

Clemson claims it can't be sued in federal court

By JOHN MONK - jmonk@thestate.com Wednesday, Apr29, 2009

U.S. Judge Matthew Perry Tuesday agreed to rule on a key issue — whether Clemson University is an arm of state government or has a more independent legal status — in a federal lawsuit brought by a fired secretary to the board of trustees.

If Perry rules Clemson is a state university that enjoys sovereign immunity in federal court, that would mean the suit brought by Gene Troutman, fired in 2007, would be dismissed from federal court.

Troutman's attorney, Joel Collins, contended during a three-hour hearing before Perry on Tuesday that Clemson for years has held itself out as a "municipality," which would mean the case could go forward in federal court.

Clemson attorneys asserted it is "an arm" of state government with sovereign immunity — meaning it cannot be sued in federal court.

Perry gave no hint of when he might rule.

The arguments took place at the federal courthouse in Columbia.

At one point, Collins — himself a Clemson graduate — said the school already had "spent a fortune" in legal fees defending itself against Troutman's suit.

Clemson's student newspaper, The Tiger Town Observer, reported earlier this month that Clemson had spent \$624,277. Clemson officials later Tuesday put the amount at about \$620,000 through March.

The newspaper cited a Freedom of Information response from Clemson that it acquired from state activist Ned Sloan.

In his suit, Troutman alleges he was fired because he questioned huge salary hikes given to associates of president Jim Barker and was urging trustees to appoint a “watchdog” to oversee university finances.

In court filings, Clemson characterizes Troutman as a “disgruntled former employee” who had a poor relationship with trustees.

Each side marshaled a host of arguments to bolster its case for or against sovereign immunity.

Clemson attorney Tom Bright cited a dozen ways Clemson is an arm of the state, including Clemson money being held by the state and Clemson’s budget being approved by the state Legislature.

“The state controls all manner of activities for ... Clemson,” Bright said.

Collins countered that Clemson officials for years have claimed it is a municipality with its own magistrate’s court and fire department.

Collins likened Clemson to Humpty Dumpty saying, “When I use a word ... it means just what I choose it to mean, no more or less.” He said Clemson wants to tell people it is a municipality but then say in court it isn’t.

Moreover, said Collins, seven of Clemson’s trustees are appointed for life, and the state constitution prohibits life appointments to state positions.

“If Clemson University is an arm of the state ... all the life trustees are disqualified,” Collins said.

Under Clemson’s unusual charter, seven of its 13 trustees — a majority of the 13-member board — are appointed for life and choose their successors.

Clemson's Bright said even though some trustees are called life trustees, "it doesn't make them trustees for life."

In another matter, Perry prompted an agreement between the parties that Troutman's attorneys must quickly return 14 boxes of documents Troutman took with him upon leaving Clemson.

Clemson officials have argued for months that the documents belong to the school.

When Collins told Perry one computer disc — originally made by Troutman's predecessor Thornton Kirby — had been "shredded" and couldn't be given back, several Clemson trustees in the audience gasped derisively.

Collins after the hearing told The State his office had located the disc and was returning it to Clemson.

Clemson attorney Ashley Cuttino told Perry there is "private, personal information about the trustees on that disc."

Clemson's attorneys have had access to the documents in the 14 boxes.

In legal papers, Troutman has said Clemson attorney Clay Steadman let him take the boxes when he left.

Clemson is to pick up the documents from Collins' Greenville office by 5 p.m. today.

If Clemson loses Perry's decision on sovereign immunity, it will likely appeal to the 4th Circuit Court of Appeals. If Troutman loses, Collins said he will re-start the lawsuit in state court, in Richland County.

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