Campus Law
by Adam S. Lambert

Reader Comments on the Ethical Considerations of Contracts and Riders.
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Advice is a good thing. We should always seek out learned counsel on important issues. When we allow ourselves to consider things from another's perspective, it often gives us better insight into the particular matter under consideration and always helps us to better understand the world around us.

Now, I am not just talking about considering the "opposite viewpoint". I am talking about considering many different viewpoints and many different perspectives, not all of which are opposed to ours, but all of which are different in some way. I am talking about something akin to the too-oft-repeated phrase "outside the box thinking".

Recently, I received an email from a school administrator. This administrator, who we will call Richard, opened up a new window of thought for me on the Contracts and Riders issue we have been discussing.

Richard wrote:

Adam,

I've enjoyed your Campus Law features in Campus Activities Journal. Here's a slight variation on contracts & riders that you might find interesting:

My program board chair went off for the summer to work a couple hundred miles away from our campus. He was seldom near a phone, so contact with him was sporadic. The chair, let's call him Bill, left me

a list of agents who may be contacting us about various artists and the dates Bill wanted to fill.

One agency contacted me via phone and we generally agreed to terms, but I informed the agent that I was not empowered to approve the contract. It would have to be approved by the 'higher ups' and then reviewed by our program board. No problem, said they.

The agency sent out a copy of the contract and rider right away so it could go through our review process. It was approved by the 'higher ups' and returned to my office just about the time Bill was getting back from his summer job. I hand-delivered the contract to Bill and asked him to convene all the program board students available to review the contract and rider A.S.A.P.

I pointed out some extensive requirements for electricity, staging, and stage help, but then asked Bill to get back with me A.S.A.P. While Bill and the program board were considering the terms of the contract and rider, the agency sent out an email stating the 'deadline' for returning the contract was neigh.

I replied that the program board students were considering the terms and that I believed they still wanted the act in question, but that I would get them an answer soon.

I contacted Bill and he said the program board no longer wanted the act because of the manpower and setups required by the contract rider. They also had decided the price was too high for that single act. I told Bill that he should call the agency and inform them of the rejection of their contract.

Several weeks later, the agency called me. They had not heard from Bill or anyone else on the program board, but they felt we had 'an ethical responsibility' to honor the partially signed, but non-returned contract. One or two more contacts were made by the agency threatening a lawsuit, but then our university system attorneys sent

the agency a letter rejecting any such 'ethical responsibility' to fulfill the terms of a non-returned contract.

That seemed to stop the threats, but I contacted other administrators in the field, and many of them along the East Coast [ed. note: Richard's school is not on the East Coast] said they usually considered a request to an agency for a contract as somewhat binding; sort of a customary practice.

What's your perspective of the above scenario?

Richard

Agents and Directors of Student Activities work in a business where trust is paramount. Negotiations depend on bilateral good faith and honest dealing. In addition to doing what is legal, we have a duty to do what is ethical and right. Moreover, we are often guided in our actions by custom as well as law.

I agree with the school's attorneys in Richard's example. Clearly, the school was on solid legal ground in making a good-faith review and rejection of the agency's contract. I have found no legal precedent stating that the school had any legal duty to inform the agency that the agency's offer was rejected. While Bill and the Programming Board should have informed the agency that the contract was not signed, they had no legal duty to do so, as the fact that the contract was never signed and returned speaks for itself.

That notwithstanding, what of the issues of ethics and custom? Even assuming that the Programming Board was on legally solid ground, should the fact that other schools considered the incomplete contract to be customarily binding have given the university an ethical responsibility to honor the agreement, at least in some form?

Custom is a strong force in the law. If In fact, custom very often becomes law. I have seen many cases where long-standing customs

have been given the effect of law.

Here in Louisiana, Article 1 of our Civil Code states, "The sources of law are legislation and custom."

Article 3 of Louisiana's Civil Code defines custom as follows: "Custom results from practice repeated for a long time and generally accepted as having acquired the force of law. Custom may not abrogate legislation."

Now, obviously, these Code Articles are nothing more than mere insight for anyone outside of Louisiana. Nevertheless, these Articles can be directly traced to French and Spanish Codes going back to the days long before the Americas were even settled, and they are restatements of common themes in the law all around the world. And, as Richard correctly noted, there is most assuredly an ethical issue to consider, if not a legal issue. Additionally, I find the placement of these Articles (the very first Article in a Code with over 3,500 Articles) to be especially noteworthy.

Even though the agency in question was informed by Richard that the contract could not be perfected without additional authority, was the agency correct in believing that there was some ethical (if not legal) duty to perfect the contract? And, if so, how far should that ethical consideration go? Did the school have only a continuing duty to deal in good faith, or did it have an ethical duty to actually honor the contract, even if in some form other than that proposed by the agency in the contract and rider?

In Richard's example, it appears obvious that the Programming Board made a good-faith review of the contract. The Board also rejected the contract in good faith, stating that the technical requirements were simply too extensive. Is that enough? Did the Board at least have an ethical responsibility to inform the agency of the rejection?

To throw you one more curve ball, I want you to note that Richard

specifically noted that the schools he talked to about this issue were on the East Coast. We won't say where Richard's school is, sufficed to say that it is not on the East Coast, but in a totally different region. Does that make a difference? Are these customary considerations limited by geographic regions? Are ethical considerations limited by geographic regions? If Richard's school were on the West Coast, should he be ethically bound to honor (or address) the customs and practices of the East Coast?

Lastly, I want you to consider the issue of the agency's behavior. Did the agency justifiably rely on the custom to its detriment? If so, did it handle the matter correctly? How should the agency have handled the matter? Even if the agency justifiably relied on the custom of the East Coast schools, what could it have done differently to avoid the bad blood that ensued?

We have a lot to consider for next month. I hope to hear from a lot of you on this issue.

Email me at:

prodevelopment@aol.com

You can also contact us via "snail mail" by writing to:

Adam S. Lambert
1477 Louisiana Ave., Suite 103
New Orleans, LA 70115
