

**Minutes
Board of Trustees Meeting
University of Central Florida
September 20, 2018**

Chairman Marcos Marchena called the meeting of the Board of Trustees to order at 1:02 p.m.

Marchena reminded the board that the meeting was covered by the Florida Sunshine Law and that the public and press were invited to attend.

WELCOME

Marchena welcomed the board members and called on Grant Heston, Associate Corporate Secretary, to call the roll. Heston determined that a quorum was present.

The following board members attended the meeting: Chairman Marcos Marchena, Vice Chair Robert Garvy, Josh Boloña, Ken Bradley, Beverly Seay, William Self, and David Walsh. Trustees Joseph Conte, Danny Gaekwad, and William Yeargin attended via teleconference.

Public Comment

There was a request for public comment from Mr. Jonathan Sebastian Blount. Mr. Blount addressed the board welcoming the opportunity for partnership with the university and noting that September is African Heritage Month.

NEW BUSINESS

Chairman Marchena stated that the past few weeks have been difficult for UCF and the purpose of this meeting was to discuss the charge to Bryan Cave, the law firm retained to investigate the inappropriate use of state educational and general (E&G) funds for capital projects.

Marchena explained the difference between education, general and capital expenditures and briefly reviewed the history of Colbourn Hall and the construction of the new Trevor Colbourn Hall as presented to the board. He stated that at no time did anyone on staff give any indication that the funding was from an unallowable source. He noted it is routine in all institutions for board and committee members to rely on the honesty and good faith of their staff together with its audit staff to ensure that appropriate funding sources are being utilized for all expenditures. Marchena stated that this breach of trust has had a significant adverse impact on the reputation of the UCF staff in the eyes of the Board of Trustees, the Board of Governors, the Governor and other elected officials.

Marchena stated he wanted to be very clear about what is known today. The decision to utilize E&G Funds for construction of this building was absolutely wrong and he was very disappointed in William Merck and anyone else on the staff that may have been knowingly involved in the decision or knowingly involved in carrying out the expenditures after the decision was made. He

stressed that this is not about any staff member engaging in the use of funds for personal gain. The funds went to construct a classroom building but that does not make the inappropriate use of the funds any less serious.

Marchena listed actions taken so far:

- The CFO is no longer employed by the university. The position has been split into two positions to ensure the individual responsible for the construction of facilities is separate from the individual authorizing the expenditure of funds for these projects.
- A requirement that every expenditure for capital projects in excess of the \$2,000,000 threshold comes before the finance committee and the board with a certification that the funds being utilized are appropriate funds. This certification form is to be signed by the CFO, the president, the vice president presenting the item and the general counsel. He noted that the chair of the Board of Governors has recommended this action to the rest of the Florida universities.
- UCF reimbursed the E&G account for the cost of the Trevor Colburn building from multiple non-E&G accounts that have funds that may be utilized for a capital project.
- We are retaining a law firm to engage in a forensic investigation with a recommendation that Trustee Beverly Seay, Chair of the Audit and Compliance Committee, lead the board's interaction with the law firm and ensure the investigation is in collaboration with the Inspector General of the Board of Governors. Marchena stated that once the report is presented, the board will determine other actions with respect to anyone else who may have been involved. He urged all employees to cooperate fully with this investigation.

Marchena called on President Dale Whittaker to share his thoughts and recommendations with the board. Whittaker thanked Chairman Marchena and the rest of the trustees for acting so quickly on this issue. Whittaker made the following commitments to the Board:

- To earn the board's trust in this new administration so that the board can carry out its governance and fiduciary responsibilities.
- To hold accountable those whom this investigation determines acted inappropriately. If someone willingly and knowingly violated State Law, Board of Governor's regulation or deceived this board, then that person will no longer be employed at UCF.
- To act transparently with the Board of Trustees, the Board of Governors and our elected officials and, most importantly, to ensure that our students and faculty are not affected by the outcomes of this investigation.

