

MINUTES OF THE EXECUTIVE AND GOVERNANCE COMMITTEE

The Executive and Governance Committee met on Tuesday, November 27, 2018 in the Miller Education Center Meeting Room.

Call to Order and Roll Call

Committee Chair Steve Smith called the meeting to order at 1:30 p.m. and requested Board Secretary Heidi Zimmerman to call the roll. Trustee Darrell Freeman was physically present for this meeting. Committee Chair Smith and Trustee Chris Karbowiak participated telephonically. Other Trustees present in the meeting room were Tony Johnston and Peyton Tracy. Trustees Pete DeLay and Pamela Wright were present telephonically. Dr. Sidney McPhee, President; Alan Thomas, Vice President for Business and Finance; Andrew Oppmann, Vice President for Marketing and Communications; Bruce Petryshak, Vice President for Information Technology and Chief Information Officer; Mark Byrnes, Provost; Joe Bales, Vice President for University Advancement; Deb Sells, Vice President for Student Affairs and Vice Provost for Enrollment Management; Kim Edgar, Executive Assistant to the President and Chief of Staff; and, Heidi Zimmerman, University Counsel and Board Secretary were in attendance at the Miller Center.

Electronic Participation and Statement of Necessity

As Trustees Smith and Karbowiak were participating in the meeting electronically, pursuant to T.C.A. § 8-44-108(b)(1), these trustees were asked the following questions: (1) Can you hear those present in the meeting room and others participating via phone so that you can participate in the meeting; and, (2) Is anyone else present in the room with you; if so, please identify each person. Each trustee indicated being able to clearly hear those in the meeting room and those on the phone. They also indicated there were no other individuals present at their locations. Ms. Zimmerman then asked those present at the meeting location if they were able to hear the trustees participating electronically. Those present answered in the affirmative. Ms. Zimmerman asked if there were any other individuals on the phone line not yet identified. Trustees Wright and DeLay indicated their presence.

Ms. Zimmerman stated that a physical quorum was not present at the meeting location; however, a quorum did exist with the inclusion of those trustees participating by electronic means. Because there was no physical quorum present, pursuant to T.C.A. § 8-44-108(b)(2), a determination that necessity for the meeting to take place was needed. Ms. Zimmerman offered the following facts to support the meeting's necessity:

1. The agenda item concerns consideration of the president's employment agreement.

This matter came before the Executive and Governance Committee at its November 13, 2018 meeting. The Committee voted to defer action and to hold a special called meeting to deliberate this matter in order to make a recommendation to the Board of Trustees at its December 11, 2018 meeting.

It is necessary for the Executive and Governance Committee to meet in order to consider this matter, to vote upon it and to make a recommendation to the Board regarding it. The Board of Trustees must consider the Committee's recommendation as concerns the president's employment agreement. Its next meeting will occur on December 11, 2018.

2. There was not adequate time for the members of the Executive and Governance Committee to make arrangements to be physically present at this meeting to form a quorum.

Based on the stated reasons, Committee Chair Smith requested a motion be made and a roll call vote be taken for a determination on the necessity of holding the meeting. Trustee Freeman made the motion that there was necessity established for the meeting and Trustee Karbowski seconded that motion. Committee Chair Smith asked if there was any discussion. Hearing none, a roll call vote was taken. The vote was three (3) Aye; zero (0) Nay.

Approval of President's Contract

Committee Chair Smith provided as background that in March 2018, the Executive and Governance Committee met and asked the Chair of the Finance and Personnel Committee, Joey Jacobs, to negotiate a contract with the president. Having done this, the draft

agreement is now before the Committee to review and deliberate upon. Committee Chair Smith stated that he would like to go through each of the eleven (11) sections of the document and ask for any discussion, comments, questions or changes. It was then agreed that any revisions agreed upon would be recorded by the Board Secretary and then, at the conclusion of reviewing the document in its entirety, Ms. Zimmerman would reread each to be sure they were accurate. The Committee could then determine whether they wanted to make a motion and vote on the document with those stated revisions.

There were no comments concerning Sections 1 or 2.

