

Is an *Acting* Head of Department a statutory member of University Senate?

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1.0 Introduction

This treatise is pertinent to the University of Lagos (UNILAG) situation in recent decades; most universities in Nigeria do not seem to controvert the question under discussion. The recent fracas between the erstwhile UNILAG Council and Management or better put, by the then Chairman of Council against the Vice-Chancellor (VC) generated much interest due to manifest breach of due process in the ‘contrived trial.’ Both sides, the observers and the federal government, quoted relevant sections of applicable law while examining the matter. Even the Senate and staff in other segments of the university dug up both the University of Lagos Act (as amended) as well as the University Miscellaneous Act and its amendments. Studying the provisions of these laws opened the eyes of non-lawyers or “unlearned” folks as I, to areas beyond the Appointment or Removal of Principal Officers. During the saga of the purported removal of the VC, which came under the proprietor’s scrutiny, the Visitor in accordance with the law mandated the UNILAG Senate to elect an Acting VC. Some concerned individuals within the UNILAG community subsequently circulated the following message:

“Sequel to the Directive of The Visitor to the Senate of the University, members of Senate (who at this time are Professors only) are requested to sign up the request to convene an Emergency Meeting of Senate on Monday, 24th August, 2020.”

Some of us had reservations about the claim that due to the expiration of the tenure of elected members, the Senate then consisted of ‘professors only.’ I raised my concern both on my faculty WhatsApp and ASUU Telegram platforms. However, I did not overstretch it so that the business-at-hand then may proceed but decided to pursue it further after the whole saga. While the lapse of tenure could validly be construed to exclude elected members from that Emergency Meeting, it is my humble submission that Senate has at any given time, other statutory members who are not necessarily professors and the Acting Heads of Departments (HoDs) are included in such group. The aim of this article is to expound my view, though it is subject to correction via superior arguments rooted in law.

2.0 Relevant Statutes on Senate function and composition

The UNILAG Act 1967 [Section 8] states that:

“it shall be the general function of the Senate to organise and control the teaching of the University and the admission and discipline of students, and to promote research at the University.”

This is buttressed and further spelt out in detail in the Universities Act 2003 [Section 7A(2)]

The Universities (Miscellaneous Provisions) (Amendment) Act 2003 states in Section 7A

- (1) *There shall be a senate for each of the Universities consisting of-*
 - (a) *the Vice-Chancellor;*
 - (b) *the Deputy Vice-Chancellor;*
 - (c) *all professors of the University;*

- (d) all deans, provosts and directors of academic units of the University,
- (e) all heads of academic departments, units and research institutes of the University;
- (f) the University Librarian; and
- (g) academic members of the Congregation who are not professors as specified in the Laws of each University.

The intent of (1)(c) is to **distinguish professors as a class, relative to other statutory members of senate**. The import is that *persons in the other categories may NOT necessarily all be professors nor need be*. For instance, in the recent past, a VC at UNIABUJA was an academic but not a professor at the time of appointment. The federal military government in 1995 appointed an Army General as the sole administrator of a crisis-laden ABU. Such individuals were the defacto chairpersons or recognized presiding officers of the senate of each university during their period of appointment!

The referenced statutes provides that *the Librarian, Heads of academic Departments, Heads (Directors) of Research Institutes* SHALL be members of senate (regardless of their personal professional rank, i.e. irrespective of whether the occupier of such office is a professor or not). The provision to elect academics who are *not professors* intends to bring into Senate another segment, namely scholarly representatives of congregation who are not part of the topmost echelon within departments, faculties, research institutes ...and the university administration at large.

While it may be the convention in UNILAG to appoint professors as substantive Heads of academic Departments/Research Institutes, etc. the university autonomy law does NOT expressly mandate so. Thus, senior academics yet to attain the professorial rank could be appointed as HoDs in *full or acting capacity*, depending on institutional preference or style. Acting title is given to someone when there is a vacancy that is not filled by the substantive rank officer and, the former has to perform the functions associated with this office, usually in addition to his normal duties. Acting appointment is normally made only in order to fill posts that are temporarily vacant and their duration are limited accordingly.

