

Meeting No. 860

THE MINUTES OF THE BOARD OF REGENTS
OF
THE UNIVERSITY OF TEXAS SYSTEM

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March 17, 1992

Austin, Texas

MEETING NO. 860

TUESDAY, MARCH 17, 1992.--The members of the Board of Regents of The University of Texas System convened at 10:10 a.m. on Tuesday, March 17, 1992, in the Regents' Meeting Room on the ninth floor of Ashbel Smith Hall in Austin, Texas, with the following in attendance:

ATTENDANCE.--

Present

Chairman Beecherl, presiding
Vice-Chairman Ramirez
Vice-Chairman Cruikshank
Regent Barshop
Regent Loeffler
Regent Moncrief
Regent Rapoport

*Absent

Regent Holmes
Regent Temple

Executive Secretary Dilly

Chairman Beecherl announced a quorum present and called the meeting to order. He stated that the sole purpose of this special meeting was to consider personnel matters associated with the search for a successor to Chancellor Hans Mark.

RECESS TO EXECUTIVE SESSION.--At 10:12 a.m., the Board recessed to Executive Session pursuant to Vernon's Texas Civil Statutes, Article 6252-17, Section 2(g) to discuss personnel matters related to the chancellor search process.

Chairman Beecherl indicated that he had requested Vice Chancellor Farabee and Vice Chancellor Millsap to first discuss with the Board the legal and legislative environments surrounding the search for a successor to Chancellor Mark.

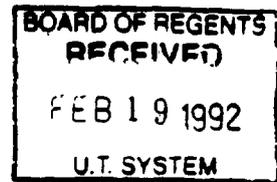
Vice Chancellor and General Counsel Farabee indicated that, soon after the announcement of Dr. Mark's resignation, he had (at the Chairman's request) written a brief concerning "Legal and Procedural Requirements for Selection of a Chancellor by the Board of Regents." Mr. Farabee reviewed this document for the Board and it is reproduced on Pages 2 - 5 for the record.

*Regents Holmes and Temple were excused because of prior commitments.

Academic Component Institutions
The University of Texas at Arlington
The University of Texas at Austin
The University of Texas at Brownsville
The University of Texas at Dallas
The University of Texas at El Paso
The University of Texas-Pan American
The University of Texas of the Permian Basin
The University of Texas at San Antonio
The University of Texas Institute of Texas Culture at San Antonio
The University of Texas at Tyler



Health Component Institutions
The University of Texas Southwestern Medical Center in Dallas
The University of Texas Medical Branch in Galveston
The University of Texas Health Science Center at Houston
The University of Texas Health Science Center at San Antonio
The University of Texas M. D. Anderson Cancer Center
The University of Texas Health Center at Tyler



THE UNIVERSITY OF TEXAS SYSTEM

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Ray Farabee
Vice Chancellor and
General Counsel

February 19, 1992

Mr. Louis A. Beecherl, Jr.
Chairman of the Board of Regents
Park Place on Turtle Creek
2911 Turtle Creek Blvd., Suite 900
Dallas, Texas 75219

RE: LEGAL AND PROCEDURAL REQUIREMENTS FOR SELECTION OF A CHANCELLOR BY
THE BOARD OF REGENTS ("BOR")

Dear Chairman Beecherl:

You have requested the Office of General Counsel to review the *Rules and Regulations* of the Board of Regents ("Rules"), statutes, and applicable law and advise you concerning any required procedure for the selection of a Chancellor of the U. T. System by the BOR. More specifically, you have posed the following questions: 1) Is there a legal requirement for a search committee, search firm, or national search? 2) Is there legal requirement for "posting" or giving notice of the job vacancy for Chancellor? and, 3) Is there a legal requirement to give public notice of the name or names of the finalists prior to selection of a Chancellor?

First Question: Is there a legal requirement for a search committee, search firm, or national search?

Answer: No.

We find no statutes, court decisions, or applicable regulations requiring a search committee, search firm, or national search. Section 3.1, Chapter II, Part One, *Rules* states:

"Appointment and Tenure. The Chancellor shall be elected by the affirmative vote of a majority of the Regents in office and shall hold office without fixed term, subject to the pleasure of the Board."

Procedures for selection of a Chancellor should not be confused with the more detailed and explicit requirements set out in the *Rules* for selection of a chief administrative officer of a component institution. That procedure may be found in Section 12, Chapter II, Part One of the *Rules* and requires an advisory committee, candidate pool, interviews, etc.

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Second Question: Is there legal requirement for “posting” or giving notice of the job vacancy for Chancellor?

Answer: Yes.

Article 6252-11 b, Section 2a, Vernon’s *Texas Civil Statutes* (“V.T.C.S.”) concerning “Notices and Information of Certain State Job Opportunities” states that:

“When a job vacancy occurs or is filled in Travis County within a state agency, the agency shall complete and submit to the commission (Texas Employment Commission) and to the (Governor’s) equal employment office as soon as possible the appropriate information form prescribed by the commission regarding the job vacancy or placement.” (Parentheticals added).

