

Meeting No. 957

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

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September 21, 2002

Austin, Texas

MEETING NO. 957

SATURDAY, SEPTEMBER 21, 2002.--The members of the Board of Regents of The University of Texas System convened at 8:37 a.m. on Saturday, September 21, 2002, on the Ninth Floor, Ashbel Smith Hall, 201 West Seventh Street, Austin, Texas, with the following in attendance:

ATTENDANCE.--

Present
Chairman Miller, presiding
Vice-Chairman Clements
Vice-Chairman Hunt
Vice-Chairman Riter
Regent Craven
Regent Estrada
Regent Krier
Regent Sanchez*

Absent
Regent Oxford

Counsel and Secretary Frederick

In accordance with a notice being duly posted with the Secretary of State and there being a quorum present, Chairman Miller called the meeting to order. He announced that the purpose of this special called meeting was to consider matters of sufficient urgency to require immediate consideration by the Board prior to the next regularly scheduled meeting on November 12-13, 2002.

RECESS TO EXECUTIVE SESSION.--At 8:37 a.m., Chairman Miller announced that the Board would recess to convene in Executive Session pursuant to Texas Government Code Sections 551.071 and 551.074 to consider those matters listed on the Executive Session agenda including the interview and discussion of credentials for the following finalist candidates for the position of President of The University of Texas Health Center at Tyler:

Kirk Aquilla Calhoun, M.D.

Charles Stiernberg, M.D.

*Regent Sanchez was present for a portion of the Executive Session but was not present to vote.

RECONVENE.--At 12:15 p.m., the Board reconvened in open session.

EXECUTIVE SESSION OF THE BOARD OF REGENTS

Chairman Miller reported that the Board met in Executive Session to discuss matters in accordance with Texas Government Code Sections 551.071 and 551.074. In response to an inquiry from Chairman Miller regarding the wishes of the Board, the following action was taken. No other item was considered in Executive Session.

U. T. Health Center - Tyler: Appointment of Kirk Aquilla Calhoun, M.D., as President and Authorization to Discharge the Advisory Committee for Selection of a President

Upon motion of Vice-Chairman Riter, the Board appointed Kirk Aquilla Calhoun, M.D., currently Senior Vice President and Medical Director at Parkland Memorial Hospital at The University of Texas Southwestern Medical School at Dallas, as President of The University of Texas Health Center at Tyler effective at a date and compensation, commensurate with the responsibilities of the office, to be negotiated by Acting Executive Vice Chancellor Guckian, approved by Chancellor Yudof, and submitted to the Board via the usual budgetary procedures.

Vice-Chairman Riter further moved that the Board find, as required by State law, that this appointment is in the best interest of U. T. Health Center - Tyler.

The motions were duly seconded and carried unanimously. President-Designate Calhoun was introduced and welcomed.

The Advisory Committee for the Selection of a President at U. T. Health Center - Tyler was discharged with sincere appreciation for the input it provided to this search process.

SPECIAL ITEMS

1. U. T. Health Center - Tyler: Authorization to Convey Approximately 20 Acres of Land in Smith County, Texas, to the Veterans Land Board of the State of Texas for Possible Veterans Home; Finding of Public Purpose; and Authorization for the Executive Vice Chancellor for Business Affairs or His Delegate to Execute All Documents Related Thereto

Upon motion by Vice-Chairman Riter, duly seconded, the Board:

- a. On behalf of The University of Texas Health Center at Tyler, authorized conveyance of approximately 20 acres of land in Smith County, Texas, to the Veterans Land Board (VLB) of the State of Texas should Smith County be selected to be the location of a new State Veterans Home
- b. Made a determination that the donation of the land will serve a public purpose appropriate to the function of U. T. Health Center - Tyler and that the consideration to The University of Texas System and to U. T. Health Center - Tyler from the Veterans Home will be adequate
- c. Authorized the Executive Vice Chancellor for Business Affairs or his delegate to take all steps necessary and to execute all documents required to complete the transaction outlined above, subject to approval of all such documents as to legal form by the Office of General Counsel.

