



UNIVERSITY OF CENTRAL FLORIDA

Office of the President
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Trustee Recommendations Received for 1.24.19 BOT Meeting

Trustee Boloña

Just want to put my Recommendation in writing for C level positions to either have a term limit or a re-evaluation system during their tenure.

Trustee Bradley

Based on the recent reports, BOT meeting and my on-going thoughts, I have the following recommendations and questions.

RECOMMENDATIONS:

Please add the following to the Chairman's recommendations for discussion which he proposed at the January 18, 2019 BOT special meeting.

INDEPENDENT FINANCIAL, THIRD PARTY AUDIT:

The UCF Board of Trustees contract directly with an independent, third party financial auditor to annually review the State and Federal sources of revenue the University receives and assure they are being spent in accordance with accepted management principles and legal or regulatory intent. This audit will be overseen by the Board and report directly to the Board, in a similar fashion to the way the Bryan Cave investigation was conducted.

AUDIT and COMPLIANCE SUB-COMMITTEE:

With the President's recommendation to hire a Chief Compliance Officer, that the UCF Board of Trustee's Audit and Compliance Sub-Committee be charged with working with the administration to hire, on-board and coordinate activities with the individual so there is a reporting relationship directly to the board in addition to the President.

BOT CAPITAL DECISIONS:

- A. *The sources and uses of capital funds be clearly cataloged, identified and ratified for capital projects including the year they were allocated by project. The BOT should annually approve the specific category of funds which can be used for capital projects. This nomenclature should then be used for all projects going forward. Terms such as "University funds" or "University carry-overs" if used should be clearly defined.*



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- B. BOT formal approval for all capital projects over \$ 2 million. Also, additional BOT approval is required for any project which exceeds 20% of its original capital funding or any project which transitions e.g. goes from a renovation to a new building.*

Commentary: Lost in the discussion on the misuse of E & G funds for the rebuilding of Trevor Colburn Hall is the discussion whether or not there was a less expensive way to complete this project. The budget implications were mentioned on Friday but have not been discussed.

QUESTIONS:

Based on Friday's discussion and not having attended the recent Finance and Facilities sub-committee meeting where the "\$ 80+ million E&G" issue was highlighted, I have the following basic questions:

1. What projects were targeted with E & G funds for capital and facilities funding?
2. When was the decision made to use these funds?
3. Who made the decision to target these funds?
4. Why was this not identified when the BOT (along with the BOG) in September 2018 asked for a full identification and disclosure of potential E & G funds misuse?
5. Are there any other misuses of E & G funds which have not been reported to the President or BOT for any purpose including project funding, facilities etc.?

Commentary: To suggest disappoint in the news I received Friday on this matter would be an understatement. When the BOT asked for a full accounting in September 2018, this was the golden opportunity for the University and its staff to share ALL the issues. It was the "chance" to self-report. Many including the Chairman and President have subsequently made declarations to the BOG and others about the extent of the problem. Now the problem has grown again. Their statements from September appear very incomplete. As a BOT member, how do I know with any certainty that Friday's information is now accurate?

To not fully provide all the information in September 2018 speaks to me of either complete incompetence (officials not understanding or knowing funds and their uses) or willful recalcitrance and a blatant disregard for the BOT's fiduciary responsibility. Either reason is very problematic.



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Trustee Walsh

Summary thoughts

I have listened carefully over the past days to community leaders, students, staff donors, and other University constituents as they have watched this issue unfold publicly.

UCF has lost credibility with the state by spending what would otherwise be known as “restricted” funds inappropriately. The State, when viewed as a donor, as any other would, will likely have the University in the penalty box for a long time period over this intentional act. When this was limited to one activity, Trevor Colbourn Hall, it appeared somewhat explainable. As the issue has spread to a contemplated \$85M program, and over five years in duration, more than a trend has emerged. The board must act effectively in ways to be fair but concurrently restore the standing of the University in credibility with the state as rapidly as possible, lest our students be hurt by this as an unintended consequence, which they will be.

Top leadership (Dr Hitt) has stepped forward to assume primary responsibility for this, as he should have. The challenge before us is the remaining involved key staff and line University management, and how to appropriately disposition their actions.

This Board member voted against the \$40M scholarship program, as I perceived it being posited as a “shiny object” geared to deflect negative attention from the similarly sized \$38.5M mis-appropriation. The fact that this was done by the University just prior to the reconciliation of remaining carryover E&G to the state as of year-end 2018 was endemic of the same issue...the University, not wanting to be exposed to potentially returning these funds to the state, elected to commit this sum in this arguably generous fashion just prior to a board meeting. It appeared to be more a public relations move as juxtaposed against the scandal, as not well thought through upon questioning during the meeting in its future execution. It was and remains unclear that the University is even authorized to move ahead with a discrete program of this magnitude on its own.