In addition to the actions that Chairman Marchena previously mentioned, Whittaker shared additional actions:

- He declared a moratorium on all new construction projects in excess of \$2,000,000 and ordered the review of all ongoing projects to ensure appropriate funds are being used. The moratorium does not apply to projects that are 100% privately funded.
- He noted UCF created a public website that features investigation updates, frequently asked questions, and the contact information for Bryan Cave.
- He has directed staff to begin a review to be shared and led from this point forward by Bryan Cave that examines whether any other capital projects inappropriately used E&G funds. He indicated that Kathy Mitchell, Interim CFO, has already completed a preliminary review.

Whittaker shared that Mitchell's preliminary review will reveal that three projects totaling approximately \$10 million used E&G funds for clearly inappropriate purposes. He stated that the university would be seeking clarity on portions of five additional projects with questionable use of E&G funds totaling an additional \$3.8 million.

Out of an abundance of caution and transparency, the additional five projects have been included in the information presented to the board today. Whittaker indicated that Mitchell's report reviewed the past five years but we intend to work with Bryan Cave to review an additional five years in order to provide an update on the past decade. Whittaker called on Mitchell to discuss the plan for replacing the funds.

Mitchell began her review with a clarification that a five-year review was completed for two reasons. The first is that 2013 was the year before the committee and board began discussions of a new Trevor Colbourn Hall instead of a renovation and secondly, in 2013, the Board of Governors revised the regulation that dealt with operating budgets and that revision clarified that operating appropriations were not to be used for construction. She stated that a portion of funding for three new facilities – the Band building, the Facilities Surplus Showroom & Postal Hub and the Research I building – were clearly in violation.

Mitchell stated auxiliary operations at the university that do not impact student services nor rely on debt pledged to pay bonds will be used to replace the misused E&G Funds.

Trustee David Walsh asked for clarification on the process of repaying these incorrect E&G funds and expressed concern about repayment prior to a thorough review by the board. Marchena asked that Mitchell complete her presentation before considering Walsh's question on why the board should act now.

Mitchell described the next five projects – Center for Emerging Media, Downtown Campus Infrastructure, The Venue, Main Campus District Energy Plant and Global UCF – as necessitating a request for immediate reimbursement out of both an abundance of caution and until we receive funding source clarification from the Board of Governors.

Trustee Bradley made a motion to approve the summary of project refunding to the E&G cash funding corrections as presented by Mitchell. Before opening the floor for discussion, Marchena

indicated a fully executed certification form was in place for today's motion to replenish the E&G funds. Marchena stated that the objective for today was to bring UCF into compliance as quickly as possible. He further stated that the funding sources identified are appropriate and will not adversely impact student services and a funding change could be considered at a later date if additional appropriate funds are later identified. Marchena asked Mitchell to confirm that the amount of available funds to replenish the inappropriate use of funds was finite. Mitchell confirmed this to be true.

Trustee William Self asked Mitchell to clarify the change in the BOG regulation and the use of E&G funds prior to 2013. Mitchell stated that in 2013 language was added to BOG regulation 9.007, a regulation that governs state university operating budgets. The language added an explicit statement that said 'Unless otherwise expressed by law, E&G funds are to be used for E&G operating activities only such as, but not limited to, general instruction, research, public service (or mission), plant operations and maintenance (no threshold), student services, libraries, administrative support and other enrollment-related and stand-alone operations of the universities.' The language was not in the regulation before 2013.

Trustee Garvy stated that in anticipation of this meeting he reviewed the minutes from Finance and Facilities Committee meetings for the past 18 months, which covers most of the projects on these lists. (He later clarified he reviewed minutes back to 2014). He also reviewed the minutes from the Board of Trustees meetings for the same period that dealt with these issues. Garvy stated that there was no indications in any of these discussions with the trustees that indicated there was any question about the appropriateness of the source of funds.

