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University of South Carolina
BOARD OF TRUSTEES

Called Meeting

February 14, 2020

The University of South Carolina Board of Trustees convened in a called meeting at 10 a.m. on Friday, February 14, 2020, by telephone conference hosted from Room 206-B of the Osborne Administration Building.

Members participating were: Mr. John C. von Lehe Jr., Chairman; Mr. Hubert F. Mobley, Vice Chairman; Mr. C. Dan Adams; Mr. J. Egerton Burroughs; Mr. A. King Dixon II; Mr. Robert F. Dozier Jr., who was present in the meeting room; Dr. C. Edward Floyd; Mr. William C. Hubbard; Mr. Richard A. Jones Jr.; Mr. Toney J. Lister; Mr. Miles Loadholt; Ms. Leah B. Moody; Ms. Rose Buyck Newton; Dr. C. Dorn Smith III; Ms. Molly Spearman; Mr. Thad Westbrook; Mr. Mack I. Whittle Jr.; and Mr. Charles H. Williams. Absent were Mr. Chuck Allen and Mr. Eugene P. Warr Jr.

USC Columbia Faculty Senate Chairman Mark Cooper was present in the meeting room and Board Secretary J. Cantey Heath Jr. confirmed USC Columbia Student Government President Luke Rankin joined the meeting by telephone.

Others joining Secretary Heath in the meeting room were: President Robert L. Caslen Jr.; Chief of Staff Mark Bieger; General Counsel Walter "Terry" H. Parham; Chief Audit Executive Pam Dunleavy; Senior Vice President for Administration and Chief Operating Officer Edward L. Walton; Athletics Director Ray Tanner; Vice President for Student Affairs and Vice Provost for Academic Support Dennis A. Pruitt; Interim Chief Communications Officer and Director of Public Relations Jeff Stensland; Presidential Faculty Fellow and Executive Assistant to the President Susan Bon; Interim Special Assistant to the President James Smith; and Board of Trustees staff member Debra Allen.

I. Call to Order

Chairman von Lehe called the meeting to order and stated notice of the meeting had been posted and the press notified as required by the Freedom of Information Act; the agenda and supporting materials had been circulated; and a quorum was present to conduct business.

Mr. Stensland introduced members of the news media who were in attendance: Andy Shain with *The Post and Courier* and Isabella Cueto with *The State*.

II. BTRU 4.00 Protecting the Institution from External Influences

Chairman von Lehe called on Mr. Parham who detailed the proposed new policy that cited the responsibility of Board members to protect the University from undue influence by external persons and bodies.

Mr. Parham said, with an ongoing review underway by the Southern Association of Colleges and Schools Commission on Colleges (SACSCOC), the University's Association of Governing Boards' (AGB) consultants recommended the Board consider addressing this matter early on in its consideration of the overall recommendations made in the AGB report.

In drafting the policy, Mr. Parham said his research yielded an AGB publication on External Influences on Universities and Colleges which outlined four guiding principals on external influence that AGB asserts every governing body must follow. Thus, he used the four principals in preparing the Board's policy, modifying them to conform to USC, since SACSCOC "looks to and respects AGB in all matters involving university governance."

Mr. Parham said the first two principals in the proposed policy state that the Board will demonstrate independence to govern consistent with state law and the Board will preserve institutional independence and autonomy. The major concept of these two principals is Board independence, free from undue influence.

He noted that at the Board Retreat in January there were a number of questions raised about whether the Board should even receive calls from external stakeholders regarding a University matter. Several Board members correctly pointed out the impracticality of saying they have to refuse to receive those calls. Mr. Parham's research specifically addressed this point. He identified language in the AGB policy to help clarify the issue.

The AGB provides, "As the overseers of a public trust, boards have an obligation to remain open to external input and ensure the institutions they govern are responsive to societal needs. They have a responsibility to link the colleges, universities and systems they serve to the interests of the public."

He said the AGB policy goes on to state, "Although boards should respect, encourage, and welcome the input of all stakeholders in considering a policy, they must ensure that their decision-making processes are free from any undue pressures from these external stakeholders."

Mr. Parham said he had inserted the essence of this language in the new policy, underscoring

Trustees understand it is appropriate to receive and respect input from stakeholders, but they must not let that input supplant their individual judgement or obligation to act in the best interest of the institution.

The third principal adopted from AGB states, “The board will protect appropriately, academic freedom and be the standard bearer for the due process protection of the institution, its faculty, staff and students.” This is a very important concept for SACSCOC as well, Mr. Parham said. With respect to external influence, SACSCOC’s reference to academic freedom relates to the potential for external stakeholders to attempt to influence academic programs and course offerings by objecting to subject matter about which the stakeholder may disagree – an issue the University had encountered in past years.