The BCLP Report and work product recommendations:

- 1) The board led investigation, while reasonably complete in respect to its originally bookended scope definition in time and topical content, now needs extended to cover added topics and time.**
- 2) Several of the key conclusions offered were reached based on inadequate data by limiting the work to the Trevor Colbourn Hall (TCH) issue, where a compelling body of added developments have arisen to suggest more investigative effort coupled with other potential conclusions.**



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3) Actions taken by the University up through January 18, and some of the suggested actions proffered on January 18 by the President, support the conclusion that added sanction-based actions are required.

Rationale to extend the investigation in time through 12/31/18 and extend its scope, to encompass the entire \$85M of contemplated mis-appropriation of E&G funds, as well as other contemplated University actions to achieve similar goals and objectives:

- The President himself in his summary remarks on 1/18 indicated conclusively that this investigation, particularly that portion by the State House and State Inspector General absolutely need to go on, and that more has to be done on it. This clearly speaks for itself in terms of more effort being needed. The BOT investigation is fundamentally as important, and had in its conduct hoped to be comprehensive, and in that sense, that its essential intended thoroughness and scope not require being later reperformed by other bodies based on any deemed incompleteness.
- The growth in magnitude of the overall issue, having expanded from its original discovery by the state auditors as a (TCH) \$38M problem, to a far larger, more comprehensive \$85M long term mis-appropriation plan and related funds reclassification.
- Activity by Mr. Merck and his team following the State Auditor General's August report to continue a general process of "hiding funds from the legislature" vis a vis the strategy developed for the 8/15/18 Finance and Budget Committee Meeting relative to the presented FFC-3 \$6.0M building acquisition by the Foundation for University distance learning programming development. This was mentioned to Walsh on 8/10 by Merck in the presence of five others.
- The process of the magnitude of the total E&G funds issue emerging not all at once, but sequentially, with respect to the time from the original disclosures by management to the ultimate final finding of the state auditor general of the final \$32.4M in late November, and the lack of willingness by **management** to forthrightly cover this in the 12/15 budget & finance committee meeting & related BOT meeting.
- As to the essential fact of whistle-blowing, and did this possibly actually occur? Specifically, how was the State Auditor General's attention brought to the mis-appropriation itself, did one or several of our own (now dismissed or other) management lead them to it? (appropriate whistle blowing) Did the Auditor General's office happen into it, and then subsequently receive confirmation from our financial or capital project management team in concurrence and support to develop the finding? (another variant of whistle-blowing). As well on this topic, Rhonda Bishop, former Chief Compliance and Ethics Officer for seven years during most of this event, should be interviewed. Rhonda's insight on disclosures made to her ethics function in any manner regarding the mis-



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appropriation should be sought. Any complete review of whistleblowing activity would not leave Rhonda and the existent UCF ethics reporting system out of the review. A culture requiring more inclination to whistleblowing has been advocated by BCLP, therefore this area should be fully vetted to assure that whistle-blowing indisputably didn't take place.

- A personal benefit review involving all manners of potential personal benefits ranging from direct kickbacks, to associated induced donations, to other favors granted by the key vendors (Pirtle Construction among others) involved. The investigator acknowledged when queried that this was not vetted thoroughly, except to the extent that "no UCF funds were unaccounted for". Pirtle (and other related TCH vendors) should at a minimum be asked to make formal representations that no direct or indirect facilitating payments, gifts, or donations of any kind were made related in any manner to this or other UCF construction projects.
- A review of the circumstances surrounding the contract negotiation and approval process with Pirtle (the TCH contractor) should be undertaken. This procurement would have been negotiated with our UCF law department. The contract, as I recall, did not come to the board for separate approval, and as well a review that the procurement abided by UCF Purchasing regulation modification UCF-7-130, section 6 b) statement that "The State of Florida's and University's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature" may potentially provide added insights. It would appear reasonable that a contractor facing this language, (Pirtle) would request adequate assurances that funds for the project in question will be ultimately approved by the Legislature. How was this done? The answer may provide a window into more folks who had knowledge of the planned funding source.
- A primary protagonist assuming responsibility for this issue has arisen in William Merck. An interview of Mr. Merck must occur as the law allows (through legislative subpoena) as necessary. Dr. Hitt as well requires further interviews to reconcile his written version with his prior Cave firm interview.
- UCF Attorneys should be interviewed: Jen Cerasa, (real estate specialist used on matters and major procurement contracts such as this one), Youndy Cook (a frequent advisor and preparer of Finance & Administration, facilities approval materials to the board), and Sheryl Andrews (who, for a number of years, matrix reported to Provost Dale Whittaker for legal matters). The legal department within UCF is used by all departments **and the board** as the knowledge center of excellence for state and BOG regulations of all types. The essential recurring theme here was the storyboarding of improper E&G funds use masked over with various alternate language for this activity in



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many presentations. As to Board presentations, the legal department is deeply involved in the preparation of many of these. It would be remarkable to discover that over the now five-year period of this activity, and, given the sheer large number of management personnel knowledgeable of it, that their counsel was not sought by management on the question of the efficacy or appropriateness of using E&G funds for new construction.

Most of the above scope could be concluded by BCLP within a month, and probably within the window of the sum \$500,000 paid them to date, as for the most part contemplated within the Board's original scope expectations. This would be concluded with the Board taking action on its tabled open action on voting acceptance of this investigation work product as now complete and accepted, or incomplete for the above-mentioned scope items and potentially others.

