

MINUTES OF TELEPHONE CONFERENCE CALL MEETING  
BOARD OF REGENTS OF HIGHER EDUCATION  
MONTANA UNIVERSITY SYSTEM

DATE: February 19, 1991

TIME: 1:30 p.m.

LOCATION: Office of the Commissioner of Higher  
Education  
33 South Last Chance Gulch  
Helena, Montana

REGENTS  
PARTICIPATING  
BY TELEPHONE: Mathers; Boylan; Schwanke; Kaze; Musgrove

REGENTS ABSENT: Johnson; Topel

OTHERS PRESENT: Commissioner of Higher Education John M.  
Hutchinson; Deputy Commissioner Jack Noble;  
Chief Counsel LeRoy Schramm; Director of the  
Guaranteed Student Loan Program Bill Lannan;  
Executive Director of MHESAC Jim Stipcich;  
Bond Counsel William Johnstone, Dorsey &  
Whitney, Minneapolis, Minnesota  
Senior Vice President Don Wyzynski,  
Daugherty Dawkins, Minneapolis, Minnesota

Chairman Mathers called the conference call meeting to order at 1:35 p.m. Roll call was taken and it was determined a quorum was present. Regents Topel and Johnson were absent and excused. Chairman Mathers questioned if Regent Topel had received the mailing of the agenda material and was told that he had. Commissioner Hutchinson noted he had a

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telephone conversation with Regent Topel, and he believed the concerns expressed Regent Topel had been satisfactorily addressed. Commissioner Hutchinson and Chief Counsel Schramm assured the Board members Regent Topel's absence from this meeting was not intended to be interpreted as objection to actions anticipated.

Commissioner Hutchinson stated for the record that the purpose of this conference call meeting was to act on the resolution included with the agenda packet authorizing and approving leasing of space for the Guaranteed Student Loan Program and for the Commissioner's office.

At the Chairman's request, Dr. Hutchinson gave a brief summary of the background leading to the request for action on the resolution before the Board. Chairman Mathers noted this would be particularly helpful to Regent Paul Boylan who was participating in his first Regent meeting today, and was appointed to the Board of Regents only recently this month.

Dr. Hutchinson explained in 1987 the Montana Higher Education Student Assistance Corporation (MHESAC) Board of Directors and the Board of Regents decided to transfer responsibility for the servicing and processing of loans, which is currently done in Indiannapolis, and moving that function to Helena. There were a number of reasons underpinning that decision, not the least of which is the fact that better service will be provided to students having the loans. With that move between 70 - 90 additional positions would be added and present space is totally inadequate to house that additional staff. Add to that the Commissioner's office does not have adequate space. As a kind of partnership between the GSL, MHESAC, and OCHE the possibility of finding new space was investigated. Space available in Helena was extensively surveyed, and one facility that was potentially available was looked at in Great Falls. After carefully consideration of all those facilities it was determined to be in the best interests

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of all parties to move ahead with construction of a new building. This was decided for many reasons, among them: (1) over the long haul it was determined this action would be cost-effective by anchoring OCHE's rental costs for the next several years thereby holding down the need for additional general funds appropriated to the Commissioner's office for rent; (2) construction of the new building provides an asset to the corporation and allows design of a building uniquely tailored for the operations contemplated. For these and other reasons - and certainly one of these was the firm belief the three entities, GSL, OCHE, and MHESAC, should remain housed in the same facility since they are integrally related. The Commissioner by virtue of his office also serves as President of MHESAC. The Director of the GSL program and the System's Chief Fiscal Officer are also officers of MHESAC by virtue of their offices. Thus, the decision to construct a new building was made.

The MHESAC Board has granted approval to move forward with the building project. Approval of the Regents is now solicited for the participation of GSL and OCHE in the project.

Regent Boylan noted he had some familiarity with the beginning of the project from his service on the Education Subcommittee during his legislative term. The snapshot provided by the Commissioner was deemed helpful.