After referencing academic freedom, the AGB policy recognizes that academic freedom is not absolute. It states, “The board should ensure that academic freedom is not used as a shield for inappropriate or unethical behavior because both disregard for and abuse of academic freedom corrodes respect for the governance of higher education.” Thus, Mr. Parham said the concept adopted for the proposed new policy is to ensure there is due process for protection of the institution, its faculty, its staff, and its students.

Finally, the last AGB principal states, “The board will assure institutional accountability to the public interest.” He explained Trustees should be attentive to political, economic, social and educational priorities of the community, state and nation and encourage the institution to search for solutions to society’s problems. Public accountability by a board also includes it serving as a model of public conduct for the campus community and the community at large. Thus, he said, those concepts have been included in the new policy.

Mr. Parham said the draft policy provides that if a Trustee believes a third-party stakeholder is attempting to unduly influence him or her, the Trustee should advise the stakeholder of the existence of the policy and then inform the Board chair who will inform the Governance Committee of the Board and the President.

He added that Trustee Moody called in advance of the meeting to recommend the policy number be changed from 4.00 to 1.19 so it would follow the Board’s Conflict of Interest Policy BTRU 1.18.

Chairman von Lehe called for a motion and second to approve the new Board policy as amended with the updated numbering. Trustee Dozier so moved. Trustee Lister seconded the motion. [Exhibit A]

In response to a question from Trustee Whittle as to whether the policy would apply to all members of the Board, Mr. Parham said it would cover all statutory members of the Board as outlined in state law, but would not technically cover the Student Body President nor the Faculty Senate Chair.

Faculty Senate Chair Cooper congratulated Trustees on the action to approve the “comprehensive policy on what the Board should do;” however, he asked how compliance would be enforced. Mr. Parham said the policy was self-governing, self-policing. If a Board member feels like he or she has been subjected to an attempt to unduly influence, the policy states they are to advise the individual who is attempting to do so of the existence of the policy and then notify the Board Chairman who will put it in the hands of the Governance Committee and notify the President as well, so the Governance Committee can determine on a factual basis what, if anything, should be done.

Trustee Spearman thanked Mr. Parham for clarifying the issue regarding being contacted, observing it was exactly what Trustees were trying to explain at its retreat in January.

The vote was taken, and the motion was approved unanimously. Faculty Senate Chair Cooper noted he was not a voting member of the Board but would like the minutes to reflect his support of the motion.

III. University of South Carolina System Board of Trustees Oath of Office, Code of Conduct and Statement of Commitment

Chairman von Lehe called on Mr. Parham who referenced a second document in agenda materials that he drafted following Board discussion at its January Retreat about the potential need for an oath of office and a code of conduct.

He noted the use as an initial guide the oath of office that state elected officials take, which is found in the state constitution. From that he crafted language more specific to the responsibilities of Trustees.

The proposed oath states:

I do solemnly affirm that I am duly qualified, according to the laws and constitution of the State of South Carolina, to serve and exercise the duties of Trustee of the University of South Carolina System, and that I will, to the best of my ability, discharge the duties of Trustee with dedication and integrity, mindful of my fiduciary obligations to the institution, and consistent with the public trust placed in me.

After the oath, is a Code of Conduct and Statement of Commitment the purpose of which is to outline certain concepts each Board member will reaffirm annually.

Mr. Parham said he wanted to credit a draft AGB consultant Rick Legon provided him. He then modified the broad, sweeping language of the AGB draft to accommodate the specifics of the University of South Carolina Board of Trustees. The proposed code focuses on: 1) the commitment and attention of Trustees to the University system as a whole; 2) the Board’s fiduciary obligations to the institution and support of presidential leadership and the fact that the President has the responsibility to direct the

operation and day-to-day management of the institution and its staff; and 3) the Board's commitment to ethical behavior and to participating in periodic Board education programs.

Mr. Parham said Trustee Moody requested in advance of the meeting that this document be amended to expressly include a reference to the Board's commitment to comply with the state's Ethics Act and to comply with the Board's existing policy on Conflict of Interest. This is accomplished by adding the following language to paragraph eight of the policy: "compliance with the Ethics, Government Accountability, and Campaign Reform Act of 1991, as amended, and Board of Trustees Policy BTRU 1.18 entitled 'Conflicts of Interest and Commitment.'"

In conclusion, he noted the final paragraph, which stated "if any board member reasonably believes a colleague on the board has violated the terms of this Code of Conduct and Statement of Commitment, he/she shall inform the board chair who may refer the matter to the Governance Committee."

Chairman von Lehe called for a motion and second to adopt the Oath of Office, Code of Conduct and Statement of Commitment. Trustee Moody so moved. Trustee Smith seconded the motion.

Trustee Dozier questioned the lack of reference to external constituencies and how Trustees should interact with them. Mr. Parham said reference could be made to the new external influence policy to address this issue.

Trustee Moody moved approval of the two proposed amendments. Trustee Spearman seconded the motion. The vote was taken, and the motion to approve the amendments was approved.

