

**MINUTES OF THE BOARD OF REGENTS
WESTERN KENTUCKY UNIVERSITY**

January 28, 1992

Required statutory notice having been given, a special meeting of the Board of Regents of Western Kentucky University was held at 326 West Main Street in Frankfort, Kentucky. The meeting was called to order at 4:05 p.m., EST, by Mr. Joseph Iracane, Chairman.

AGENDA ITEM 1 - Invocation

The meeting opened with a prayer of invocation by Dr. Paul B. Cook, Executive Vice President for Administration and Technology.

AGENDA ITEM 2 - Roll Call

The following members were present:

Mr. Bobby R. Bartley
Mr. Danny Butler
Mr. Stephen B. Catron
Mr. Robert L. Chambless, Jr.
Dr. Eugene E. Evans
Ms. Heather E. Falmlen
Mr. Monnie L. Hankins
Mr. Joseph Iracane
Mrs. Patsy Judd
Mr. Fred L. Travis

Also present were Dr. Thomas C. Meredith, President; Dr. Paul B. Cook, Executive Vice President for Administration and Technology; Ms. Liz Esters, Staff Assistant for Special Projects and Secretary to the Board of Regents; and Mr. Franklin Berry, University Attorney and Parliamentarian, and Mr. Fred Hensley, Director, University Relations. Governor Louie B. Nunn also attended.

AGENDA ITEM 3 - Employ attorneys and auditors and any other personnel determined appropriate at the meeting necessary to perform any function of the Board of Regents

Mrs. Judd read the call for the meeting as follows: "At the written request of Regents Butler and Judd, I am hereby calling a special meeting of the Board of Regents of Western Kentucky University to be held Tuesday, January 28, 1992, at 4 p.m., EST, at 326 West Main Street in Frankfort."

"The primary purpose of this meeting is to employ attorneys and auditors and any other personnel determined appropriate at the meeting necessary to perform any function of the Board of Regents."

Stating that the Board of Regents had been sued and needed legal representation, Mr. Butler moved that the law firm of Stoll, Keenon & Park be

retained to represent Western Kentucky University, its Board of Regents, and/or members of its Board of Regents in the pending litigation in the Warren Circuit Court against the Board and any and all other litigation which may exist or hereafter arise, and that such firm be retained for all other purposes that the Board of Regents of Western Kentucky University might determine to need the services of said firm and that members of the firm be paid their usual and normal hourly rate plus out-of-pocket expenses for all representation. Such employment shall be for a period of time not to exceed four (4) years. The motion was seconded by Mrs. Judd.

In discussion that followed, Mr. Travis asked about the hourly rate, and Mr. Butler stated that their usual and customary hourly rate would depend on which member of the firm would be doing the work. The hourly rate for Mr. Johnson, who is the lead member of the firm, would be \$200.

In addition, Mr. Travis asked, "You're wanting to hire him for four years?"

Mr. Butler stated, "I don't know how long the litigation is going to last. The litigation might not last six months. It might not last two weeks--I can't tell you that. I don't know. As you are aware, we've been sued--we have to have some representation. I'm just putting it for a period not to exceed four years. It's on an hourly basis, what they work is what we would have to pay them for."

Mr. Travis asked if the firm would only represent the Board for this lawsuit. Mr. Butler stated that the motion is for the specific purpose of representing the Board in this lawsuit and in any other litigations that might arise or be pending.

Mr. Travis asked, "You're wanting to hire them to represent the Board for the litigation that we are getting into; are you hiring them to represent us in other matters, too?"

Mr. Butler stated that the motion is broad enough and reread his motion: **I move that the law firm of Stoll, Keenon & Park be retained to represent Western Kentucky University, its Board of Regents, and/or members of its Board of Regents in the pending litigation in the Warren Circuit Court against the Board and any and all other litigation which may exist or hereafter arise, and that such firm be retained for all other purposes that the Board of Regents of Western Kentucky University might determine to need the services of said firm and that members of the firm be paid their usual**

and normal hourly rate plus out-of-pocket expenses for all representation. Such employment shall be for a period of time not to exceed four (4) years.

