

UCCSN Board of Regents' Meeting Minutes June 9-10, 1992

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BOARD OF REGENTS

UNIVERSITY AND COMMUNITY COLLEGE SYSTEM OF NEVADA

June 9, 1992

The Board of Regents met on the above date in the Computing Services Video Room on the University of Nevada, Reno Campus and the University of Nevada, Las Vegas Campus, for a special video meeting.

Members present:

In Las Vegas: Mrs. Carolyn M. Sparks, Chairman

Mrs. Shelley Berkley

Mr. Joseph M. Foley

Mrs. Dorothy S. Gallagher

Dr. Lonnie Hammargren

In Reno: Dr. Jill Derby

Dr. James Eardley

Mr. Daniel J. Klaich

Members absent: Mrs. June F. Whitley

Others present: Chancellor Mark H Dawson

President John Gwaltney, TMCC

Mr. Donald Klasic, General Counsel

Mr. Ron Sparks, Vice Chancellor

Assemblyman Bob Price

Ms. Mary Lou Moser, Secretary

Also present were Dr. John Swetnam, Vice Chairman, Faculty Senate, UNLV and Mr. Joel Kostman, President, CSUN.

Chairman Sparks called the meeting to order at 1:40 P.M., stating the purpose of the meeting was for the Board to determine a response to the letter it had received from Senator John Vergiels, Chairman, Legislative Commission. The letter is filed in the permanent minutes.

1. Review of Legislative Commission Request

Chairman Sparks asked General Counsel Klasic to give the

Board an explanation of the legal authority of the Legislative Commission and the Board on this matter.

General Counsel Klasic explained that the Legislative Commission had voted to "... proceed with the inquiry into the University of Nevada System."

General Counsel Klasic stated that this is a case of two agencies with constitutional authority. The Legislature has plenary authority to investigate for purposes of producing legislation; that power is broad. In the *Branhove* Case, the U. S. Supreme Court stated:

"Investigations, whether by standing or special committees, are an established part of representative government. Legislative committees have been charged with losing sight of their duty of disinterestedness.

In times of political passion, dishonest or vindictive motives are readily attributed to legislative conduct and as readily believed. Courts are not the place for such controversies. Self-discipline and the voters must be the ultimate reliance for discouraging or correcting such abuses. The courts should not go beyond the narrow confines of determining that a

committee's inquiry may fairly be deemed within its province"

However, there are limitations upon the Legislative Commission's authority. The *Branhove Case* also said: "To find that a committee's investigation has exceeded the bounds of legislative power it must be obvious that there was a usurpation of functions exclusively vesting in the judiciary or the executive" Although an investigation may be the function of the legislative branch, in *King vs. Board of Regents*, the Nevada Supreme Court ruled that the Board of Regents had exclusive executive control over the administration of the State University.

General Counsel Klasic stated that if there was a challenge to an investigation, the law would favor the Legislature being able to investigate. But he stated there were three areas to consider: The Legislative Commission is not the Legislature itself, but is a quasi-executive agency, and as such there must be standards set for an investigation. NRS 218.682 is a broad statute providing that the Legislative Commission can set up committees to deal with problems and Statewide issues. This particular investigation by the Commission is very open ended; they have stated they will

investigate "anything that anyone wants to produce." That statement is too sweeping, too broad and sets no standards or criteria for guidance.

The second area is that of constitutional autonomy of the Board of Regents. A member of the Legislative Commission stated it would investigate for future legislation, for instance to draft legislation to correct relationships between the Legislature and the Board of Regents, or for establishing policy controls for the System. There could be a possible infringement of the autonomy of the Board.

The third area is that the matter could be turned over to the Grand Jury, or facts could simply be released to the public. That could infringe the functions of the judicial or executive branches.

