

Meeting No. 1,102

THE MINUTES OF THE BOARD OF REGENTS
OF
THE UNIVERSITY OF TEXAS SYSTEM

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March 20, 2013

Austin, Texas

MEETING NO. 1,102

WEDNESDAY, MARCH 20, 2013.--The members of the Board of Regents of The University of Texas System convened this special called meeting at 9:07 a.m. on Wednesday, March 20, 2013, in the Board Room on the Ninth Floor, Ashbel Smith Hall, 201 West Seventh Street, Austin, Texas, with the following participation:

ATTENDANCE.--

Present

Vice Chairman Foster
Vice Chairman Hicks
Vice Chairman Dannenbaum
Regent Cranberg
Regent Hall
Regent Pejovich
Regent Stillwell

Absent

Chairman Powell
Regent Gary
Regent Purgason,
Student Regent, nonvoting

In accordance with a notice being duly posted with the Secretary of State and there being a quorum present, and in the absence of Chairman Powell, Vice Chairman Foster called the meeting to order.

REPORT AND RECOMMENDATIONS FROM THE AUDIT, COMPLIANCE, AND MANAGEMENT REVIEW COMMITTEE, INCLUDING THE FOLLOWING AGENDA ITEM.-- Vice Chairman Foster called on Audit, Compliance, and Management Review (ACMR) Committee Chairman Pejovich for a report and recommendations from the special called ACMR Committee meeting that was held prior to this Board meeting. (Also see ACMR Committee Meeting Minutes.)

U. T. System: Action regarding possible additional review concerning the relationship between the U. T. Austin School of Law and the Law School Foundation and the financial management and use by U. T. Austin of funds to support the School of Law*

Committee Chairman Pejovich stated that the Audit, Compliance, and Management Review Committee presented one action item for approval. She said that earlier today (March 20, 2013), the Committee approved a motion to recommend that the Board of Regents set aside the previous report related to The University of Texas at Austin School of Law and the Law School Foundation (LSF), determining that the report did not fully address the issues of concern to the Committee.

Committee Chairman Pejovich said the Committee also approved a motion to recommend the Chancellor be directed to work with the Office of General Counsel and the Office of the Board of Regents to take all necessary steps to secure the service of appropriate and experienced experts to conduct a thorough external investigation of the use and management by U. T. Austin of funds provided for the support of the School of Law, with the understanding that the external investigation will also supplement and assist in the ongoing audit work of The University of Texas System Audit Office.

She said the Committee recommended approval of these actions by the Board.

Vice Chairman Hicks asked about the last time an outside investigation had been done for the U. T. System, thinking it was last year, and he specifically asked about the cost and how much was recovered. Chancellor Cigarroa noted an outside investigation in Dallas that cost approximately \$530,000 and recalled the restitution from former President Wildenthal to The University of Texas Southwestern Medical Center was, he believed, around \$16,000-\$20,000.

Vice Chairman Hicks asked Chancellor Cigarroa if he supported the recommendation, and Chancellor Cigarroa replied that the role of the Chancellor and the role of management is to answer questions from Regents and respond to significant concerns from the Board. On the matter of the "Burgdorf report," certain questions arose as concerns that triggered the Audit, Compliance, and Management Review Committee to move forward to have Chief Audit Executive Peppers conduct an audit of how funds flow from the LSF to the Law School, how those funds were accounted for, how those funds were expended, and the oversight of those funds. He noted that audit is still in process.

On December 9, 2011, Chancellor Cigarroa instructed Vice Chancellor and General Counsel Burgdorf to review the relationship between the U. T. Austin School of Law and the Law School Foundation. On October 15, 2012, Mr. Burgdorf's report titled *Report and Recommendations on the Relationship between The University of Texas at Austin School of Law and The University of Texas Law School Foundation* (the "Burgdorf report") and a letter from the Office of the Attorney General of Texas dated November 2, 2012, were delivered to members of the Board.

Dr. Cigarroa added that if that audit were to identify red flags, that would trigger a discussion of whether an external review is needed or whether there is new information or subsequent questions that the scope of the audit does not cover. One would have to consider if an outside review is needed, and that is the subject of this discussion.

