Minutes of the Special Board of Regents Meeting
Audit and Compliance Committee

Murray State University
Friday, April 15, 2011
Pogue Library Jesse Stuart Room

Harry Lee Waterfield II, Chair
Bill Adams
Constantine W. Curris

Roll Call

A special meeting of the Murray State University (MSU) Board of Regents (BOR) Audit and Compliance Committee was held on Friday, April 15, 2011, in the Jesse Stuart Room in Pogue Library on the main campus of Murray State University. Chair Harry Lee Waterfield called the meeting to order at 2:10 p.m. and reported all committee members were present.

Others present were Randy J. Dunn, President; Jill Hunt Lovett, Senior Executive Coordinator for the President, Coordinator for Board Relations and Secretary to the Board of Regents; Tom Denton, Vice President for Finance and Administrative Services and Treasurer to the Board of Regents; Amy Sasseen, Internal Auditor; John Rall, General Counsel and Regents Sharon Green, Kirby O'Donoghue and Phil Schooley.

Agenda

1. **Roll Call**

2. **Review and Discussion on Corporate Policy: *Statement of Ethical Principles and Code of Conduct*** **Mr. Waterfield**

3. **Adjournment**

Corporate Policy: *Statement of Ethical Principles and Code of Conduct*, discussed

Dr. Curris believes the proposed Corporate Policy: *Statement of Ethical Principles and Code of Conduct* (referred to as *Code of Conduct*) attempts to address ethical issues pertaining to University employees and members of the Board of Regents but these are essentially two different groups which may necessitate the adoption of two separate documents. Although he has previously researched the topic, during the recent Association of Governing Boards (AGB) national meeting AGB officials referred him to the AGB Board of Directors' *Statement on Conflict of Interest* and the principles outlined within that document. It was recommended the MSU Board proceed in the direction of this statement because it represents consistency with what is occurring across the country. The *Code of Conduct* which has been proposed by the administration could then be revised to pertain only to University employees. Further discussion regarding the *Code of Conduct* included the following:

- The proposed policy refers to the various campus handbooks which already exist but also references a department head establishing their own conflict of interest statement and it is unclear why this language was included. Dr. Dunn indicated certain elements contained in the *Code of Conduct* relate to provisions in the *Faculty Handbook* or *Personnel Policies and Procedures Manual.* The policy statement was developed around a set of values or shared beliefs regarding how the University operates and conducts business. The approach which was undertaken was to conduct a fairly broad review of topics which are generally addressed in this type of document. Language regarding departments having their own codes was added with the Office of Procurement specifically in mind. A unit may have a code which is more specific whereas the *Code of Conduct* represents a broader policy. The intent is for the unit's code to not be any less restrictive than what is provided in the *Code of Conduct*. The work group which developed the *Code of Conduct* believed it would be helpful, when a policy statement or principle can be found elsewhere, for that reference to be included. It is beneficial to remind individuals about policies and where they are located but there are other issues contained in the *Code of Ethics* which would not be included in the campus handbooks. Confirmation was provided that the *Personnel Policies and Procedures Manual* applies to staff and the *Faculty Handbook* pertains to faculty.

