

MINUTES OF THE SPECIAL MEETING

BOARD OF TRUSTEES

THE UNIVERSITY OF TENNESSEE

August 28, 1998
Knoxville, Tennessee

The Board of Trustees of The University of Tennessee met in special session at 10:00 a.m. Eastern Daylight Time, Friday, August 28, 1998 by telephone conference call originating from the Office of the General Counsel and Secretary, 721 Andy Holt Tower, Knoxville campus.

The following members were present:

Mrs. Johnnie Amonette
Mrs. Barbara Castleman
Mr. Roger Dickson
Mr. J. Steven Ennis
Mr. Amon Carter Evans
Ms. Emily Graham
Mr. James A. Haslam, II
Mr. Jerry Jackson
Dr. Joseph E. Johnson
Mr. Tom Kerney
Mr. Clayton McWhorter
Mr. William B. Sansom
Dr. Leonard Share
Mrs. Susan R. Williams

The Secretary announced a quorum was present.

Also present were Deputy Attorney General Kate Eyler; George E. Barrett, Esq.; Secretary and General Counsel Beauchamp E. Brogan; Deputy General Counsel Catherine Mizell; Director James W. Bennett; Assistant Secretary Linda Logan and members of the news media.

Mr. William B. Sansom called the meeting to order. Mr. Sansom said the Board had only one item of business to consider at the meeting. Following input from Board members following the last Board meeting, Mr. Sansom said he felt the addition of Mrs. Lucy Shaw to the Presidential Search Committee was the right thing to do. He said Mrs. Shaw was unable to participate in the meeting but has agreed to serve.

Mr. Sansom made the following motion:

That Mrs. Lucy Shaw be added to the Presidential Search Committee.
The motion was seconded by Mr. Amon Carter Evans and unanimously carried.

Mr. Sansom asked the members of the Search Committee to stay on the phone after the conclusion of business in order to try and determine a time and place for its first meeting. He said the Search Committee's first order of business would be to select a search firm. The Search Committee will also consider, and hopefully act upon, the composition of the advisory committee. The advisory committee will be made up of individuals from each of the campuses, alumni, faculty, students and a cross section of individuals to help in the selection process. The first assignment for the search firm and the advisory committee is to prepare a job description.

Mr. Sansom recognized George E. Barrett, Esq. for his comments.

Comments by George E. Barrett, Esq. Mr. Barrett thanked Mr. Sansom for allowing him to address the Board regarding its policy. He said the starting point for any discussion with the University is the Geier decision and the settlement entered into in 1984. He read from the introduction of the Settlement Agreement as follows:

It is the intention of the parties that the dismantling of the dual system shall be accomplished in such a way as to increase access for black students and increase the presence of black faculty and administrators statewide and at the historically white institutions.

He referred to Section III, B. which states:

Within 180 days, SBR and UT shall develop a plan, including financial and other incentives, to attract white faculty and administrators to TSU and black faculty and administrators to predominantly white institutions.

Mr. Barrett said that is recognized in the University's Charter and Bylaws in Article IV, Section 1.(a) in directing the formation of a Search Committee in the event of a vacancy of the president:

. . . the Vice Chairman, shall recommend to the Board the appointment of a search committee composed of appointed members of the Board of Trustees.

He said Article IV 1.(a) further states:

The search committee may adopt such rules and procedures as it deems necessary in performing its duties and shall comply with applicable affirmative action and desegregation requirements.

He referred the Board to its statutory duty as explained in T.C.A. Code 10-7-611 which is entitled "Proportionate representation of minority and nonminority groups on appointed bodies".

(a) It is the intent of the general assembly to recognize the importance of balance in the appointment of minority and non-minority persons to membership on statutorily created decision-making and regulatory boards, commissions, councils, and committees, and to promote that balance through the provisions of this section. Furthermore, the general assembly recognizes that statutorily created decision-making and regulatory boards, commissions, councils, and committees play a vital role in shaping public policy for Tennessee, and the selection of well-qualified candidates is the paramount obligation of the appointing authority.

(b) In appointing members to any statutorily created decision-making or regulatory board, commission, council, or committee of the state, the appointing authority should make a conscientious effort to select, from among the most qualified persons, those persons whose appointment would ensure that the membership of the board, commission, council, or committee accurately reflects the proportion that each group of minority persons represents in the population of the state as a whole . . . as determined pursuant to the most recent federal decennial census. . . .

Mr. Barrett said he laid out for the Board the legal, statutory and moral basis that encumbers them in making the appointments. He said the Board cannot rely upon statutes referencing membership on the Board of Trustees of The University of Tennessee. The governing authority for Board of Trustees of The University of Tennessee is found in statutes passed between 1932 and 1971. In 1997 the Legislature passed the statute previously cited. It is a rule of statutory construction that if statutes are conflicting and cannot be reconciled, the Legislative intent is ascertained by the most expressed statute which is the one previously cited. Mr. Barrett said the Board cannot escape following that statutory mandate by relying upon previous statutes in regards to governing of The University of Tennessee. Since UT is the flagship institution of public higher education, it must lead by example as the flagship school. Mr. Barrett said the present Search Committee is hardly the example of that leadership obligation. It is the vestige of the way things were done in the past. It is not representative of the manner in which things should be done today both as a matter of law and as a matter of right which the Board undertook by entering into the settlement in the Geier case. The present Committee, with the exception of today's action, is all white -- two white males from Knoxville, one white male and one white female from Memphis, and one white male from Tullahoma, Chattanooga and Nashville. This can be cured in one of two ways. White males in Knoxville and Memphis can step aside for females or the committee could be enlarged so half of it could be white and a proportional number of minority members, even if it is necessary to go outside the Board for members. Mr. Barrett said this would offer an opportunity for representation from the Martin campus which is not presently represented on the Board. Mr. Barrett asked the Board to remember that forewarned is forearmed. He said he is confident now that the Board has been explained the law and obligations under the statute and the Geier settlement that as conscientious citizens of the State each will be true to the Oath of Office and follow the law in the Geier dictate and duty to represent all the people of Tennessee.

Mr. Sansom thanked Mr. Barrett for his comments which he said are important. He said an advisory committee has to still be put together and Mr. Barrett's comments will be considered in making those appointments.

Mr. Brogan said he talked with Mr. Barrett the previous day and explained why it is his opinion that the Search Committee is legally constituted. Only the Board of Trustees can appoint the Search Committee. The Board of Trustees is the governing body of The University of Tennessee. Only the Board of Trustees can elect the president. The make up of the Board of Trustees is provided by law. The appointing authority of the Board of Trustees is the Governor of the State of Tennessee. He appointed Lucy Shaw to the Board who is the only minority member on the Board. If the Governor appointed the entire Board to be the Search Committee, according to Mr. Barrett it would not be properly constituted. Mr. Brogan said he disagrees with Mr. Barrett's interpretation of the law and so advised him. He asked for comments from Deputy Attorney General Kate Eyler.

Ms. Eyler confirmed that the Attorney General's Office does agree with Mr. Brogan about the legal position.

There being no further business to come before the Board, the meeting was adjourned.



Beauchamp E. Brogan
Secretary