

JAN 30 1992

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

January 30, 1992

Required statutory notice having been given, the first quarterly meeting of the Board of Regents of Western Kentucky University was held in the Regents Conference Room of the Wetherby Administration Building. The meeting was called to order at 10 a.m., CST, by Mr. Joseph Iracane, Chair.

AGENDA ITEM 1 - Invocation

The meeting opened with a prayer of invocation by Dr. Stephen Schnacke, Head, Department of Educational Leadership, and member of the University Budget Committee.

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; Dr. Robert Haynes, Vice President for Academic Affairs; Dr. Jerry Wilder, Vice President for Student Affairs; Ms. Liz Esters, Staff Assistant for Special Projects and Secretary to the Board of Regents; and Mr. Franklin Berry, University Attorney and Parliamentarian, Dr. James Heck, Executive Assistant to the President, and Mr. Fred Hensley, Director, University Relations. Governor Louie B. Nunn was also in attendance.

AGENDA ITEM 3 - Disposition of minutes of the special meeting of October 8, 1991, the regular meeting of October 31, 1991, the special meetings of December 2, 1991, and January 17, 1992.

The minutes of the above meetings were presented by Chairman Iracane. Motion was made by Ms. Falmlen and seconded by Mr. Catron to approve the minutes as submitted inasmuch as copies had been mailed to members prior to the meeting. The roll call vote follows:

Aye: Bartley, Butler, Catron, Chambless, Evans, Falmlen, Hankins, Iracane, Judd, Travis

Chairman Iracane asked Mr. Catron if the injunction that was placed by Mr. Catron and Mr. Bartley was still in effect related to the employment of Governor Nunn. Mr. Catron replied affirmatively. Chairman Iracane then asked Mr. Bartley the same question. Mr. Bartley also replied yes.

Mr. Butler moved that the Board of Regents of Western Kentucky University employ Louie B. Nunn for the purpose of supervising the audit authorized by the Board and to be conducted for the Board and undertake any other tasks as directed by the Board for a period of six months as a salaried employee on the payroll of Western Kentucky University and to be paid a salary of \$12,000 per month and to serve at the pleasure of the Board.

Mr. Travis asked Mr. Butler to read the motion again.

The motion was seconded by Mr. Chambless.

Ms. Falmlen asked if the \$12,000 per month would be a flat fee thereby eliminating the out-of-pocket expenses, mileage, etc. Mr. Butler affirmed that he would be a salaried employee to serve for a period of six months at the pleasure of the Board. He could serve up to six months.

Ms. Falmlen asked if the Governor's services would be terminated if the job he is needed for is finished in a month or a period of time less than the six months.

Mr. Butler responded that it is at the pleasure of the Board.

Ms. Falmlen also asked if the number of hours per week that Governor Nunn was expected to work is stipulated.

Mr. Butler noted that that was at the discretion of the Board and the Governor.

Mr. Catron inquired about the purpose of the motion stating, "The Board has voted on two previous occasions to hire Mr. Nunn. This is a third vote on the same issue."

Mr. Butler stated that this action is to hire him as a salaried employee of Western Kentucky University.

Mr. Catron stated, "I think if I am understanding you correctly, and correct me if I am wrong, but this looks like an attempt to circumvent KRS12.210 which is the requirement that legal counsel obtain the approval of the Governor prior to being engaged. Am I misinterpreting the intent of the motion?"

Mr. Butler stated, "First of all, I don't agree with your interpretation that the legal counsel issue has got to be approved by the Governor. We disagree on that. Secondly, I would hope that by doing this we can certainly defray some costs of legal litigation which has been instigated by the suit that you and Mr. Bartley have filed against this Board."

Mr. Catron stated, "This, in my mind, looks like nothing more than an attempt to circumvent the law. I think that those who vote in favor of it are simply voting to circumvent the Kentucky Revised Statutes on what is required for engaging counsel."

Mr. Butler said "That is strictly your opinion."

Mr. Catron stated, "It certainly is, and I am expressing it. I think it is an absolute outrage to try to accomplish this in this manner. That is all I will say at this point about it."

Mr. Travis stated to Mr. Iracane, "My understanding was, when we talked of hiring Governor Nunn, that he was going to recommend as to whether or not an audit needed to be done and in what depth, and in what areas; and now with this motion, you are recommending that he supervise the audit. So you are assuming that he is going to ask for an audit to start with. Is that right in this motion?"

Mr. Iracane stated, "My attempt in this thing is to hold the costs down related to the injunction of Mr. Catron and Mr. Bartley. I expressed that to you privately, and that is the attempt. As far as the motion is concerned, as far as what Governor Nunn will do, it is my understanding he will perform in the same capacity that he did previously."

Ms. Falmlen stated, "As far as costs goes, doing some figuring, the Governor would have to work at least twenty (20) hours per week to at least make his \$150 per hour. From what I understand about the complications of an audit, I would think that he would work more than that. So, it sounds to me like this would be a cost effective way of hiring the Governor while keeping the costs down because we wouldn't pay out-of-pocket expenditures."

