SUPPLEMENT NO. 10
DISTRIBUTED AT MEETING
DIII Mgmt Council 1/10

REPORT OF THE NCAA DIVISION III INTERPRETATIONS AND LEGISLATION COMMITTEE

***ACTION ITEMS*.**

1. Legislative Action Items.

a. Approval of Official Interpretation – Advertising Intercollegiate Contests in Conjunction with High School Contests.

(1) Recommendation. Approve the following Official Interpretation:

Advertising of Intercollegiate Contests Held in Conjunction with High School Contests (III). The NCAA Division III Management Council determined that if an institution permits competition between high schools, preparatory schools or two-year colleges to be conducted in conjunction with an intercollegiate event, the institution may include the names of the participating teams in advertising for the event. However, the institution may neither publicize the appearance of any specific prospective student-athlete nor use individual or team photographs of participating prospective student-athletes in any advertising for the event.

[References: NCAA Division III Bylaws 13.10.4 (prospective student-athlete's visit) and 13.11.2.2 (competition in conjunction with a high school, preparatory school or two-year college) and a staff interpretation (5/17/95, Item No. b), which has been archived]

(2) Effective Date. Immediate.

(3) Rationale. This is currently a staff interpretation in Division I and an official interpretation in Division II. It is appropriate to elevate this staff interpretation to an official interpretation in Division III.

(4) Estimated Budget Impact. Minimal since advertisements are already permissible; this simply clarifies what can be included in those advertisements.

(5) Student-Athlete Impact. None.

b. Noncontroversial Legislation – Amateurism and Playing and Practice Seasons – Fundraising for Institutional Activities.

(1) Recommendation. Approve in concept noncontroversial legislation to:

(a) Permit an institution to earmark funds for a particular student-athlete that are considered earned by the student-athlete, but require any unearned funds to be deposited into the general team or institutional fund;

(b) Specify that any funds earmarked for a student-athlete may not exceed the cost of the student-athlete's actual and necessary expenses for the particular athletics event;

(c) Specify that any funds raised by a student-athlete in excess of actual and necessary expenses, even if earned, must be applied to the general team or institutional fund;

(d) Specify that all funds must be given to the institution to administer rather than given directly to the individual student-athlete;

(e) Establish a definition of "earned" for purposes of fundraising activities as any money received as a result of volunteering or working a specific function (e.g., concession stands) provided the rate of pay is commensurate with actual duties performed and is available to all team members; and

(f) Maintain current legislation that permits an institution to require participation in a fundraiser at any time (i.e., during and outside the playing season), but during the playing season prohibits an institution from making a student-athlete's involvement in practice or competition contingent on participation in the fundraiser.

(2) Effective Date. Immediate.

(3) Rationale. Current rules regarding preferential treatment restrict a student-athlete's ability to raise funds based on any number of factors unique to the student-athlete, even those that may not be based on the student-athlete's athletics reputation or skill. For example, a student-athlete who dedicates more hours of time selling concessions at institutional events than his or her teammates is not permitted to receive the benefit of his or her efforts through the monies raised if it is unequal to his or her teammates. Instead, the funds must go directly to the team or institutional fund. This unfairly treats student-athletes who actively participate in fundraisers compared to those that do not. Establishing a definition of what constitutes an "earned" activity will address this imbalance in a more

objective manner and permit institutions to earmark funds under limited conditions with appropriate institutional oversight. Under this recommendation, the restrictions on strict earmarking of donations would continue to apply and such funds would have to be distributed to the general team or institutional fund rather than being assigned directly to an earmarked student-athlete. Accordingly, this restriction maintains the safeguard against legitimate preferential treatment in order to prevent a student-athlete from using his or her athletics reputation or skill as the sole basis for receipt of funds.

Under this recommendation, "earned" would be legislatively defined as "any money received as a result of volunteering or working a specific function." For example, there are institutions that request involvement of certain groups (e.g., teams, clubs, student groups) to staff concession stands, ticket booths or serve as ushers during athletics or other events. An institution would be permitted to earmark funds for a specific student-athlete based on the number of hours he or she worked (or some other objective standard typically used), provided the rate or assignment of pay is commensurate with the work performed and consistent for all involved. Further, the opportunity to be involved must be made available to all members of a particular team. In this case, participation in volunteering or working the function would be considered an "earned" activity.

In its discussion about how to define "earned" for earmarking purposes, the committee agreed that expanding the definition to include sales fundraisers, athletically related fundraisers (e.g., swim-a-thons) or direct appeal requests was not appropriate given the stronger connection to potential preferential treatment issues. In these three scenarios, the possibility exists that a student-athlete may raise more funds based solely on the individual's reputation or skill. The committee distinguished these activities from volunteering or working in that the rate or assignment of pay as an objective factor would protect against the use of athletics reputation or skill as a factor of preferential treatment.