Concerning Section 3 Salary and Other Compensation as President, Trustee Karbowski stated her understanding that the salary is in alignment with the report of a well-respected consultant in this area. Based on that consultant's work, she stated was very comfortable with the level of salary reflected in the agreement. Trustees Freeman and Committee Chair Smith indicated their agreement. Committee Chair Smith commented with regard to Paragraph E., that it would be reasonable to add a requirement that anything Dr. McPhee does outside his duties at MTSU shall be submitted and reviewed annually. There then ensued a discussion concerning the scope of activities that would require prior written approval of the Chair of the Board, and the process to be followed should Dr. McPhee wish to sit on other boards or engage in consulting activities. Ms. Zimmerman suggested the following sentence be added after the sentence allowing for outside engagements: "Dr. McPhee shall secure written approval of the Chair of the Board prior to holding outside directorships or engaging in consulting activities." The Committee members accepted this addition. Trustee Wright asked for clarification with regard to Paragraph J of Section 3, stating that it was unclear to her whether the stated bonus was to be paid as a signing bonus in the next contract term if the initial contract ended after five (5) years and the president continued; or, if the payment was a bonus if he remained for the entire five (5) year term.

Committee Chair Smith and Trustee Karbowski indicated their interpretation of that paragraph as being that if Dr. McPhee serves the full five (5) years, payment is due at the conclusion of the contract term; that it is not a signing bonus. It was decided that placing a comma within the statement would clarify its ambiguity: "If Dr. McPhee remains President

of the University, at the conclusion of the original term of this Agreement on December 10, 2023, the University agrees to pay Dr. McPhee a bonus of \$250,000.”

No changes were recommended concerning Sections 4 or 5.

Committee Chair Smith asked, with regard to Section 6, Paragraph F., whether there should be a cap or a yearly accounting on these expenses. This was discussed among the trustees. Trustee Karbowiak voiced a concern that there may not be an appropriate segregation of duties if a staff member, the Vice President for Business and Finance, provides the approval. She stated that this may not provide adequate oversight if there is not also at least an annual review and accounting of what has been spent. Trustee Freeman asked Mr. Thomas for information about the past amounts of expenses incurred in support of activities of the president’s spouse. Mr. Thomas stated that this specific information is not separately maintained. (However, since these expenses are made by, at the direction of and for the benefit of the President, they are always included in the annual audit of the President.) Trustee Karbowiak suggested that rather than including a specific amount in the agreement, state instead that the Board shall annually establish a reasonable cap on the expenses allowable under the provisions of this paragraph. In that way, the Board can review what has been spent in the past and determine a reasonable amount for the future based on the level of activity. Not knowing what events may occur in the future, putting a cap in place might be limiting. She suggested that from time to time, the Board Chair may increase the cap based on reasonable assessment of need. It was agreed to add the following to the end of Paragraph F.: “The Board of Trustees shall annually establish a reasonable cap on the expenses allowed by this Paragraph F. From time to time, the Board Chair may increase the cap based on need. An annual accounting of expenses will be provided to the Audit and Compliance Committee.”

No changes were recommended to Sections 7, 8, 9, 10 or 11.

Trustee Freeman made a motion to approve the President’s Contract with the following revisions:

1. Add to Paragraph E. of Section 3. immediately before the final sentence, the following: “Dr. McPhee shall secure written approval of the Chair of the Board prior to holding outside directorships or engaging in consulting activities.”
2. Add a comma to the sentence in Paragraph J. of Section 3. as follows: “If Dr. McPhee remains President of the University, at the conclusion of the original term of this Agreement on December 10, 2023, the University agrees to pay Dr. McPhee a bonus of \$250,000.”
3. Add at the end of Paragraph F. of Section 6 the following: “The Board of Trustees shall annually establish a reasonable cap on expenses allowed by this Paragraph F. From time to time, the Board Chair may increase the cap based on need. An annual accounting of expenses will be provided to the Audit and Compliance Committee.”

Trustee Karbowski seconded this motion. A roll call vote was taken. The vote was three (3) Aye; zero (0) Nay. Committee Chair Smith stated that the motion carried unanimously. Ms. Zimmerman stated that she would make the revisions voted on by the Committee and include them in the agreement to be placed in the Board materials for its next meeting on December 11, 2018.

The meeting was adjourned at 2:01 p.m.

Respectfully submitted,

Executive and Governance Committee