Vice Chairman Hicks noted that members of the Board had an opportunity earlier in the Audit, Compliance, and Management Review Committee meeting to speak to President Powers and Provost Leslie, and he asked Chancellor Cigarroa if he had any hint of malfeasance or impropriety. Chancellor Cigarroa responded that he had a hint of malfeasance, but that in the discussions with Provost Leslie, he was comforted that, though the lack of transparency about how funds flowed from the LSF to faculty members in the Law School was structurally bypassing the Provost's Office, and, therefore, the Provost was at a disadvantage of being able to completely understand faculty compensation, the process weakness has been corrected.

Vice Chairman Hicks said he is not supportive of this proposition. He noted that President Powers alerted officials of the problem, the problem has been investigated, and the actions to fix it have been blessed by the Attorney General. He said he does not support spending \$500,000 of taxpayers' money, and he expressed a degree of frustration over the disproportionate amount of time and attention being directed by certain Board members at U. T. Austin. He said he is not sure this is the best way to serve the Board or the State, and, using a General Motors analogy, he said it is as if attention was only focused on the truck division. Vice Chairman Hicks said there is no doubt in his mind that the intent is to lay some blame at the feet of President Powers. He added that he does not trust the intention of where this process is going. Vice Chairman Hicks remarked that, in past years, he has been proud to be a Regent, but admitted he has been somewhat ashamed at times during the past two years to be a U. T. Regent. He expressed the way internal people are being treated is not supportive of the way that he thinks a board treats the management and leadership of the organization.

Vice Chairman Dannenbaum expressed concern about two parts of the proposed motion, and he recommended amending the motion or fine-tuning the process accordingly if the decision is to go forward with an external investigation. In reference to "fact matters which may affect legal opinions regarding the independent status of the Law School Foundation," he recommended that a definitive determination is needed regarding the independence of the LSF. If the Foundation is determined to be independent, the issue of "use and management by U. T. Austin of funds provided for the support of the School of Law" would not apply.

Speaking about the need for the U. T. System institutions to be competitive and, keeping in mind that taxpayer funds must be totally transparent, Vice Chairman Dannenbaum urged caution on the part of the Board in setting precedent that would inhibit the ability to seek donor funds for grants, chairs, or supplements to retain the best faculty at all the institutions.

Regent Stillwell said he also has concerns and opposed continuing this investigation, saying it has run its useful course. He summarized past events:

- The "Burgdorf report" was well done in his opinion; Mr. Kenneth Breen, an experienced outside lawyer and investigator, participated in the report. He understands that part of the action of the Audit, Compliance, and Management Review Committee is to reject that report based on information the Committee has. Based on information he has, he said he does not agree with the conclusions reached by the Committee.
- At the conclusion of the "Burgdorf report," the need for another external review was questioned.
- The matter was reviewed by the Attorney General. Vice Chancellor and General Counsel Burgdorf recommended in his report that the forgivable loan program should be discontinued or wound down, and the Attorney General agreed, but recommended it be discontinued now. He said he believes the Board agreed with the recommendation, and the program has been discontinued and will be replaced by more traditional deferred compensation arrangements.
- Following that, the Board formed the Advisory Task Force on Best Practices Regarding University Affiliated Foundation Relationships, of which he is a member, to review all of the affiliated foundations in the U. T. System, including the LSF, with a view toward what is desirable, feasible, and reasonable to develop best practices with respect to affiliated foundations. The work of that Task Force is ongoing.
- In addition, he said the Audit, Compliance, and Management Review Committee has directed the internal auditors to review the flow and application of funds in the context of the LSF and U. T. Austin.

In summary, Regent Stillwell said a sufficient amount of time, money, and attention has already been invested in this matter, and he does not think there is a need for an external review. He said there is nothing about the substance, format, scope, or presentation of the "Burgdorf report" that needs to be rejected or, yet again, be reviewed. He suggested the Board declare the historical part of the matter over and move forward in ways that have been already recommended, have been or are being implemented, and that might be supplemented again by the results of the Advisory Task Force on Best Practices Regarding University Affiliated Foundation Relationships. He recommended a roll call vote on the motion.