As it relates to required participation in fundraising, pursuant to NCAA Division III Bylaw 17 regulations, athletically related activities are only permissible during an institution's declared playing season. While Bylaw 17.02.1.1 defines athletically related activities broadly in order to limit a student-athlete's time commitments outside of the playing season, there is a specific exception in Bylaw 17.02.1.1.1-(b) that permits a student-athlete to participate in fundraising activities (that do not involve the use of athletics ability such as a "swim-a-thon") outside the declared playing season. However, while participation in these fundraising activities may

occur outside the playing season, a student-athlete's future involvement in practice or competition *may not be* contingent on whether he or she participates in a fundraising activity. Such mandatory participation that is tied to practice or competition causes the activity to become an athletically related activity, thereby negating the exception.

During the playing season, participation in fundraising activities (regardless of whether they involve athletics ability) is permissible. However, different than the analysis for outside the playing season, during the playing season a student-athlete's future involvement in practice or competition *may be* contingent on whether he or she participates in a fundraiser to the same extent that athletics involvement is contingent on any other in-season activity.

As a result of reviewing current legislation, the committee agreed that the legislative analysis regarding required participation in fundraising activities should remain unchanged. Specifically, they agreed that it should continue to be impermissible for an institution to require a student-athlete to participate in fundraising activities outside the playing season as a condition of athletics involvement. The committee noted that it would be permissible, however, for an institution to require a student-athlete to be responsible for the cost of athletics involvement, but the student-athlete would have the discretion as to how he or she chose to pay the cost (e.g., payment by parent/legal guardian, earmarked funds through earned activities). As a result, participation in fundraising activities where a student-athlete could earn funds would exist as an option for a student-athlete rather than a necessity, as the student-athlete would have multiple opportunities to pay the cost of his or her involvement.

Therefore, in maintaining current legislation, it *would not be* permissible for an institution to:

(a) Outside the playing season, require a student-athlete to participate in any fundraising activity (regardless of whether athletics ability is used) in which a student-athlete's future athletics involvement in practice or competition is contingent on participation in the fundraiser; or

(b) At any time, require a student-athlete to participate in a fundraising activity to pay the cost of athletics involvement (e.g., $500 for a spring baseball trip).

However, it *would be* permissible for an institution to:

(c) During the playing season, require a student-athlete to participate in a fundraising activity that involves the use of athletics ability with a consequence related to future athletics involvement attached;

(d) Both during and outside the playing season, require a student-athlete to participate in a fundraising activity that does not involve the use of athletics ability if no consequence is attached; or

(e) At any time, require a student-athlete to be responsible for the cost of athletics involvement (e.g., $500 for a spring baseball trip).

The distinction between items (a) and (c) is that item (a) applies outside the playing season while item (c) applies during the playing season when it is permissible to attach a consequence. Additionally, the distinction between items (a) and (d) is that item (d) does not have a consequence related to athletics involvement attached to the required fundraising, whereas item (a) does. If an institution wanted to tie a consequence to nonparticipation in a fundraiser that does not involve the use of athletics ability, the consequence would need to be unrelated to athletics.

Meanwhile, the distinction between items (b) and (e) is that item (b) would require the cost be paid through fundraising only, while item (e) does not limit the options for payment to fundraising. Under item (e), a student-athlete would have multiple options to pay the cost, but would not be limited to fundraising alone.

Finally, it is important to note the committee reviewed the NCAA Division III Student-Athlete Advisory Committee's opinion in its evaluation of the issue. They noted the Student-Athlete Advisory Committee's support of the current rule that does not permit any form of earmarking. However, the committee believes the current rule is too strict and does not provide institutions any flexibility to manage the increasing reality of fundraising as a necessity in a reasonable manner. The committee noted its recommendation is permissive, not required, which means an institution could still operate and manage its fundraising activities under the current standard if it desired. This recommendation would simply permit institutions another option by which to administer their fundraising activities.

(4) Estimated Budget Impact. May provide some relief to institutional budgets with additional options for student-athletes to raise funds.

(5) Student-Athlete Impact. Benefit for those at institutions who earmark earned funds.

2. Nonlegislative Action Items.

- **None.**

***INFORMATIONAL ITEMS*.**

1. Review of 2010 NCAA Convention Legislative Proposals Question and Answer Guide. The committee approved two editions of the question and answer guide for distribution to the membership during its November and December teleconferences.

2. Approval of Revised Social Networking Education Column. The committee approved a revised educational column on social networking based on the passage of NCAA Division III Proposal No. NC 2010-11 which created a limited exception for correspondence of a general nature issued via text messaging or a social networking site.

Committee Chair: Terry Rupert, Wilmington College (Ohio)
Staff Liaisons: Amy Huchthausen, Academic and Membership Affairs
Jeff Myers, Academic and Membership Affairs