

MINUTES OF THE SPECIAL MEETING

BOARD OF TRUSTEES

THE UNIVERSITY OF TENNESSEE

August 21, 2003
Nashville, Tennessee

A special meeting of the Board of Trustees of The University of Tennessee was held at 11:00 a.m., Central Daylight Time, Thursday, August 21, 2003, in the War Memorial Building Auditorium, Nashville, Tennessee.

I. CALL TO ORDER

Chairman Phil Bredeesen called the meeting to order.

II. ROLL CALL

The Secretary called the roll, and the following were present:

Governor Phil Bredeesen
Mrs. Johnnie D. Amonette
Mrs. Barbara C. Castleman
Mr. F. Michael Combs
Mr. J. Steven Ennis
Commissioner Ken Givens
Mr. James A. Haslam, II
Mr. Waymon L. Hickman
Dr. Rhynette N. Hurd
Mr. Jerry L. Jackson
Mr. D. Lynn Johnson
Mrs. Andrea J. Loughry
Mr. James L. Murphy, III
Mr. John H. Pontius
Mrs. Susan Richardson-Williams
Commissioner Lana C. Seivers
Mr. Don C. Stansberry, Jr.
Mr. William B. Stokely, III
Mr. John C. Thornton
Ms. Carol L. White

The Secretary announced the presence of a quorum.

III. RATIFICATION OF CHAIRMAN=S ACCEPTANCE OF DR. JOHN W. SHUMAKER=S RESIGNATION

Governor Bredeesen said the meeting largely concerns the events surrounding Dr. John Shumaker=s resignation. He noted that he had accepted Dr. Shumaker=s unconditional resignation (Exhibit 1) and waived the six months notice requirement on behalf of the Board of Trustees.

Mr. D. Lynn Johnson moved approval of the Resolution (Exhibit 2) ratifying the Chairman=s acceptance of Dr. Shumaker=s resignation. Mr. Jerry L. Jackson seconded, and the motion carried unanimously.

Mrs. Susan Richardson-Williams moved that the Review of the Auditor=s Report on Expenditures by the Office of the President be moved forward on the Order of Business to be considered prior to the item on the Severance and Release Proposal. Mr. D. Lynn Johnson seconded, and the motion carried unanimously.

IV. REVIEW OF THE AUDITOR=S REPORT ON EXPENDITURES BY THE OFFICE OF THE PRESIDENT

Governor Bredesen asked Mr. Mark Paganelli, the Executive Director of Audit and Consulting Services, to present the audit on the expenditure of funds by the office of President John Shumaker (Exhibit 3).

Through a power point presentation, Mr. Paganelli reviewed in detail the findings on the audit and the suggested recommendations for change that might prevent similar problems in the future (Exhibit 4).

Mrs. Williams said the audit report shows the expenditure of almost \$500,000 in conjunction with renovations of the president=s residence. She asked for an explanation of the funding sources for the expenditures.

Mr. Paganelli said most of the money for the renovations came from unrestricted gift money.

Mr. Murphy asked if there was budget prepared for renovations to the home.

Mr. Paganelli said there was no budget because the extent of the renovations and total purchases for the home were indefinite and were modified regularly. He said such a method of operation was out of the ordinary.

Mrs. Andrea Loughry said she was of the understanding that the first floor of the residence is considered a public area to be furnished by the University while the other floors are considered private areas to be furnished by the president. She asked if there is a written policy to that effect.

Mr. Paganelli said there is no written policy, but that was past practice. He said a policy is being recommended to govern not only the president=s house but other University-owned homes well.

Mr. Combs asked for a clarification of the unaccountable expense account the president receives.

Mr. Paganelli said the \$20,000 per year the president receives as an unaccountable expense allowance is money he receives with his paycheck for which he does not have to supply receipts. He said the understanding is that the University president will occasionally incur expenses that are not reimbursable under the University=s policy, and this account is set up to provide for those situations.

In response to questions about the president=s use of an American Express travel card issued through the University and the University=s payment of those charges on the front

end constituting an exception to the University policy, Mr. Paganelli said the policy gives the president the authority to make exceptions to the travel policy when necessary. He said he believes the intent of the exception is to allow the president to make exceptions to the policy for other senior level administrators not to allow him to make exceptions for himself.