Trustee Gaekwad also expressed concern about moving forward with repayment prior to a more thorough board review. He raised concern on the impact on departments when using auxiliary funds to replace E&G funds. He also asked that staff take the necessary time to brief trustees in advance of meetings.

Trustee Conte asked Mitchell to confirm the action voted on today complies with Board of Governor's regulations in regards to moving the funds to replace the misused E&G funds. Mitchell confirmed that moving these funds as presented is in compliance with the Board of Governors regulations and Florida statutes.

The board voted on the motion from Bradley to direct staff to replenish the E&G funds on the projects identified from the referenced non-E&G accounts. Vice Chair Garvy seconded the motion. The motion carried with two oppositions from Walsh and Gaekwad.

Trustee Joshua Boloña inquired about a continued process to evaluate other funds used for replenishment that may lessen the negative impact on operations and services. Whittaker committed that the movement of funds today does not preempt further investigation nor is a review of the budget over. He asks that the board request Bryan Cave to accelerate providing conclusive, new actionable information for the administration. He further committed to returning the E&G funds to the units that provided the flexible funds, with the understanding that this reimbursement will not hinder activities.

Walsh asked for clarification on who selected the outside investigative firm. Marchena stated that he requested Vice President and General Counsel Scott Cole to find an experienced law firm that had not worked with the university in the recent past and had no connection in this area with any one of the trustees. Cole identified Bryan Cave and specifically Joseph Burby, who was a past assistant district attorney.

Walsh made a motion that the board, not the university, participate in the selection of the firm and that the board be the signer of the engagement letter. Bradley seconded the motion.

Marchena requested that the motion be held until after Bryan Cave had the opportunity to address the board on the firm's ability to provide an independent review and that the board be given the opportunity to question the reporting structure. Walsh withdrew his motion and Bradley withdrew his second.

Whittaker confirmed that he is requesting that the board accelerate the process to the extent possible so that the administration can be provided information on whether processes, personnel or additional projects and accounts need to be adjusted.

Whittaker asked the board to consider an action to suspend the performance unit plan for himself and the other vice presidents until the investigation is completed to the board's satisfaction. Whittaker clarified that the performance unit plans are generally reviewed at the November meeting and awarded in December. A motion was made to suspend the performance unit plan and the motion was approved unanimously.

Marchena asked Whittaker if he was involved with the decision to use E&G funds or if he knew that E&G funds were being inappropriately used in the Trevor Colbourn Hall project. Whittaker stated as chief academic officer at that time, his charge was the prioritization of the uses of funds to ensure they were being used to their highest academic purpose. He worked with Merck, who as CFO was charged with certifying the source of funds. At no time was he told, know or have any suspicion that the funds utilized violated state statute or Board of Governor's regulations.

Boloña asked about a check and balance process. Marchena said that was being reviewed and Whittaker restated the separation of the CFO responsibility from the vice president responsibility.

Marchena called on Seay who noted that she discussed process, scope, and timeline with Joseph Burby. Seay stated she was also in contact with Governor Wendy Link, Chair of the Audit and Compliance Committee for the Board of Governors. She requested that Link supply questions from the Board of Governors so the trustees can have full transparency with them and ensure they are addressing their concerns as the law firm is charged with this process.

To that point, Marchena stated he had conversations with Board of Governors Chair Lautenbach and Chancellor Criser. Both Lautenbach and Criser requested that the board's firm cooperate with the Office of Inspector General. Marchena ensured that the law firm selected would fully cooperate with the Inspector General and the Board of Governors, including access to

documentation, the ability to provide questions and review information as well as notification of all interviews and an opportunity to attend interviews.

Seay stated the firm will be working directly with her and all information or questions will go through her. This way it is clear the firm is working for the Board of Trustees. Marchena stated that Cole is the general counsel for the board in response to Walsh's comments expressing concern that the administration's attorney was involved with the selection.

Seay stated there was an extensive search through the organizational charts to determine those parties that the firm will interview in addition to requesting emails and other documentation. Seay outlined a timeline that will first address Trevor Colbourn Hall, then any other issues found. Seay asked Burby to address the board.