- **Conclusions requiring re-visiting; and potential further sanctions**

The conclusion that no one benefitted from the TCH issue was incomplete based on Cave's acknowledgement that no forensic investigation or audit steps were taken to assure that funds nor other in-kind benefits of any manner did not flow back to any University related official from contractors benefitting from the building program.

The conclusion briefly reached with only minor note that the University Vice President and General Counsel was uninvolved and had no responsibility for this overall activity. This conclusion has little merit from an overarching commonsense standpoint. The University General Counsel is charged with, as a primary duty, being the single University Official responsible to be fully knowledgeable of the entire body of state regulatory requirements. He is responsible to advise the President and the President's key staff, as well as the Board of Trustees on an ongoing basis relative to such matters and the associated risks. Particularly that we have now become fully aware of the magnitude of the five year planning surrounding this, coupled with the fact that the General Counsel has consistently had an attorney assigned within all CFO/Chief Administrative function major initiatives and contracts, and that certainly this contract would have been negotiated by that attorney reporting directly to the General Counsel, and the fact that the General Counsel is expected at all times as a fundamental duty to be providing advice and counsel to the President and Mr. Merck on such regulatory matters and how to deal appropriately with them. It is not plausible or reasonable that over the five-year period his counsel was not sought on this matter. The Board Chair has argued that this role (that occupied by Mr. Cole) also reports to the board. If that be true and correct, a duty to report this to the board existed. The fact of the August 13 disclosure of this kind of activity to him via a board presentation involving a non-commercial five-year lease payment by the University that University legal Counsel, Jen Cerasa herself prepared, along with writing the contract of purchase and sale for that particular building, indicates involvement in this kind of matter on an overall basis. The General Counsel is the knowledge leader as well responsible



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to instruct the board on of all manner regulatory and ethics issues. This Executive was absent from providing counsel on this matter to the board. It is not clear that he did or not, or was or was not requested to provide counsel on the use of E&G funding to the Provost, then President, or VP Administration & Finance.

Leadership. Decisions such as those to use restricted E&G monies for building programs begin at the top of the organization. Dr Hitt has accepted his share of responsibility by letter, for the matter being pushed forward on an overall basis. This comes from the perspective of an essential leadership role, that being the role in final authority to act and direct behavior. The decision to move ahead and build TCH is owned by Dr. Hitt. Excepting for the use of donated funds, clarity generally exists around the need to have BOG and legislative approval for a PECO project, which this project was, over most, years properly classified as.

The Board has adequately dealt with sanctioning him, save for the fact that terminating his employment relationship could have waited for the close of necessary added cooperative interviews with him.

The then Provost and now President. The dismissal of Dr. Whittaker's former Controller makes his status relative to TCH and related issues while Provost difficult. As raised on Jan 18, it is troubling that these termination decisions were reached based on information included in a board commissioned, investigative report that **the board has not as yet taken an action to formally accept as complete.** Controllers generally do not make decisions to use inappropriate funds or defalcate otherwise for their own purposes. They act, unless in the case of their own bonus being at stake or unless theft is involved, on behalf of the larger organization. Generally, they act with care and conservatism. Supervisory responsibility connotes some general awareness of what a subaltern is doing, the obligation to provide training and counsel, and some degree of leadership of their activities. The act of charging a subaltern with getting something done "no matter how", is likewise unacceptable management. In that the "no matter how" involved fund contraversion even to the extent that Dr. Whittaker did not have full comprehension of precisely how regulatorily, is quite problematic.

So, we will struggle with why his own controller for this activity has been dismissed. We are in complicated space now...the two controllers and possibly others did fully whistleblow to our appointed investigators. Further investigative effort may well indicate that they whistleblew previously. As the report indicates, they actually cooperated very fully. Now they are dismissed.

To the extent we may infer that she did not whistle-blow, and that rationale did arise inside the President's decision to terminate, the whistle blowing would have been on Dr. Hitt, Mr. Merck and Dr. Whittaker. Dr. Whittaker has suggested nominal bonus forfeiture as his own penance



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for this issue. The question of the gap in suggested sanctions between his controller being dismissed, while his own lower, self-recommended sanction be far less severe, indicates a leadership deficit. "Partial" acknowledged responsibility for this issue is impossible to reconcile in this case, particularly because these facilities were built for the benefit of housing academic programs under his direction, at his urging, and in his then capacity as the Provost and Chief budget officer of the University. His own acceptance of partial responsibility, but while assigning complete responsibility for it to his then Controller, appears to be more than potentially a self- incriminating action. As well, as the magnitude of the issue before us has grown dramatically during the investigation, and the last portion of its revealed growth not forthrightly devolved by the University.

Once interviews with Mr. Merck (under subpoena), Dr. Hitt, and the mentioned added investigation steps, particularly relative to pertinent activities up through December 31 can be taken as outlined above, a final decision on full and appropriate sanctions relative to President Whittaker and Mr. Cole and others can be made.

David M. Walsh

1/23/19