Compliance with this statute is spelled out in more detail in the “Inventory of Texas Basic State Personnel Statutes,” issued under Governor William P. Clements, September 1987, with the following statement:

“Notices and Information of Job Opportunities. The 65th Legislature enacted a statute that requires state agencies to provide the Texas Employment Commission and the Governor’s Equal Employment Opportunity Office with information regarding job vacancies and placement, as they occur in Travis County. Both offices must post notices of job vacancies, submitted by state agencies, for at least ten working days, unless notification is received that they have been filled.

A copy of the posting form used is attached as Exhibit A. “State agency” as defined in Section 1 of Article 6252-1 1 b as including “a university system or an institution of higher education as defined in Section 61.003, Texas Education Code.”

Postings, notices, and such recruitment efforts as determined appropriate by the BOR should comply with “The Texas Educational Opportunity Plan for Public Higher Education, September 1989 to August 1994. For example, any advertisements should include the phrase “an Equal Opportunity/Affirmative Action Employer.”

Third Question: Is there a legal requirement to give public notice of the name or names of the finalists prior to selection of a Chancellor?

Answer: Yes.

The *Texas Open Records Act*, Section 3(a), Article 6252-1 7a, V.T.C.S., states:

“All information collected, assembled, or maintained by or for governmental bodies...is public information and available to the public...with the following exceptions only:

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"....

"(23) the names of applicants for the position of chief executive officer for institutions of higher education, except that the governing board of the institution of higher education **must give public notice** of the **name or names** of the finalists being considered for the position at least 21 days prior to the meeting at which final action or vote is to be taken on the employment of the individual." (Emphasis added).

"System" in this context is considered the same as an "institution of higher education." (Section 61.003 (6) and (8), ~~Texas~~ Education Code) Public notice of the name(s) of the finalists will allow the **Office** of the Board of Regents to **maintain** the names of non-finalists confidential and not subject to an Open Records request Under the wording of the statute, either one name or more may be posted, depending on the **BOR's** determination of the finalist or finalists.

Summary: Requirements and procedures for filling the position of Chancellor should not be confused with those for filling a vacancy for the chief executive **officer** of a component. Although an extensive search procedure might be utilized, there is no requirement for such a search. On the other hand, there should be notice of the vacancy to the Texas Employment Commission and the Governor's Equal Employment Opportunity Office. The Texas Employment Commission and Governor's Equal Employment Opportunity offices will post a notice of the vacancy and the **BOR** should wait least ten working days prior to making a determination of the name or names of finalists for the position of Chancellor. Once the name or names of finalists for the position of Chancellor has been determined, public *notice* of such name or names should be given at least 21 days prior to the meeting of the **BOR** at which **final** action or vote is to be taken.

If we can furnish other information or answer additional questions, please advise.

Sincerely,



Ray Farabee

RF/sts

Attachment: Exhibit A

xc: Mr. Arthur H. Dilly
Dr. Hans Mark

Lfstfng Number: _____ Opening Odtr: _____
Stdrtfng Salary: _____ Closing Date: _____

STATE AGENCY JOB VACANCY NOTICE

JOB TITLE: _____ CLASSIFICATION #:

AGENCY: _____

ADDRESS: _____ ZIP CODE: _____

WORK LOCATION ADDRESS: _____
(If different than above)

REFER TO: _____ BY APPT: YES- NO TELEPHONE _____

NUMBER OF OPENINGS: _____ DURATION: Permanent Temporary _____ Hours/Wk: _____

TRAVEL REQUIRED: Yes ___ No ___ SHIFTS: 1st- - - ___ 3rd ___ Rotdtfng _____

MERIT SYSTEM EVALUATION: Yes _____ No _____

TYPING: Yes No _____ WPM _____ SHORTHAND: Yes No _____ WPM _____

JOB DESCRIPTION:

MINIMUM QUALIFICATIONS (License, Education, Experience):

REMARKS (Application procedure, Special requirements):

EXHIBIT A

E-30A (1081)

DATE FORM COMPLETED: _____

Mr. Farabee also reviewed the Regents' Rules and Regulations to emphasize the difference between the formalized search process required for the Chief Administrative Officer (President) of a component institution and the relative freedom which the Board has to select a process to elect a Chancellor.

In summary, Mr. Farabee reported that (1) the Board had much more than met the legal requirements for the posting of the availability of the Chancellor's position and, indeed, had made additional efforts to ensure that possible sources of minority candidates were included in the posting procedure, (2) the Board had complete authority to conduct the search as a Committee of the Whole, without an Advisory Committee, and to retain the consultative services of an executive search firm, and (3) the Board would have to comply with that section of the Open Records Act [V.T.C.S., Article 6252-17a, Section 3(a)(23)] which requires that the name or names of the finalist candidate or candidates be publicly released at least twenty-one (21) days in advance of any formal action to elect a new Chancellor.