Mrs. Williams asked how Trustees could have known that the president was making exceptions to the policy for himself.

Mr. Paganelli said there is no direct avenue for senior level administrators to communicate with the Board outside the public setting. One of the recommendations presented in the audit report is that some direct method of communication between senior-level officers of the University and Trustees be established.

Mr. Stansberry asked if there is an internal auditor who reports directly to the Trustees rather than to the chief executive officer and whether compliance with the University's policies would have prevented the problems that were identified in the audit report.

Mr. Paganelli said there has never been a direct line to the Trustees, but previously the office of audit and management services reported to the chief financial officer of the University until a change was made during Dr. Wade Gilley's tenure as president directing internal audit to report to the president. Mr. Paganelli said a recommendation resulting from the audit report is that the position of chief financial officer of the University be reinstated.

Mr. Paganelli said for the most part the recommendations for strengthening policies pertain to changes suggested for improving the University's internal administrative policies. He said some recommendations are being made about the reporting of certain items to the Board, such as the request for endorsement of international initiatives without adequate financial information being provided.

Following discussion from Board members about the desirability of having an internal audit committee that would report directly to the Board of Trustees, Mr. Paganelli said an audit committee would certainly provide a helpful avenue of reporting. In the corporate world, such a method allows for the flow of confidential information, but is more difficult in university setting because the committee's reports would immediately be public information.

Trustees agreed that even though an audit committee's findings would be public, its existence as well as established, well-defined, routine audits would encourage careful consideration of questionable decisions on the front end.

In response to questions about the audit of contracts, Mr. Paganelli said there is no routine schedule for the auditing of contracts. He said the list of no-bid contracts is large, and those contracts are routed to internal audit after the fact.

Mr. Paganelli said another recommendation resulting from the audit is the advisability of creating a budget for presidential entertainment in order to ascertain the appropriate amounts to be spent for various functions prior to the expenditure of funds.

Mrs. Susan Williams moved approval of the audit report. Mr. James A. Haslam, II, seconded, and the motion carried unanimously.

V. APPOINTMENT OF AN AD HOC COMMITTEE ON GOVERNANCE

Governor Bredesen appointed an ad hoc committee of the Board to work through items

such as changes in policy, changes in the Bylaws and changes in reporting procedures. He asked Trustees Steve Ennis, John Pontius and Jim Murphy to serve on a committee chaired by Rhynette Hurd. Governor Bredesen also appointed two additional members from outside the University because of their special expertise. He appointed Ms. Linda Rebrovick, with BearingPoint in Nashville and a national Board member of KPMG, and Mr. Larry Martin with First Tennessee Bank in Knoxville. Governor Bredesen said the University wants to make its search for a new president as competitive as possible without putting into place hundreds of rules. He asked that the committee be prepared to present recommendations at the fall Board of Trustees meeting in October.

VI. SEVERANCE AND RELEASE PROPOSAL

Governor Bredesen said he asked Dr. John Shumaker and Vice Chairman Clayton McWhorter to join him in Nashville to talk through the issues, which at that point had spun out of control. Governor Bredesen noted that two things resulted from the discussion: an unconditional resignation from Dr. Shumaker and an agreement that the Governor and the Vice Chairman would recommend to the Board a severance package deemed appropriate under the circumstances. The Governor noted that issues were presented by Dr. Shumaker's employment contract, and that he and the Vice Chairman felt that this matter needed to be brought to an end and did not need to go forward in court. He noted that the proposed payment represents a very small severance in comparison to what might be paid in legal fees and what might likely be paid in a negotiated settlement. Governor Bredesen firmly recommended the Resolution approving the severance and release proposal (Exhibit 5) to bring to an end a very difficult period in the life of the University.

Mr. Waymon L. Hickman said that Dr. Shumaker's unconditional resignation was a key, noting that he could have demanded a lot that would have led to an adversarial proceeding. Mr. Hickman moved adoption of the Resolution approving the severance and release proposal. Dr. Rhynette Hurd seconded.