Chairman von Lehe called for a motion and second to adopt the Oath of Office, Code of Conduct and Statement of Commitment as amended and to require each Board member to take the oath and sign the document annually at the full Board meeting in August. Trustee Mobley so moved. Trustee Moody seconded the motion. The vote was taken, and the motion was approved as amended. [Exhibit B]

Faculty Senate Chair Cooper requested the minutes reflect his support of the Board's adoption of an Oath of Office, Code of Conduct and Statement of Commitment.

IV. Appointment of Ad Hoc Advisory Committee on Governance

Chairman von Lehe called on Mr. Parham who explained formation of the ad hoc advisory committee as a subcommittee to the Executive and Governance Committee. Mr. Parham said the Board Bylaws contains a section regarding ad hoc committees that states such committees cannot be created to act upon any matter appropriate to be acted upon by a standing committee.

In 2018, the Board added responsibility for governance to the Executive Committee and changed the name of the committee to Executive and Governance Committee. As a result of that action, it is

necessary that the advisory committee report to the Executive and Governance Committee, which will then take its recommendations to the full Board.

Chairman von Lehe said the Ad Hoc Advisory Committee on Governance would consider the January report of the AGB as discussed during the Board's January Retreat and make recommendations to the Executive and Governance Committee for an appropriate path forward.

He announced the following had agreed to serve on the committee, which Trustee Dorn Smith had agreed to chair: William Hubbard, Leah Moody, Gene Warr, Mack Whittle and Board Advisor David Seaton. Chairman von Lehe and Vice Chairman Mobley will serve as ex officio members of the ad hoc committee.

Dr. Smith said he planned to schedule the first meeting of the Ad Hoc Advisory Committee on Governance within the next seven days and would work toward providing recommendations before the Board's reorganizational meeting in August.

V. Athletics Employment Agreement

Chairman von Lehe called on Mr. Parham who said Athletics Director Tanner and President Caslen sought approval of a proposed employment agreement for assistant football coach Tracy Rucker. Mr. Parham asked Mr. Tanner or President Caslen for comments before he reviewed the contract details.

Mr. Tanner said if the Board approved, Tracy Rucker would be added to the football coaching staff as Defensive Line Coach, effective February 17.

Mr. Parham said Coach Rucker would serve as an assistant football coach through December 31, 2021, with a base salary of \$525,000 annually. As with all other multi-year contracts, if the University informs Coach Rucker after the final regular season game in 2021 that his contract will not be extended/renewed, the term of the contract will automatically be extended until February 28, 2022 or the date Coach Rucker accepts other employment, whichever occurs first. However, he noted this extension is not applicable if Coach Rucker is terminated with or without cause at any time.

The contract also contains the same provisions as all other assistant football coaching contracts such as the earning of incentive bonuses if the football team wins the Southeastern Conference (SEC) East or the SEC Championship, and he can receive a bonus if the football team is selected for and participates in a post-season bowl game. The amount of the bonus depends on the quality of the bowl game itself. As is always the case with assistant coaches, he has the use of a vehicle.

The buyout provisions also are the same as for other multi-year coaches' contracts, Mr. Parham said. If the University terminates for cause, all obligations to pay stop as of the effective date of

termination. If the coach is terminated without cause, the University is obligated to pay an amount equal to his base salary for the remaining term of the contract. However, the standard mitigation obligation imposed on all assistant coaches is applicable – if he finds another coaching job, the University’s obligation to pay is reduced dollar-for-dollar based on what he earns in the new position.

Finally, if Coach Rocker terminated the contract, he will owe the University \$100,000 if he terminates in the first year and \$50,000 if he terminates in the second year.

Intercollegiate Athletics Committee Chair Whittle said he was in total agreement with Mr. Tanner’s request.

Mr. Parham responded to Trustee Newton’s request to summarize what constitutes “cause” in terminating a coach. He said at least a dozen enumerated grounds were included in the contract as examples but were not intended to be all inclusive. Cause is behavior that the University determines to be inappropriate. For instance, knowledge of any Title IX allegation involving faculty, staff or students and failure to report those allegations to the Title IX coordinator, is grounds for cause. Criminal activity, misdemeanor or felony, are grounds for termination for cause. He confirmed there were no provisions requiring a certain number of games be won or certain standards of play be attained. Trustee Newton said she struggled with contract language requiring coaches be paid when they are not performing.

Chairman von Lehe called for a motion and second to approve the Athletics employment agreement with Coach Tracy Rocker. Mr. Whittle so moved. Dr. Smith seconded the motion. The vote was taken and the motion passed.

VI. Adjournment

There being no other matters on the called meeting agenda, Chairman von Lehe adjourned the meeting at 10:39 a.m.

Respectfully submitted,

J. Cantey Heath, Jr.
Secretary