- Discussion occurred regarding whether the MSU Foundation Board of Trustees also needs to adopt the *Conflict of Interest Principles* contained in the AGB Board of Directors' *Statement on Conflict of Interest* if that body does not already have a statement which suits this purpose. Most likely there is greater opportunity for a conflict of interest to exist with the Board of Trustees due to its management of gifts and donor estates intended to support the institution. Dr. Dunn indicated the Foundation is a separate corporate entity and would be required to make its own decision regarding whether any such action is warranted. The issue of Murray State needing a *Code of Conduct* moved to the forefront when the University auditors recommended such a policy be developed and adopted. That same recommendation was not made during the Foundation audit which suggests a mechanism was already in place which caused this not to be cited as a recommendation.
- Regardless of whether this *Code of Conduct* is adopted the issue of an individual possessing an interest in a particular transaction will continue to exist but this document would put in place a means of channeling such concerns. Situations will arise where an individual's interest will be so far removed – for example, being an owner of shares of company stock – that the situation could not possibly be deemed as constituting an interest in a contract. The *Code of Conduct* provides a means of condensing general notions about ethical behavior and conflict prevention in one location.
- An additional concern for Regents is whether provisions are contained in this document which would essentially invite or create additional lawsuits. Mr. Rall stated the document certainly was not developed for that purpose but instead provides a summary of the basic principles associated with what a public institution of higher education should embrace. In particular, issues of stewardship in terms of financial affairs. If an issue arises but is ignored a lawsuit could certainly be viable but that same scenario could occur now. A statement is included in the *Code of Conduct* which indicates if the Board (or University) is aware of a problem which is covered by this document (or another University policy) care should be taken to address that concern and it has been clearly indicated this is the University's position.
- The question to be answered is whether the Board and the University are more vulnerable if the content of the *Code of Conduct* is adopted – although all agree such a statement is needed. Mr. Rall reported when a lawsuit is discussed it involves a breach of the law and if the University is aware of such a breach the situation should be remedied. Because of the quasi-whistleblower aspect of this issue, Dr. Dunn indicated he is more concerned this could result in increased internal reporting of real or perceived inappropriate behavior. This creates an obligation for investigation on the University's part regardless of whether the complaint is valid. Over time as the code "settles in" the campus community will learn that false reporting tactics will not work and these occurrences will lessen.
- The C*ode of Conduct* indicates "University information technology resources may not be used for personal or commercial profit" and it appears the attempt to dot every "i" and cross every "t" results in more individuals being limited from doing what they are expected to do in the first place. Mr. Rall reported this policy already exists whether or not the *Code of Conduct* is adopted. When the *Grievance Procedures* for the Office of Equal Opportunity were implemented in the 1980s there was likely a learning curve accompanied by a large number of claims and there will be a settling in period as individuals learn about the *Code of Conduct*. Current grievance procedures could be used for retaliatory or venomous purpose if one were so inclined but there is also a state whistleblower statute that would address such circumstances.
- Reference to employees not utilizing time during their regular work hours or University resources on behalf of or in connection with, or to provide services to, matters unrelated to Murray State including businesses, clubs, causes, political parties or events, affairs or issues related to such groups was questioned. Particular issue was taken with inclusion of causes because the University is involved with *Relay for Life* and time is spent raising money for this event. Mr. Rall reported this particular guideline was drafted with *Relay for Life* in mind and directed the Board's attention to the exceptions listed which indicate a department sponsoring a relay team. The intent of including this reference as part of the policy was to encourage employees to be good stewards of their time. In response to an inquiry regarding professors providing consulting services Mr. Rall indicated a provision was included which allows for outside employment as long as it is in conformity with established policy or procedure.
- Dr. Dunn reminded the Committee that the *Code of Conduct* is fact-based and will be driven by the circumstances involved in any given situation. There must be a mechanism in place to handle an event that occurs on down the continuum and this should include language which indicates after a certain point a situation will be deemed to have gone too far. It is difficult to say what this point is but that is why administrators have been hired. As long as enabling language exists to address worst case scenarios then those who enforce compliance must be trusted to be wise in their judgments.
- Confirmation was provided that the *Statement of Ethical Principles and Code of Conduct* has been reviewed by Staff Congress and Faculty Senate. Dr. Dunn reported that during a recent leadership council meeting it was indicated a representative from Faculty Senate would be present today if that body had concerns.

- In response to a question regarding whether faculty are prohibited from dating students, Mr. Rall indicated faculty are not unless the student is in the faculty member's class and the instructor fails to report this situation to their superior so that a mechanism can be put in place for proper evaluation of the student (examinations, grades, etc.).
- Confirmation was provided that employees interested in contracting with the University would not be prohibited from doing so but this must be channeled in a way so proper review is given to the issue to avoid a conflict of interest between involved parties.
- An inquiry was made regarding whether the proposed document addresses conflicts of interest with the Board of Regents. Mr. Rall indicated some provisions in the document do not address the Board but the main consideration may be with respect to contracts and even if this *Code of Conduct* is not enacted there is a contracts statute. State statute provides a mechanism by which a Board member can enter into a contract with the University. It was agreed the Regents must be clear about what constitutes a situation where a Board member would need to recuse themselves from discussing or voting on a particular issue. Appointments to the Board include bringing in individuals with expertise which will benefit the University and this is desirable. At the same time, the University must avoid potential conflicts of interest. The *Code of Conduct* being proposed is intended to represent principles of solid stewardship and would apply to all University employees, including student employees.

The Audit and Compliance Committee unanimously agreed to the following:

1) The *Conflict of Interest Principles* contained in the Association of Governing Board (AGB) Board of Directors' *Statement on Conflict of Interest* (most current format) should be presented to the full Board for approval at the quarterly meeting on May 20, 2011. The principles will serve as the Board's operating guide with the remaining information contained in the AGB *Statement* being utilized for additional reference material.

2) The proposed Corporate Policy: *Statement of Ethical Principles and Code of Conduct* pertains to University employees and should be revised with any reference to the MSU Board of Regents being removed. Mr. Rall will modify any additional language that would potentially engender judicial conflict to show an effort was made to avoid unnecessary judicial disputes. If the document can be simplified that work should be undertaken, including the addition of an introduction containing reference to stewardship in terms of every University employee being responsible for the welfare of the institution. An indication that these policies are designed to provide guidance and ensure transparency so goals can be accomplished should also be included in the introduction.

3) The Audit and Compliance Committee will then recommend the revised *Statement of Ethical Principles and Code of Conduct* to the full Board for approval on May 20.

Dr. Dunn provided copies of information (from Mrs. Sasseen) prepared by BDO (Binder Dijker Otte and Company) which constructed a comprehensive Audit Committee self assessment reflective of what would be required by Sarbanes-Oxley.

Adjournment

The Special Board of Regents Meeting – Audit and Compliance Committee – adjourned at 3 p.m.

Chair

Secretary

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