Mr. Stansberry said he thought the Board deferred discussion of the bonus for Dr. Shumaker rather than deferring payment. Ms. Williams and Mr. Johnson said they also thought the Board deferred discussion of the bonus. Mr. Pontius said he thought the Board deferred payment. Governor Bredesen asked what was reflected in the minutes. Ms. Mizell noted that the minutes had not been prepared, but her recollection was that Dr. Shumaker asked that there be deferral of any consideration of payment: either increasing his base salary or a bonus. Commissioner Givens said that was his recollection as well. Ms. Mizell said there was general discussion of Dr. Shumaker's performance and a general indication on the part of the Board that he had performed well, but she did not believe there was any specific action taken by the Board to conclude that he had earned the entire 27 percent bonus.

Mr. Jackson noted that it might be easy to take the position that Dr. Shumaker is not owed anything, but the Governor's negotiation of this resolution under difficult circumstances should be honored and approved. Mr. Hickman agreed, noting that Dr. Shumaker was without counsel. Governor Bredesen agreed that the amount likely would have been much higher if Dr. Shumaker had been represented by counsel. He also noted that the Vice Chairman's recollection concerning the bonus was that, in the Board's mind, Dr. Shumaker had earned the bonus. The Governor noted that even if that was an incorrect recollection, the severance proposal should not be reviewed as individual items that would stand on their own, but as a package that made sense. Mr. Johnson agreed that the severance should be approved as a package and not on the basis of any individual component.

Commission Givens asked if Dr. Shumaker was under investigation for any criminal activity. Governor Bredesen said that his reading of the audit report and conversations he has had do not lead him to believe that anything rose to that level. The Governor noted that he could not say definitively that no misdemeanor was involved, but it appeared to be more a case of poor judgment.

Mr. Pontius asked whether Mr. Paganelli's work should be finalized and any new amounts due from Dr. Shumaker be deducted from the severance. The Governor noted that Dr. Shumaker had actually over-reimbursed the University, and Mr. Paganelli noted that the amount of over-reimbursement was \$2,800.

Mr. Thornton asked Ms. Mizell if Dr. Shumaker could have been fired for cause. Ms. Mizell replied that in her opinion there were grounds to consider termination for cause. The University would be required to give Dr. Shumaker notice of the grounds and at least two weeks to prepare for a hearing before the Board, at which the Board would decide whether to terminate him for cause. Mr. Haslam asked how long the process would have gone on. Ms. Mizell responded that after termination, Dr. Shumaker would have been entitled to a full due process hearing, and he would have appeals that could take from a year to eighteen months.

Mr. Murphy noted that based on his experience, that process is exactly what the University would have been involved with if this matter were not resolved. He said that a lot of lawyer's time would have been spent, and this matter would have been back in the press with every new court action.

Mr. Stansberry said he had been vocal on this issue, but he did agree with what Mr. Murphy said. He noted that those in positions like the Governor and the Vice Chairman have to be able to do what needs to be done at a moment when it needs to be done. Mr. Stansberry said if he had the choice of firing Dr. Shumaker for cause or paying this money today, he would pay the money.

The motion to adopt the Resolution approving the severance and release proposal was carried unanimously.

VII. REPORT OF THE EXECUTIVE COMMITTEE ON APPOINTMENT OF AN INTERIM PRESIDENT

Mrs. Johnnie Amonette, Chair of the Executive Committee, called the Board's attention to the proposed criteria for the selection of an interim president (Exhibit 6.) She moved approval of the Resolution (Exhibit 7) appointing Dr. Joseph E. Johnson to serve as interim president effective August 21, 2003. Mr. James A. Haslam, II, second, and the motion carried unanimously.

The Board welcomed Dr. Johnson to his new position and expressed their unequivocal support of his appointment.

Dr. Johnson said he has great affection for The University of Tennessee and if the Board of Trustees believe that through his service as interim president the University will be able to regain its credibility and move ahead with its primary focus of educating students, he will be glad to offer his services.