Dr. Schramm noted that at Regent Topel's request he had prepared a memorandum highlighting the features of the agreements underlying the financing of the Student Loan Building Project. Dr. Schramm stated it is important that the minutes reflect the Regents' understanding of the substance of the agreements they are being asked to authorize the Commissioner to sign. To assure that understanding, Dr.

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Schramm read the following memorandum, and noted that in addition to hearing the memorandum during this conference call meeting, the memorandum will be sent to each Regent because it is important they have a copy on record:

TO: Board of Regents

FROM: LeRoy H. Schramm  
Chief Legal Counsel

DATE: February 19, 1991

RE: Student Loan Building Project

I have been asked to highlight the features of the agreements underlying the financing of the Student Loan Building Project. Such a summary of highlights may be helpful for at least three reasons. First, none of the documents are in their final form yet. Therefore, the Board approval is based on draft documents and general representations as to what the final documents will contain. This procedure is not unusual. The Regents commonly give such general approval and authorize the Commissioner some discretion as to the actual wording of finished documents. Second, a summary is useful because the documents, in either final or preliminary form are lengthy, detailed and not easy for a layperson to understand on first reading. Third, a summary is useful because the resolution now before the Regents only provides a general description of the transaction and the authorized documents. It is therefore appropriate to lay out some of the understandings behind the Board's consideration of the resolution.

1. Neither the Regents, nor the Guaranteed Student Loan Program (GSL), nor MHESAC are issuers of the bonds which will finance the building. The issuer will be Lewis and Clark County. The anticipated security for the bonds, however, does not come from the county. The Regents and MHESAC will then lease the building from the county and the rental payments from these leases is what will be used to make the bond payments. While the leases will be with the county, MHESAC will serve as building manager and be responsible for day-to-day oversight of the building.

2. The Regents will be party to two separate leases, one for the Commissioner's Office space, the other for GSL space. The Regents have no ongoing financial obligations under either the bonds or the leases other than to pay the required rental

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amounts. The funds to pay the rent on the Commissioner's Office lease may come from any source of funds legally available to the Regents. The funds to pay the rent on GSL's space need come only from funds dedicated to GSL purposes. The Regents are not obligated to use non-GSL funds to pay to GSL rent if no GSL monies are available. Of course, in such an event, GSL would be in default on their lease obligations and would have no ongoing right to occupy the space.

3. The leases are expected to run until approximately 2014 and the basic rent amounts for that period are expected to be stable (but not absolutely fixed). An additional component of the rent will increase over time because the costs of basic building maintenance and utilities will no doubt rise between now and 2014. The initial rent estimates are shown on Exhibit 3 of the material provided to you by mail.

4. The leases could be terminated before 2014 when the bonds are subject to the mandated "put" in 1998. Such a termination may occur if no refinancing of the outstanding bonds is secured nor are the bonds paid off in a lump sum by MHESAC. In that event the Regents (and MHESAC, as well) could be ejected by the trustee who could take possession of the building. In that event the Regents' obligation to pay rent is terminated also.

5. Beginning in 2001, MHESAC has the right to displace the Commissioner's Office, but not GSL, if MHESAC needs additional space. Of course, MHESAC then becomes responsible for paying the rent on the space it takes over.

6. At the end of the financing period MHESAC may acquire the building for a nominal sum. The Regents have no such right unless MHESAC chooses not to exercise its option. However, the Regents have a continuing right to occupy their space at a rate that reflects the fact that the building is paid off.

The Chairman called for questions from the Regents.

Regent Schwanke questioned the percentage of space of the new facility that would be leased to the Regents. Dr. Schramm responded MHESAC will occupy 56%; GSL 27%; OCHE 17%. The two Regents' components of the space would total 44% of the space. The Regents' percentage could shrink if MHESAC expands more than anticipated during the term of the lease. If, for instance, MHESAC determined it needed the entire building it

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could make that demand. At the end of the financing period (2014) it is not certain whether the Regents' share and MHESAC's share would be frozen. The language on accommodation on that point is still being negotiated.