Mr. Chambless asked Mr. Travis, "I know my memory is bad, but I thought that at several meetings back, Freddie, we passed a motion calling for an audit, and it was approved by a majority of the Board."

Mr. Travis stated, "That we did, but we also turned around and changed again when we agreed to hire Governor Nunn that we were going to have him to try to get these two different groups together to reach some kind of

an agreement as to whether an in-depth audit needed to be held and in what areas it needed to be held. That was my understanding, so we more or less reversed ourselves."

Mr. Chambless asked "That's in one of those motions?"

Mr. Travis stated, "No, it's not in a motion; we talked among ourselves about it."

Mr. Chambless stated, "I think that what the lawsuit is relying on, from what I've heard about it, is the fact that there is a motion that was approved by the Board to have an audit and that Governor Nunn was to review the areas and, I thought it was in one of our meetings, try and reduce the broad areas that were to be audited in an effort to try and save money. Because once the thing got started, and you're on that committee--

Mr. Travis said "We've only met one time, so that hasn't been the committee's function."

Mr. Chambless stated, "No, I thought it was Governor Nunn's job to try and reduce the areas to be audited--to try and save money."

Mr. Travis said, "But, you're telling him here now to supervise an audit, and yet he has not talked to all of us privately as to whether it needs to be done or not. That's my argument."

Mr. Iracane added, "As far as I am concerned, this motion relates to the injunction presented to us by Mr. Catron and Mr. Bartley, period. As far as the opportunity for Governor Nunn to help us--it remains the same in my mind. So consequently, the cost of this situation and the continuation of these meetings simply relates to the injunction that has been presented to us, and what I feel like we are trying to do is continue on in the direction that we discussed prior to this injunction. If the injunction wasn't there, we wouldn't have this quarrel or this misunderstanding or whatever. We're dealing with that, and then we're going to get right back on track, hopefully and get this behind us so that our University can go ahead."

Ms. Falmlen stated, "If this can speed the process to reaching the end of this injunction, whether it be through the court systems or by the lawsuit being dropped, then I don't see--if this is what we have to do to stop that, then I think this is what we have to do. I don't think we have a choice."

Mr. Iracane said, "We made note of that by me asking Mr. Catron and Mr. Bartley if this injunction was still in effect. Their answer was "correct." We have a motion on the floor, we have a second, is there any other discussion?"

Mr. Bartley responded, "Yes, to our learned student regent, we have an internal auditor, whom we pay; we have Baird, Kurtz and Dobson, whose bid, we have it; all the information, anything you would want, you can have at your fingertips-it's public, it's wide open, it's free of charge, if you would just ask for it and look at it. Why we need anybody else is beyond me. Now we might hire Grandma Moses too--Sister Teresa might come help us--"

Ms. Falmlen, "Maybe we'll resort to that next."

Mr. Bartley, "There are accounting courses you might take before you leave, and you could go and look at the records."

Dr. Evans, "Well, will our insurance cover a second suit?"

Mr. Iracane, "As of right now, our attorneys are not present, but I assume Mr. Berry, can you, are you at liberty--?"

Mr. Berry, "That's a conflict--"

Mr. Iracane, "Oh, that's right, I'm sorry--a conflict."

The roll call vote on the motion by Mr. Butler to employ Governor Nunn is as follows:

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

Nay: Bartley, Catron, Travis

Pass:: Hankins*

*Mr. Hankins stated, "May I take a moment just to, in essence, talk about that. In the discussion I think we talked about that the motion was to have Mr. Nunn to supervise the audit, and I was thinking the same way Mr. Travis did that we were asking that the Governor declare whether or not an audit be held at all or be necessary--it goes back to my original decision of abstaining on the first motion to ever have this happen; mainly because I thought that it needed to be declared whether or not we needed an audit overall. That's the same thing that I was saying in this case. The motion should have--not should have--could say that he declare whether or not the audit is necessary since we are revamping, or that Mr. Nunn is going to revamp the audit procedure. There still isn't a declaration of whether or not we need an audit, so I'll pass"

Mr. Iracane stated, "So we will employ Mr. Nunn as read in the motion by Mr. Butler.

Dr. Meredith stated that it probably ought to have an effective date.

Mr. Iracane responded, "I assume we'll just start as of today."

AGENDA ITEM 4 - Committee reports

Mr. Butler stated, "It's been called to our attention that there is a restraining order in effect at the present time, and the hearing on the injunction to make that in the form of an injunction or dissolve the restraining order has not been heard. It was originally scheduled, it's my understanding for today, that's what I read in the paper anyway, is that true Steve?"

Mr. Catron responded, "Yes."

Mr. Butler added, "I assume it's being continued by the agreement of Stoll, Keenon & Parks and David Cole. Did they agree to continue that?"

Mr. Catron noted, "We simply advised Chairman Iracane by letter prior to your engagement of counsel that the hearing had been passed and continued generally on the docket in order to allow the Board to engage counsel and opportunity to prepare--just simply a reasonable approach on the counsel's part."