The State Veterans Home Program, as authorized in 1997 by the 75th Texas Legislature, was created to secure funding from the U. S. Department of Veterans' Affairs for construction of state veterans homes. Four homes have been built and the VLB has issued a request for proposals for suitable land for construction of two additional homes. The deadline for submittal of applications is October 1, 2002.

The Smith County Commissioners Court has accepted responsibility to be the lead applicant for a proposal to locate a veterans home in Smith County. U. T. Health Center - Tyler has agreed to donate approximately 20 acres of surplus campus land to the VLB if Smith County is selected to be the site for a veterans home. Donation of the land in its existing condition is the only commitment being made by the Health Center as part of the application process. All other financial obligations, services, and certifications associated with the application will be the responsibility of Smith County or other local contributors.

The land to be conveyed is part of approximately 650 acres of land in the northeast corner of the U. T. Health Center - Tyler campus received by the Board of Regents in 1977 from the Texas Board of Health Resources under the provisions of Chapter 282, 65th Legislature, 1977 Regular Session. The State of Texas received the land from the United States of America (War Assets Administrator) in 1947 as part of the distribution of Camp Fannin, a former military base. The 20 acres has been valued at approximately \$50,000 by East Texas Property Management Services and comparable tax appraisal records of the Smith County Appraisal District. Compensation for the donation of the land will be recovered from additional fees generated by the veterans home and related activities.

Section 164.001(c) of the Texas Natural Resources Code dealing with the Veterans' Financial Assistance Program states: "The legislature finds that this chapter and the financial assistance program authorized by this chapter are in furtherance of a public purpose."

2. U. T. Board of Regents: Adoption of Disclosure Policy as Stated in the Disclosure Resolution Approved by The University of Texas Investment Management Company (UTIMCO) Board of Directors

Vice-Chairman Hunt stated that the Board of Directors for The University of Texas Investment Management Company (UTIMCO) had met on September 18, 2002, to discuss issues related to public disclosure of private equity investments. He summarized his remarks made at the UTIMCO Board meeting by saying there is a code of conduct for Board and staff that is the strongest in the State, and he is confident that full and fair disclosure is the correct leadership response by the UTIMCO Board of Directors. He then called on Mr. Bob Boldt, President, Chief Executive Officer and Chief Investment Officer of UTIMCO, who said that under the new policy, UTIMCO is required to disclose estimated rates of return on investments to date on its private equity funds. He reported that UTIMCO had contacted about two-thirds of its more than 70 private-fund partners to inform them of its new disclosure policy and that about three of every 10 general partners indicated they will probably seek a waiver of disclosure.

Vice-Chairman Hunt noted that the outside directors of UTIMCO would like confirmation from The University of Texas System that the policy they adopted on September 18, 2002, is what is intended by the U. T. System.

Chairman Miller commented that UTIMCO is the largest manager of public funds in the United States. He remarked that since investments are confidential under State procedures, taking away prudent protection might lead to a lesser return. However, he said that the University can be on the cutting edge to lead the industry to disclose more, and that openness cannot be considered illegal in any way.

Regent Krier commended Chairman Miller, Chancellor Yudof, and the UTIMCO Board of Directors for its good leadership. She then asked if those partners who refuse disclosure are more sensitive to disclosing one part of the information. Mr. Boldt responded that the sensitive issue is the rate of return.

Vice-Chairman Clements also commended the UTIMCO Board of Directors for its leadership.

Vice-Chairman Hunt moved that the U. T. Board of Regents find that the disclosure policy as stated in the Disclosure Resolution on Page 6, adopted by the Board of Directors of The University of Texas Investment Management Company (UTIMCO) on September 18, 2002, is consistent with the intent of the U. T. Board of Regents for full and fair disclosure.

He further moved that the U. T. Board of Regents endorse the concept of the disclosure policy for private equity investments embodied in that Resolution.

Vice-Chairman Riter seconded the motions, which carried by unanimous vote of those present.