VIII. COMPENSATION FOR THE INTERIM PRESIDENT

Mr. J. Steven Ennis, Chair of the Finance Committee, moved approval of the Resolution (Exhibit 8) setting forth the compensation package for Dr. Joseph E. Johnson during his service as Interim President of The University of Tennessee.

Mr. D. Lynn Johnson expressed his support for the compensation package for Dr. Johnson but noted his concern about the process of determining presidential compensation. He said the process should not automatically start with what the previous president made but should take into consideration the market and other relevant factors. Commissioner Givens concurred. Mrs. Williams asked if any compensation would be paid by the UT Foundation, and Mr. Ennis responded that none would.

Mr. James A. Haslam, II, seconded the motion, and it carried unanimously.

IX. RESOLUTION AMENDING AUTHORIZATION FOR CHECK SIGNATURES

Mr. James L. Murphy, III, moved approval of the Resolution amending authorization for signatures (Exhibit 9). Mr. Jerry L. Jackson seconded, and the motion carried unanimously.

X. PRESIDENTIAL SELECTION PROCESS

Governor Bredesen asked for Trustee input on what might be done differently in the next presidential selection process.

Mr. D. Lynn Johnson suggested that the process be more open than the last, particularly since the reputations of the University and the Board are damaged.

Dr. Hurd agreed with the desire for an open process, but said having served on the earlier search committee and being implored by candidates not to disclose their candidacy because of the impact on their current positions, she stressed the importance of identifying the best person for the job without jeopardizing the positions of candidates who are not chosen for the position.

Mr. Johnson said part of the dilemma in previous searches has been in stipulating the intention to seek candidates who are sitting presidents. He said a sitting president in good standing will not likely want his or her name public. Mr. Johnson said the Board might want to rethink that standard, which might allow for more openness. He said the hiring of a consultant might be another issue to address.

Mrs. Castleman said in looking for a new president, Trustees should first and foremost seek someone who has strong integrity.

Mr. Combs said there is a clear message coming from faculty on all the campuses that they need to be directly involved in the search--not on the periphery, not on advisory committees. He said faculty are very anxious to provide whatever support that might be appropriate.

Ms. White said she has received input from students who are concerned about the selection and who have expressed the desire for direct involvement on the search committee.

Dr. Hurd said she endorses faculty involvement since faculty are employees of the state, but cautioned that direct involvement of student representatives might make them open to criticism and liability. She said issues could arise with student representation since they are

neither members of the governing body nor state employees. Dr. Hurd said while she endorses full participation by students, she is hesitant to have students other than the student Trustee serving on the search committee.

Ms. White said students are very frustrated with recent presidential selection processes, and some of that tension might be relieved by involving them more fully in the search process.

Mrs. Williams agreed with Dr. Hurd that there should be student input in the process without their service on the search committee.

Dr. Hurd said involvement is very time consuming which might prove a burden on a student who was placed on the search committee.

Mr. Thornton reminded the Board that both the student and faculty Trustee served on the presidential search committee during the previous selection process.

Mr. Stansberry said the contract for a new president should include a very clear definition of cause that includes among other things activities in violation of policy and embarrassing to the University. He said an individual who wants to become President of The University of Tennessee must be willing to follow all policies and practices that are inherent to the position.

Mrs. Loughry said the Association of Governing Boards has expertise that could be utilized during the search process in lieu of a search consultant.

Dr. Hurd stressed the importance of mentoring after a president is selected. She said policies should be clearly defined and explained.

XI. PROPOSED BYLAW AMENDMENT CONCERNING COMPOSITION OF A PRESIDENTIAL SEARCH COMMITTEE

Governor Bredesen said the Resolution (Exhibit 10) for a Bylaw change would formally permit members of the faculty to participate in the search process as full members of the Search Committee.

Mr. James A. Haslam, II, moved approval. Dr. Rhynette Hurd seconded, and the motion carried unanimously.

XII. ADJOURNMENT

Mrs. Susan Williams made the motion to adjourn. Mr. James A. Haslam, II, seconded, and the motion carried unanimously.

Respectfully submitted,

Catherine S. Mizell
Vice President, General Counsel and Secretary