Mr. Butler, "All right, what I am saying, I don't want to put Governor Nunn in an embarrassing position. I don't want to put this Board in an embarrassing position to try--I don't want to do anything to violate the court's restraining order--don't want to do anything that would give the appearance of violating the court's restraining order, and I assume that there will be a hearing scheduled pertaining to the restraining order within the next week or so. I would certainly anticipate that, and **I am going to move that, based on that, this meeting be adjourned until after that hearing to see what the effects of the hearing pertaining to the restraining order and the hearing on the injunction would be at that time. I'd like to move that we adjourn, dismiss until after that hearing.**"

The motion was seconded by Mr. Chambless.

Mr. Iracane asked for discussion.

Ms. Falmlen, "I'm sure it's my ignorance of the law, and excuse me. I'm not sure how proceeding with the business of this Board is going to effect that particular injunction. Just explain it further, please."

Mr. Butler, "Well, we cannot, the way I interpret it, we are not in a position to ask Franklin Berry as to how we should proceed. I don't think we are in a position ask Governor Nunn at this time until after the hearing how we should proceed, and as I have previously stated, personally, I'm not

going to advise a Board that I'm a member of how to proceed because, as I have previously stated 'an attorney that represents himself has got a fool for a client and an idiot for a lawyer' so I am not going to make any statements. I just feel more comfortable with the restraining orders if we take no additional action in this meeting until after we can get some legal advise on how to proceed. That's the reason I am making the motion."

Mr. Travis said, "I can't in any way see how passing the Academic Committee recommendations and the Finance Committee recommendations are going to get us into a problem with an injunction."

Mrs. Judd, "Could I ask a question. Mr. Catron, in the restraining order, is there a provision that says that we are supposed to retain the status quo?"

Mr. Catron responded, "Insofar as the engagement of Mr. Nunn is concerned, it is not directed in any respect to the operations of Western Kentucky University. The purpose of the restraining order and the purpose of a temporary injunction, and I'm making statements without my counsel here, the purpose of those two items is solely for the purpose of maintaining the status quo of the issue that is in question. The issue in question in the lawsuit that was filed is directed toward the engagement of Louie B. Nunn as special counsel to this Board, and it is narrowly written to cover only those items, and is directed toward maintaining the status quo insofar as the engagement of special counsel is concerned. It is solely on that issue, and is not directed to the operations of this University."

Mr. Iracane, "But, do we have counsel now--are we at liberty to understand that we as a Board now have counsel from anyone. I mean Franklin Berry is not--?"

Mr. Catron, "I think you would defer to Mr. Berry and his position on that. I would not presume to answer for him."

Mr. Berry, "I represent the University as to matters between the Board, between Board members and between the Board and Dr. Meredith, and I am not involved. That would be a conflict; I represent the University."

Mr. Iracane, "Thank God, I'm not a lawyer. We have a motion on the floor and a second to the motion--any other discussion related to this situation?"

Mr. Catron stated, "The injunction, Mr. Chairman, is not directed toward the operations of the University. I concur with the earlier comments

that I see nothing on this agenda that is going to precipitate in any manner the need for counsel, and I see no reason that the business of the Board of Regents cannot proceed."

Mrs. Judd stated, "Mr. Catron, I'm not an attorney, but I think it could be read either way."

Mr. Catron stated, "It cannot be read either way. If you wish to read it one way, I am confident that you can, Mrs. Judd, but it is not intended, and I am telling you it is not intended, nor is the language itself directed toward the operations of Western Kentucky University. No reasonable reading of that injunction could even imply that as being the case."

Mr. Iracane, "In discussing this situation, since the major crux of the concern is based on finance and personnel matters--can we continue on with the Board leaving out those issues? I'm just asking this as a question, you know we're open for discussion--leaving out the Finance and Investment Committee and the other business related to personnel matters and continue on since we have some people that have come a great distance. International Affairs--we have a report from Dr. Petersen and some others. Would that be?"

Ms. Falmlen, "Number seven--the consideration of the employment of an auditing firm would be deleted?"

Mr. Iracane, "Leave that out too, anything that would be related to--would that set well with you Mr. Catron, or just let it go.?"

Mr. Catron, "I prefer going on with the business of the Board under any circumstance. I didn't make the motion."

Mr. Iracane, "Leave the motion as stands then."

Roll call vote on the motion to adjourn is as follows:

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

Nay: Catron, Hankins, Travis

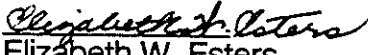
Pass: Falmlen

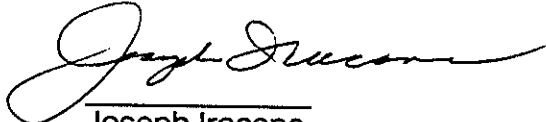
The meeting adjourned at approximately 10:25 a.m.

JAN 30 1992

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 regular meeting held on January 30, 1992, in the Regents Conference Room of the Wetherby Administration Building on the Western campus, 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

February 20, 1992


Elizabeth W. Esters
Secretary

February 20, 1992