In summary, General Counsel Klasic stated that the legislative body does have a wide range of authority to investigate; the Board could challenge that authority on the basis the investigation is vague and over-broad, infringement of the Board's autonomy could be questioned, or the matter could be referred to the Grand Jury and the courts for consideration, thereby infringing judicial functions. Gen-

eral Counsel Klasic cautioned that it would be an uphill battle if a challenge were issued.

Dr. Eardley asked if it was known how extensively the Commission wants to proceed and if there are parameters.

General Counsel Klasic stated that it is not known, that in the transcript of the Commission meeting there was a reference to "... whatever material would be brought to us". Dr. Eardley then asked how the Board could respond if it does not know the scope of the investigation. General Counsel Klasic stated that a member of the Legislative Commission had initially referred to Jerry Tarkanian and his resignation. Chairman Sparks stated that it was her understanding that the Commission's original recommendation for investigation was with the basketball program; however, since that time, they have expanded that to all issues connected with UNLV, which is a broad scope.

Dr. Hammargren stated that he had called for an independent investigation last March, and that 5 Regents were in favor of an investigation, but in March only 4 voted in favor.

The Clark County Grand Jury voted 17-0 in favor of an investigation. All Southern Legislators voted in favor of an investigation, so he felt it was quite clear that there

should be one.

Dr. Hammargren moved to cooperate fully with the Legislative Commission in its investigation. Mrs. Berkley seconded.

Chairman Sparks explained that there were not 5 votes (from the Board) in favor of an investigation. Dr. Hammargren stated that 5 members had spoken at the meeting for an independent investigation; that 4 wanted the Legislature to investigate and 1 wanted the investigation by the Attorney General.

Mr. Klaich stated that Dr. Hammargren's motion, as framed, made it difficult to vote. He questioned where the assumption had come from that the Board of Regents was not going to cooperate fully. He stated that he had no problem with an investigation into the resignation of the Coach, the acceptance of the resignation and the events subsequent to that, but the Board has received an open-ended request from Mr. Vergiels. He suggested that the Board provide Mr. Vergiels and the Committee with a full report about the resignation, the acceptance of that resignation and the events subsequent to that incident and then let the Commission pose specific questions to the Board,

should there be questions, and the Board could then respond. He added that he did not feel it was prudent to just state that the Board would "cooperate fully".

Mrs. Berkley stated that she felt it was less important to argue the constitutional point, but that she felt the Board needs to address the public on the matter. She added that the Board cannot dictate to the Legislature about what it wants to investigate. She pledged full cooperation of the Board if the goal is to get to the truth. She suggested a short letter be sent pledging full cooperation and then await a response. She reminded the Board that the Legislature provides the funds for the operation of the System, and in order to fulfill the Board's responsibility to students, it needs the funding from the Legislature, and the Board should be mending fences with the Legislature.

Mr. Foley stated he disagreed with Mrs. Berkley's statement that the Board cannot refuse Mr. Vergiels' request because refusing would jeopardize all appropriations (for UCCSN) in the future. He added, that even the Tarkanian people were upset with Mr. Vergiels' handling of the matter because they feel Mr. Vergiels has a conflict of interest in that he is an employee of UNLV. Mr. Foley stated that he

agreed with Mr. Klaich. He explained that the resignation (Mr. Tarkanian's) came about with the involvement of "Perry the Fixer". Mr. Tarkanian resigned, then attempted to withdraw that resignation. He stated he felt the Board should supply a paper, in detail, about the events before and after the resignation.

Mr. Klaich suggested that the Board not pledge its cooperation, but that it should start cooperating right now. He added that he deeply resented any implication of Mrs. Berkley's previous comments concerning the actions or votes of the Board in getting to the truth of this matter. He continued that other members have not done this, although she may have.