Chairman Beecherl next introduced Vice Chancellor Millsap to advise the Board of his views regarding the general legislative/political environment which would be faced by the incoming Chancellor.

Vice Chancellor Millsap indicated that the projected state fiscal deficit, the generally negative reaction to any increased taxes, the increased emphasis on performance based budgeting, the competing demands of other state agencies for scarce resources, and the continued uncertainties regarding several legal issues all predict a very difficult, demanding, and stressful 1993 legislative session. He suggested that the intensity of these issues could be further complicated by (1) results of the contested elections in November, (2) the eventual outcome of the speaker's race, and (3) what could be considerable turnover in the chairmanship of committees. He added that the Chancellor serves an important role as spokesperson for The University of Texas System, as well as for higher education generally. Mr. Millsap concluded by noting that once again it would be important to have an effective and unified coalition of individuals and groups working in support of higher education.

Chairman Beecherl then directed the Board's attention to the credentials of the nominees, applicants, and prospects which had been compiled by Executive Secretary Dilly and by Mr. Ron Zera representing the executive search firm of SpencerStuart, Inc., Dallas, Texas. Mr. Beecherl emphasized the confidential nature of the review process and reminded the Board that these names were protected from public disclosure under the same open records statute that requires the 21-day prior notice referred to earlier by Mr. Farabee.

Executive Secretary Dilly reviewed with the Board the credentials of the nine (9) applicants and three (3) nominations which had been received as a result of the public postings and the advertisement in The Chronicle of Higher Education.

Mr. Zera reviewed with the Board the credentials of thirteen (13) "Recommended-External," four (4) "Recommended-Internal," and nine (9) "Alternatives for Consideration" prospects thought by SpencerStuart, Inc. to be qualified for the Chancellor's position. In discussing the prospects, Mr. Zera indicated that the selections had been influenced by (1) the criteria developed by the Board, (2) SpencerStuart's perception of institutions which were "on the move" by virtue of powerful leadership, (3) a careful review of major U. S.

higher education institutions, and (4) advice and consultation from fourteen (14) respected higher education leaders both within Texas and nationally. He noted that the firm had reviewed prospects from higher education, government, foundations, the military, and the private business sector and that the twenty-six (26) prospects presented had been reduced from an original list containing 107 names. Mr. Zera responded to questions from the Board regarding the several prospects and the process used by SpencerStuart, Inc.

Chairman Beecherl indicated to the Board that he had requested the advice and consultation of the System-wide Faculty Advisory Council on the search process and the several nominees, applicants, and prospects. He said that the Council had met on March 13, 1992, and heard presentations very much like those to the Board today from Mr. Farabee, Mr. Millsap, Mr. Dilly, and Mr. Zera. In addition, the Council met with Mr. Beecherl and Mr. Rapoport as well as two individuals from the prospect list. Mr. Beecherl then distributed the Faculty Advisory Council's letter dated March 13, 1992, which contained the Council's recommendations. A copy of this letter is on file in the Office of the Board of Regents.

Following further discussion, including a review of the letters from the several component presidents suggesting qualities and attributes desirable in the next Chancellor, the Board decided to reconvene in open session.

RECONVENE.--When the Executive Session adjourned at 11:55 a.m., the members of the Board reconvened in open session. Chairman Beecherl reported that the Board had met in Executive Session to discuss personnel matters associated with the search for a successor to Chancellor Hans Mark. In response to Chairman Beecherl's inquiry as to whether there was any action from the floor, the following action was taken:

U. T. System: Public Release of the Name of the Finalist Candidate (Dr. William H. Cunningham) for the Position of Chancellor in Accordance with V.T.C.S., Article 6252-17a, Section 3(a)(23).--Regent Moncrief moved that, in compliance with Vernon's Texas Civil Statutes, Article 6252-17a, Section 3(a)(23), which requires that the name or names of any finalist or finalists for the position of a chief executive officer of an institution of higher education be publicly released twenty-one (21) days in advance of any final action, Dr. William H. Cunningham, President of The University of Texas at Austin, be announced to the media as the finalist candidate for Chancellor of The University of Texas System effective September 1, 1992.

The motion was seconded by Vice-Chairman Ramirez and Regent Rapoport and approved without objection. At the conclusion of the vote, Chairman Beecherl said that, "Although Regents Temple and Holmes could not be with us today, I believe that they would certainly concur with the motion that we have just passed."

ADJOURNMENT.--Chairman Beecherl announced that the business for which this meeting was scheduled had been completed and the meeting was duly adjourned at 11:58 a.m.

/s/ Arthur H. Dilly
Executive Secretary

March 19, 1992