer any questions you may have.