Mrs. Gallagher stated that if, in Mr. Vergiels' letter, he had not stated, "... and other matters concerning the University of Nevada, Las Vegas", she would be agreeable to the motion; that she agreed that the UNLV basketball program and the Tarkanian matter might be a matter for investigation. She stated she felt the investigation would be setting a precedent and that in the future the Legislature could decide it wanted to investigate officers, programs, etc., where it did not have the expertise the Board would

have, and that would be a challenge to the Board. She stated she was in favor of releasing everything the Board has on the Tarkanian and basketball program matter and let the Legislators see if they are finding what they think is there. She stressed that the Board has not covered up anything; that there may have been some things left unsaid, and the investigation may prove it had been left unsaid.

General Counsel Klasic interjected that in the Board "laying everything out", it should be aware there was currently litigation in process with an Assistant Coach, and there was a threat of the Coach filing a law suit as well. Some of this material may be privileged testamentary information. Under the Open Meeting Law, there may be some information for which it would be required that the Board would have to vote for its release, and it would also have to obtain permission from all persons discussed in a closed meeting before that information could be released.

Mrs. Gallagher stated she would not want to jeopardize any litigation, and questioned whether executive session information could be deleted on those who might refuse its release. General Counsel Klasic stated he felt it could be

done.

Dr. Derby stated she was in favor of the motion because of the perception by the public and the abuse the Board has taken in voting against an independent investigation. She stated that she felt a paper from the Board would not be believed by the Legislature; that limiting cooperation is not helpful; and that it is important to stress willingness to cooperate.

Dr. Eardley stated that he felt cooperation with the Legislature is best, but he would expect the Legislature to clearly tell the Board what it wants. He stated that as an elected official he was here for the protection of the Constitution and the students. He added that attention has been directed for one full year on this particular program and that he felt it was the President's problem. He stated he would "balk" at the Legislature evaluating the Board's performance; that this was very questionable. He added that he was not against an investigation, but that he did not like the implication that the Board is trying to "stone-wall" and is offended by that.

Chairman Sparks stated that this request by the Legislative

Commission is the only one the Board has received for information on the Tarkanian matter; but she felt the Commission's motion was as vague as the letter from the Chairman. She stated she would be comfortable releasing the executive session information if the intent is to get to the truth of the resignation. She suggested the Board direct the Chancellor to provide details of the resignation and related matters. She expressed concern that the Legislature had not provided funds for the investigation, adding that the Board had spent a year in its deliberations on the matter.

Mrs. Berkley stated she did not think the Legislature was asking permission, that the letter requests cooperation, and she stressed that the Board would be "jumping the gun" if it gave the Commission information now. She suggested a simple letter stating full cooperation and then to wait to hear from the Legislature. Chairman Sparks stated she felt the letter does ask for information regarding the resignation of the Coach and that it was not necessary to put it off any longer since the Board had the information.

Mr. Klaich stated he would not be in favor of mentioning the constitutional authority of the Board; that it would serve no purpose. Additionally, he stated he did not mean

to limit the scope of the Legislature's investigation; that the Board cannot tell the Legislature what to investigate.

However, he stated that the Board could provide information on the specific item in the letter, then await further questions from them.

Mr. Klaich moved to amend the motion to add ... by directing the Chancellor to collate and deliver to the Committee such information concerning the resignation of Coach Tarkanian and events subsequent to that resignation; that the Board does not intend to imply that it is limiting its cooperation and that if there are other questions, the Legislative Commission should get back to us. Mr. Foley seconded.

Dr. Derby stated she felt this would limit cooperation; that she liked the simple motion. Mrs. Berkley questioned why the Board should not cooperate fully.

General Counsel Klasic stated that the letter from Mr. Vergiels was not an accurate rendition of the motion passed by the Commission. The motion was to "... proceed with an inquiry into the University of Nevada System" and Mr. Vergiels' letter is not as broad. Mr. Klaich stated that according to the transcript a letter had been read

into the transcript, one that had been prepared before its Commission's meeting, so that the members knew what was in the letter. Mrs. Gallagher related that the letter sent to the Board was different from either the letter read into the transcript or the motion. Chairman Sparks stated that the Board can only respond to the letter it had received.