Regent Cranberg said he hoped that a fully correct, more comprehensive, informed report can replace the "Burgdorf report." While he hopes the cost of such a report will be less than what was presented, he spoke about the value of such a report, saying there is no price that can be put on the integrity or trust that is associated with the governance mechanisms that the Board is entrusted with donor and taxpayer monies. He said he believes the "Burgdorf report" has legitimate concerns and questions but is not a full disclosure of the

facts that are known that are material to understand what happened that triggered an admitted loss of governance process, not just with Dean Sager's \$500,000 forgivable loan, but with other compensation and expense reimbursement items that affected the Law School's Foundation funds. He reiterated the importance that the report be a full and accurate disclosure of the facts and circumstances that occurred. Regent Cranberg agreed with Vice Chairman Hicks that governance lapses have probably been fixed, but his confidence that the facts are full and complete depends on having a record of what actually occurred to stand behind. He said this would be the first external review, and the fact questions that have been posed for legal opinions in-house and by the Attorney General should be ones that one can stand behind as the full and complete description of the facts.

Noting that he is reviewing documents he requested from U. T. Austin, Regent Hall commented on the sum total of information that is available to help in the decision. He said that after reading six open records requests to U. T. Austin, he and General Counsel Frederick were still receiving documents last night (March 19, 2013) that were responsive, but had not been included in the files. He said it is not appropriate to dismiss the matter at hand. He spoke about the greatness of U. T. Austin, and said that his role as Regent is to make the U. T. System institutions better and to help them.

Vice Chairman Foster said this effort is not a criticism or indictment, but a look at the propriety and the governance of the Foundation and its relationship with U. T. Austin. He agreed with Vice Chairman Dannenbaum that a determination is needed concerning the independence of the Foundation and relationship to the Law School. He spoke about the need for an independent investigation out of concern for the fiduciary duty of a board member of a public institution.

For ease of reference, the motion approved by the Audit, Compliance, and Management Review Committee is set forth below.

Motion by Vice Chairman Foster

I move that the Committee recommend that the Board set aside the previous report on the issues of the relationship between The University of Texas and the Law School Foundation, and of governance issues within the University. Among the issues that concern the Board are:

- Fact matters which may affect legal opinions regarding the independent status of the Law School Foundation, including that of the Attorney General.
- Fact discrepancies regarding transparency and disclosure of or consent to material compensation matters that have affected the confidence of the Law School faculty, the Board, and the public at various times.

I further move that we recommend that the Board and Chancellor Cigarroa work with the Office of General Counsel and the Office of the Board of Regents to take all necessary steps to secure the services of appropriate and experienced experts

to conduct a thorough external investigation of the use and management by U. T. Austin of funds provided for the support of the Law School, including issues related to compliance with approval and reporting of employee compensation, and with the understanding that the external investigation will also supplement and assist in the ongoing audit work of the U. T. System Audit Office.

Finally, I move that we recommend the Board at the same time express its great gratitude to the many generous benefactors of the Law School. It is with this sense of gratitude and duty that the Board will fully discharge its lawful responsibilities to safeguard the use of these funds intended for maximum benefit of the University.

Regent Hall seconded the motion.

Upon recommendation of Regent Stillwell earlier and direction of Vice Chairman Foster, General Counsel Frederick called the roll call vote. Members of the Board responded as follows:

Vice Chairman Hicks - nay
Vice Chairman Dannenbaum - nay
Regent Cranberg - aye
Regent Hall - aye
Regent Pejovich - aye
Regent Stillwell - nay

Vice Chairman Foster broke the tie by voting affirmatively.

Secretary's Note: See Minutes of the U. T. System Board of Regents held on April 11, 2013, modifying this recommendation.

EXECUTIVE SESSION NOT HELD.--The Board did not recess to Executive Session. For the record, the following captions had been posted with the Secretary of State.

- 1a. U. T. System: Discussion regarding assignment and duties of individual personnel involved in issues concerning the relationship between the U. T. Austin School of Law and the Law School Foundation and the financial management and use by U. T. Austin of funds to support the School of Law

- 2a. U. T. System Board of Regents: Discussion with Counsel on pending legal issues

- 2b. U. T. System: Discussion and appropriate action related to legal issues concerning the relationship between the School of Law and the Law School Foundation and the financial management and use by U. T. Austin of funds to support the School of Law

- 2c. U. T. System Board of Regents: Discussion and appropriate action concerning legal issues related to Board duties concerning review of issues related to transparency of employees' compensation and benefits

ADJOURNMENT.--At 12:35 p.m., there being no further business, the meeting was adjourned.

/s/ Carol A. Felkel
Secretary to the Board of Regents

March 27, 2013
(Secretary's Note on Page 6 added April 11, 2013)