Regent Kaze asked if it was correct that MHESAC had to give one year's notice of its intent to occupy space leased by lessees. Mr. Stipcich explained there are mechanisms for the Regents' protection. First, MHESAC's option to acquire any of the Commissioner's Office space does not begin until ten years have passed. OCHE has ten years of space guaranteed. In addition, MHESAC does not have the right to acquire GSL's space. That right is limited strictly to the space occupied by the Commissioner's Office. After year 10, if MHESAC determines it needs additional space occupied by OCHE, a one-year's notice to the Regents is required prior to occupancy. Dr. Schramm noted those points are important ones. He will clarify his memorandum to reflect the clarifications just made that OCHE's space is assured for ten years and MHESAC's option to expand only applies to OCHE space.

Chairman Mathers asked for clarification as to where title of the building resides at the end of bond payment period. Dr. Schramm responded the documents will state MHESAC has right to title of the building for the nominal payment of \$1.00; OCHE will have the on-going right to rent from MHESAC at a favored rate.

Regent Kaze referenced concerns he had raised on certain documents which were discussed in a telephone conversation with bond counsel Bill Johnstone just prior to the meeting. He asked Mr. Johnstone to speak to those concerns to the full Board.

Mr. Johnstone stated he and Regent Kaze discussed two issues: (1) Regent Kaze was concerned about the Board of

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Regents being party to the bond purchase agreement. That concern has been discussed with Mr. Wyzynski and he has agreed on behalf of the underwriters that the Regents do not need to be and will not be party to the bond purchase agreement; and (2) Regent Kaze asked if the Regents had to be party to the management agreement or whether the nominal responsibility they assumed under that agreement could instead be provided in the lease. Mr. Johnstone reported he told Regent Kaze the Regents could and would be removed from the management agreement. A minor change will be made in the lease to reflect that change.

Regent Kaze added he had been assured the Regents' lease with the county would not include a balloon rental payment at the end of the first financing period, i.e., eight years out. Instead, the Regents' lease will continue at the then-existing rental plus Regents' share of costs subject only to the mortgage. Mr. Johnstone stated that was correct. The leases do not require that lessees assume the responsibility for payment of the purchase price on the mandatory purchase date which is in effect a balloon payment. Rather, the lessees are only required to continue to make their regular rental payments which are scheduled to be essentially equal over the term of the lease. In the event the bondholders put the bonds in 1998, and they could not be refinanced or re-marketed, the bondholders would have the option to protect their interest by foreclosing the mortgage. In that event the leases could be terminated, but there would be no obligation on the part of the lessees to make any balloon payment.

Regent Kaze noted the draft of the resolution mailed to the Regents would have to be modified to reflect Mr. Johnstone's statement, i.e., the Regents are not authorizing anyone to sign a bond purchase agreement or management agreement on behalf of the Board of Regents. Mr. Stipcich assured Regent Kaze that would be done.

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Hearing no further comments, Dr. Hutchinson noted the staff recommendation to the Board is that the Commissioner be authorized to sign the various documents authorizing this transaction on behalf of the Board of Regents, and to execute the leases on the Board's behalf. Chairman Mathers concurred with that recommendation without objection from any other Board member. He added it was his assumption further that all lease agreements would contain the clarifications and revisions made by Regents Kaze, Topel, and Schwanke.

Regent Kaze then moved approval of the resolution presented to the Board with all modifications noted by Mr. Johnstone and the modification authorizing the Commissioner to execute the necessary documents on behalf of the Board of Regents. A copy of the modified resolution will be delivered to the Board of Regents office by Executive Director Stipcich to be kept on file with the minutes of the meeting.

At the Chairman's request, a roll call vote was taken. Regents Schwanke, Musgrove, Kaze, Boylan, and Mathers voted aye. The motion carried unanimously.

Regent Kaze stated for the record he wished to thank Chief Counsel Schramm and Executive Director of MHESAC Jim Stipcich for their particular patience with the many questions and issues raised in bringing this transaction to closure. It was a job well done.

There being no other business to come before the Board, the meeting adjourned at 2:04 p.m.

The next regularly scheduled meeting of the Board of Regents will be held March 21-22, 1991 in Helena, Montana.