Assemblyman Bob Price asked to speak to the Board. He stated he had been at the Legislative Commission meeting and related that there was a great deal of testimony that went beyond the resignation of the Coach, that it had included discussion on the UNLV Foundation and the relationships of the Foundation, and that is why the motion was much broader. He urged a simple motion pledging Board cooperation. He added that the Legislature can impanel a State Grand Jury. Mr. Price asked that the Board reconsider the amendment.

Mrs. Gallagher asked why the Commission would not have wanted to sit down with the Board of Regents and discuss this situation. The Commission must also work under the Open Meeting Law. Mr. Price stated he was surprised that Mr. Foley was the only Regent present at their meeting.

Chairman Sparks agreed with the amendment and added that she was concerned that with the simple motion the meetings would go on and on.

Mr. Klaich withdrew the amendment, and Mr. Foley withdrew the second, and Mr. Klaich presented another amendment, seconded by Mr. Foley.

Mr. Klaich moved to reply as follows to the action of the Legislative Commission as stated in the letter to Chairman Sparks from Senator John Vergiels dated June 1, 1992:

"We agree to accept your invitation to cooperate with the Legislative Commission. We will begin that cooperation by directing the Chancellor to compile and forward information in our possession regarding the resignation of Jerry Tarkanian, the acceptance of that resignation and related events subsequent to the resignation. If additional information is desired, please contact the Chancellor at your convenience." Mr. Foley seconded.

Motion carried on roll call vote:

Aye: Regents Eardley, Foley, Gallagher, Klaich, Sparks

Nay: Regents Berkley, Derby, Hammargren

Absent: Regent Whitley

Chairman Sparks then called for the vote on the motion as amended. Mrs. Berkley stated she was concerned that a "yes" vote would limit Board cooperation, and asked whether this was "stonewalling". She asked to be reassured that the Board would not withhold information, and wanted a clarification as to what would be provided. Mr. Klaich stated that it meant the Board would cooperate with the Commission, that the Board was not limiting them in any way. Chairman Sparks stated that a draft of the reply would be facsimiled to the members of the Board. Mrs. Berkley asked if information on the Foundations would be sent to the Commission, with Mr. Foley replying that the Commission had not yet asked for that information. Mr. Klaich explained that any response to the Legislative Commission is a public document, available to the media and the public. He stated that the motion puts forth, in a concise response, what this scenario is, that in so doing, it could not be picked apart by the media, and that if the Commission wants something else, it can make such a request.

Upon roll call vote, the motion as amended carried:

Yea: Regents Derby, Eardley, Foley, Gallagher,
Hammargren, Klaich, Sparks

Nay: Regent Berkley

Mrs. Berkley then changed her vote to "yea".

2. New Business

A. Regents:

None.

B. Public:

Mrs. Jackie Mc Call Singer stated that questions regarding the Foundations had been brought to the Board of Regents at different times in different areas but because of time restraints her questions had not been answered. She stated the Legislative Commission had "called us in" to testify before them at their recent meeting. She added that in the beginning the Board of Regents had given her more attention, then had stopped.

Chairman Sparks explained that if Mrs. Mc Call wished a lengthy discussion, that topic should be made an agenda item. Mr. Foley asked that Mrs. Singer write a letter to the Chancellor giving specific details so the Board could answer. Mrs. Singer agreed that she would do that. She denied that she was a "Tarkanian radical".

Dr. Hammargren questioned whether there would be an item at the June meeting regarding the Foundations, with the Chancellor replying that the Board had requested General Counsel Klasic to conduct a survey of all the institutions on gifts, and that a Chancellor's Committee was being appointed to oversee the survey. When the survey is completed, it will be presented to the Board. The Chancellor noted that General Counsel Klasic set a September 1, 1992 deadline for this information. Mrs. Mc Call stated she would be willing to wait until September.

Assemblyman Price thanked the Board for its cooperation.

The meeting adjourned at 3:00 P.M.

Mary Lou Moser

Secretary of the Board

06-09-1992