Mr. Butler added, "Of course it's on an hourly basis for how many hours they work for us. Hopefully, it's not going to take four years; hopefully, it's not going to take six months. I don't know that; I'm not in a position to answer that. I just want to hire somebody to represent this Board in this litigation that's been brought against us. It's broad enough to cover any other litigation that might arise or for any other purposes that we might need their services for-- the Board might need their services for."

Mr. Travis asked if the firm of Stoll, Keenon & Park would be used in addition to Governor Nunn. Mr. Butler stated, "Their representation of us would be completely different from what Governor Nunn was hired by this Board to do. This has to do with litigation."

Mr. Travis asked if the firm would deal only with litigation, and Mr. Butler stated, "Or any other purpose that we might determine that they be needed--not to exceed four years. Hopefully, it's brief, but I don't know."

Ms. Falmlen asked, "If we decide to hire them, if we somehow want to use them for some other litigation that came forth, would there have to be a vote of the Board to go into that specific litigation, or would this automatically cover it?"

Mr. Butler responded, "This would cover it. This is for a period not to exceed four years. If we hire them, we could also remove them if we are not satisfied."

Ms. Falmlen asked, "Who will determine if they take another case? OK, say someone sues me as a member of the Board and I would like for them to represent me because it is dealing with the Board--who makes that decision as to whether or not it is appropriate?"

Mr. Iracane stated the Board would make that determination.

Mr. Travis asked where the money would come from to pay the firm. Mr. Butler stated, "If the Board approves the hiring of them, then the University, in my opinion, would be responsible for the funds. In some law suits and litigations, you might request attorney's fees from the opposing side if it is determined at the end of the litigation that the suit was frivolous or whatever maybe the opposing side that brought the litigation might be responsible--I can't answer that, I don't know. Ultimately, if they do not, our Board, the University will be responsible. We didn't instigate this suit."

As a point of clarification, Dr. Meredith, noted that, administratively, a number of lawsuits are under way at the University and asked, "how does that play into this?"

Mr. Butler stated, "I wouldn't think it would play into it at all unless we decided we wanted to use this firm. That's not the intention."

Mr. Iracane stated, "They are representing us, and if there wasn't a lawsuit, then we wouldn't be here for this. If the lawsuit was not here, in other words, if tomorrow it was eliminated for whatever reason, we would not owe them a penny. If we go to court, and they represent us in court through this litigation, we pay them, and we pay them on an hourly basis. If the law suit is not there, we don't have to have any legal counsel, we'll go on the way we planned to go on at the last Board meeting."

Mr. Travis stated, "The motion seems too broad to me. We are only hiring a lawyer to represent us in this one case. It seems to me we have it too broad."

Mr. Butler stated that from a personal standpoint, he preferred it to be broad then it can be tightened down once somebody is hired in the broad sense and they're payed on an hourly basis. Mr. Butler said, "If there's other litigation to come up, we are going to be advised of that situation and we can determine whether or not we want to continue with this hourly rate with these people or not. With litigation going and other litigation that might arise or whatever, we don't need to have to come back and hire somebody every time. This is broad enough to cover that. Now we can certainly cut it off if we decide we don't want to continue with it, but it is better to have it too broad than too narrow. That's strictly my opinion."

Mr. Travis asked, "How was it arrived upon hiring these lawyers?"

Mr. Butler stated, "These lawyers have had experience in these related matters. They are somebody that will not have, in my opinion, to spend a lot of time doing a whole lot of research knowing how to answer this type of suit, the type of matters that are being brought in this present action--injunctive relief, etc. They are experienced in this matter. I think that they, in my opinion, are the best group under the circumstances to handle this action."

Mr. Hankins asked, "Could we have used them in the beginning?"

Mr. Butler noted, "We didn't hire anybody in the beginning to represent us in any type of litigation."

Mr. Hankins said, "Going back to the beginning when we needed representation, period, could they have been hired then?"

Mr. Butler stated, "I think we could have hired anybody--any firm that we wanted to at any time, in my opinion."