Vice-Chairman Hunt said that a full financial report would be presented at the October 10, 2002 meeting of the Finance and Planning Committee.

Counsel and Secretary's Note: See related Board action on November 13, 2002, adopting a resolution stating that with respect to matters involving public policy decisions concerning the funds managed by UTMCO as agent for the Board of Regents, including decisions with respect to the Texas Public Information Act, the Regents reserved those decisions unto themselves. Chancellor Mark Yudof, on behalf of U. T. System, asked that UTIMCO be advised to no longer seek an Attorney General's ruling on future requests for disclosure of internal rates of return and remaining value information with respect to UTIMCO's private equity investments.

UTIMCO Resolution on Disclosure

RESOLVED, That the Corporation is committed to a policy of full and fair disclosure to the public with respect to its private investments; and

RESOLVED, That, without limiting its commitment described above, the Corporation shall immediately take the steps outlined below to enable it to disclose to the public the following information (“private investment information”) with respect to its private investments: the name and purpose of each private investment entity; the names of the individual principals managing such private investment; the amount invested by the Corporation in such private investment; and the investment returns for such private investment; and

RESOLVED, That the Corporation’s staff and counsel shall review each existing private investment contract to determine whether waivers are required from the general partner or equivalent counterparty in order for the Corporation to disclose to the public such private investment information; and

RESOLVED, That where such waivers are not required, the Corporation shall disclose to the public the private investment information; and

RESOLVED, That where such waivers are required, the Corporation shall take all steps necessary in order to obtain such waivers from the appropriate private investment general partner or equivalent counterparty; and

RESOLVED, That upon receipt of a request for disclosure of private investment information relating to an investment managed by a general partner or equivalent counterparty who has refused to provide such waiver, the Corporation shall seek an Attorney General’s decision as to whether the disclosure would cause substantial competitive harm to the general partner or equivalent counterparty or other investors in the private investment and, therefore, may not be disclosed as a matter of law; and

RESOLVED, That in any instance when such an Attorney General’s decision is sought, the Corporation shall not take a position in support of withholding the private investment information, rather the Corporation shall notify the appropriate private investment general partner or equivalent counterparty of the request for an Attorney General’s decision; and

RESOLVED, That no private investment shall be made with any entity in the future unless the Corporation has clear and unequivocal authority to disclose to the public the private investment information relating to such investment.

September 18, 2002

3. U. T. System: Approval to Establish an Interim Self-Insurance Plan for Directors and Officers Liability Coverage Effective September 18, 2002

Executive Vice Chancellor Kennedy described the current situation regarding liability insurance for directors and officers of The University of Texas System. He said that external factors such as the frequency and severity of claims industry-wide have contributed to a drastic change in the Directors and Officers Liability insurance marketplace. Mr. Kennedy stated that as of September 18, 2002, the U. T. System no longer has Directors and Officers/ Employment Practices Liability insurance coverage, and this has led the U. T. System to recommend a self-insurance program.

Vice Chancellor and General Counsel Godfrey explained that, under State law, there is broad protection for those serving on the governing boards of public entities.

Chairman Miller asked for immediate, formal authorization that there will be full protection for directors and officers liability. He said directors and officers should have the same protection now under self-insurance as they would with an insurance plan. He commented that members of the Board came on the U. T. Board of Regents with the expectation of being insured and did not know until last Monday (September 16) that this was an issue.

Vice-Chairman Hunt moved that the Board authorize the Chancellor and the Executive Vice Chancellor for Business Affairs to establish an interim U. T. System self-insurance plan for directors and officers liability coverage effective September 18, 2002, with terms and conditions as in the directors and officers policy with National Union that expired on September 18, 2002.

The motion was unanimously approved.

ADJOURNMENT.--Chairman Miller announced that the purpose for which this meeting was called had been completed and the meeting was duly adjourned at 1:00 p.m.

/s/ Francie A. Frederick
Counsel and Secretary to the Board

October 8, 2002