Concerning appointment into an acting position, Section 11 of the Interpretation Act cap 123 of the Laws of the Federation of Nigeria [Act 2004] vol. 7 updated in 2010 specifies regarding appointments:

- “(1) Where an enactment confers a power to appoint a person either to an office or to exercise any functions, whether for a specified period or not, the power includes-*
- (a) Power to appoint a person by name or to appoint the holder from time to time of a particular office;*
 - (b) Power to remove or suspend him;*
 - (c) Power, exercisable in the manner and subject to the limitations and conditions (if any) applicable to the power to appoint-*
 - (i) To reappoint or reinstate him;*
 - (ii) To appoint a person to act in his place, either generally or in regard to specified functions, during such time as is considered expedient by the authority in whom the power of appointment is question is vested.*

(2) *A reference in an enactment to the holder of an office shall be construed as including a reference to a person for the time being appointed to act in his place, either as respects the functions of the office generally or the functions in regard to which he is appointed, as the case may be.*”

The import of (1)(c)(ii) & (2) above is that ***an acting officer is ordinarily to be presumed as empowered as if he were substantive; the powers and duties devolves to the office and not the person per se. Unless explicitly stated in the instrument of appointment by an appointing authority, the acting officer will assume the full duties and responsibilities of the post in question.***

Indeed, the appointment letter of a typical acting Head of Department (Ag. HoD) in UNILAG is silent about any restriction compared to being a substantive officer except in the tenure of office. The Ag. position is for 1 year rather than 3 years. The *Regulations Governing the Conditions of Service of Senior Staff* (2016) however, indicates in Chapter II Section 2(ii) &(iii) that an Ag. HoD/Dean be recused at a meeting of any Appointment & Promotions Committee/Board convened to consider candidates for the professorial position or a post for which the office holder is an applicant. This is understandable since one should neither be a judge in his own case nor evaluate others for a superior rank. It is for same reason that where there are acting officials, the Annual APER Form of senior academics are assessed at the Faculty/College or University level rather than at the departmental level.

3.0 Conclusion

It is expedient that we uphold an atmosphere for varied intellectual contributions and debates. Non-professors should neither be excluded nor silenced in Senate. All HoDs, acting or substantive, ought to be duly recognized in Senate as Deans and Librarians are. Given the function of Senate and the role of HoDs as academic officers over teaching units, it is amazing that Ag. HoDs are precluded from Senate. If the Acting HoDs are allowed to speak as Chief Examiners in Senate, many issues will be resolved promptly without referring such to committees like BCOS. Local administrative policy limits the participation of Ag. HoDs in UNILAG Senate, contrary to extant laws. If it was not so in the beginning, why and when was it changed? Rejoinders to this piece should also address the following:

1. Should all academic members of staff in a department, ***including professors***, attend a departmental meeting called and chaired by an Ag. HoD?
2. Why do ***Ag. HoDs*** presently attend ‘*Dean & HoDs Meeting*’ and other meetings involving HoDs but are ***not*** permitted to attend Senate meetings?
3. There have been ***several Acting Librarians*** in UNILAG, were such not recognized as members of Senate and were they barred from attending Senate meetings until/unless they became substantive?
4. Some Faculties & the SPGS have had ***an Ag. Dean*** (non-professor), were such barred from Senate?
5. While the *Deputy VC, Development Services* was Ag. VC of UNILAG, would she have convened, attended and chaired a Senate meeting in her personal capacity as a professor or as ***the Acting VC***?
6. Is it posited that an ***Ag. VC is ineligible*** to attend a meeting of the Committee of Vice-Chancellors of Nigerian Universities?
7. Did Vice President Yemi Osinbajo ***not*** exercise full presidential powers by signing the 2017 appropriation bill, summoning meetings of the service chiefs, etc. when he served as Ag. President?