Mr. Hankins asked, "So they could cover all things that the Board wants to look at--they could cover anything?"

Mr. Butler stated, "If we give them the authority, I am sure that they could."

Mr. Hankins asked if it would be a firm that everybody could consent on to cover every aspect of what the Board needed done.

Mr. Butler responded, "I really don't know what you are asking. We previously hired Governor Nunn. I'm going to make a motion after this motion is over with that we rehire Governor Nunn. There were some questions that have come up in a lawsuit over the way that he was hired. Personally, I'm going to make a motion that we rehire him today. It's on the agenda, etc. I don't see anything was wrong with the way he was hired before. To clarify matters, I am going to move that we rehire him again today as well. So I'm going to be making a motion that we not only hire this firm for litigation purposes, I'm going to recommend that we rehire Governor Nunn as well."

Mr. Hankins asked if that was necessary since the Board had already voted on doing that.

Mr. Butler felt it was necessary stating, "Since we did that, there have been two regents who disagreed with that course of action. They raised the question. I think it was done correctly the first time, but there's certainly nothing wrong where it's on the agenda, making the motion to do it again."

With no further discussion, the roll call vote on Mr. Butler's motion to employ the law firm of Stoll, Keenon & Park is as follows:

Aye: Butler, Chambless, Evans, Falmlen, Iracane, Judd

Nay: Bartley, Travis

Abstain: Catron, Hankins

Mr. Butler moved that Louie B. Nunn be employed as attorney to represent Western Kentucky University and its Board of Regents in any and all matters that the Board might determine to need his services and that Governor Nunn be paid the sum of \$150 per hour plus out-of-pocket expenses for such representation. Such employment shall be for a period of time not to exceed four (4) years. The motion was seconded by Mr. Chambless.

In discussion that followed, Mr. Travis asked the purpose of the motion noting, "We've already voted to hire Mr. Nunn. I don't see any reason that we have to vote again to hire him. Mr. Travis asked Governor Nunn, "Governor, is this necessary?"

Governor Nunn noted, "I'm restrained by this lawsuit to give any advice or the Board's restrained from asking me anything. So therefore, I don't think that I should respond and cause any trouble for the Board. You've got enough troubles as it is."

Mr. Butler said, "I don't think it can hurt anything at all to rehire Mr. Nunn. There were some questions raised in this lawsuit about the way the Governor was hired; it wasn't on the agenda, etc. There's no question about it being on the agenda today to hire attorneys, so to remove any cloud over the hiring of the distinguished Governor, I am making the motion that we hire him."

Mr. Travis noted, "I still don't see why that we need to do this. It just seems like we are repeating ourselves because it's in litigation anyway. I don't see that this is going to accomplish anything. It seems trivial to argue over it anyway. We've already voted to hire Mr. Nunn."

With no further discussion, the roll call vote on Mr. Butler's motion to employ Governor Nunn is as follows:

Aye: Butler, Chambless, Evans, Falmlen, Iracane, Judd, Travis

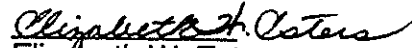
Nay: Bartley, Catron

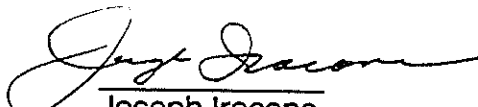
Abstain: Hankins


There being no further business to come before the board, a motion to adjourn was made by Dr. Evans and seconded by Mrs. Judd. The meeting adjourned at approximately 3:20 p.m.

CERTIFICATION OF SECRETARY

I hereby certify that the minutes herein set forth an accurate record of votes and actions taken by the Board of Regents of Western Kentucky University in a special meeting held on January 28, 1992, at 326 West Main Street in Frankfort, Kentucky, and further certify that the meeting was held in compliance with KRS 61.810, 61.815, 61.820, and 61.825 (enacted as Sections 2, 3, 4 and 5 of House Bill 100, 1974 Regular Session, General Assembly).


Elizabeth W. Esters
Secretary


Joseph Iracane
Chairman


Elizabeth W. Esters
Secretary

February 20, 1992

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