Burby said he was a partner in the law firm of Bryan Cave Leighton Paiser and gave a brief description of the firm, his background and work history. Burby qualified that he leads the firm's internal investigative practice that conducts investigations for colleges and universities around the country in allegations of executive and faculty misconduct, among other subjects. He assured the board that Bryan Cave was uniquely qualified to conduct this investigation and that they will conduct a full, complete and unbiased investigation.

Burby confirmed he has personally never conducted legal work for the university. He confirmed, via a conflict check, that his firm performed legal work with the university in 1991, though the individual is no longer with their firm and he is not aware of any legal work since that time. He confirmed he understands that the Board (as a whole) is his client and not the university. He confirmed that he understands he will work through the chair of the audit committee for access to staff in coordinating interviews, documentation review, etc.

Marchena reviewed elements of the investigation that the board would expect from the chosen law firm:

- If anyone other than the CFO was involved and to what extent.
- If anyone personally profited from this.
- Were there other projects beyond the ones that were already identified today by Mitchell in which funds were inappropriately utilized?
- For the firm to present any missing controls that could prevent this in the future and whether the controls that were in place were violated.
- The firm's recommendation as to any additional controls that need to be in place.
- To cooperate with the Office of Inspector General of the Board of Governors to ensure that they are able to present any questions they may have, to attend any of the interviews, and have an opportunity to review any information gathered.

Burby stated he was comfortable with these items. Marchena inquired as to the timeline and Burby stated that he understood the urgency and time sensitivity and committed to moving expeditiously without sacrificing quality.

Burby further confirmed he has not personally worked with General Counsel Scott Cole, the Board of Governors or the other universities in Florida. He also stated that he has not personally conducted legal work for the individual members of our board. Burby indicated that he could not confirm if his firm has conducted legal work for the companies that our trustees are affiliated with and asked that the trustees disclose if their companies have worked with Bryan Cave. Burby confirmed he would either revise or issue a new engagement letter to the Board of Trustees so that it specifically lists the Board of Trustees as the client. He stated that his firm would retain a forensic accounting firm to assist with the investigation.

Garvy asked if the Board of Trustees could be polled to see if they have worked previously with Bryan Cave. The trustees present in the room confirmed they had not worked with Bryan Cave. Yeargin noted via teleconference he had not. There was no response from Gaekwad or Conte.

A discussion regarding attorney/client privilege followed. Burby stated that his expectation would be that conversations with employees and this board would be treated as privileged and their interview notes would be attorney work products and also privileged. He said their report would identify everyone they spoke to but writing reports of each interview may not be possible due to cost and time issues. Burby qualified that if misconduct concerns were raised that are unrelated to their investigation, they would share those concerns with the compliance and ethics department. Likewise, criminal concerns, although unlikely, would also be reported.

Garvy asked Cole to discuss his process of selecting the firm. Cole stated he explored approximately 10 Florida firms he was familiar with and quickly concluded that this was too close of a relationship for the independence requested by Chairman Marchena. He used legal websites to identify firms that specialized in internal investigations and higher education law, and that were independent from UCF and the State University System. He identified four firms and recommended Bryan Cave. Cole stated his recommendation was based on Burby's combination of prosecutorial experience, his work with the federal government and the peculiarities of government practice, his independence from the university and the fact that Bryan Cave was a large firm with significant resources conveniently located in Atlanta.

Yeargin inquired as to the firm's ability to provide real-time reporting as requested by Whittaker. Burby said they could do this but expressed concern that this would slow the process. Burby offered to report to the board as often as it likes. Marchena stated the board would leave that judgment to Seay. Bradley suggested a regular report at future board meetings for the short term. Burby qualified that the process outlined here would be the same whether there was criminal activity or not. Walsh requested that any criminal actions be brought to the Board immediately. Burby agreed and noted he would want to look at reporting obligations for the university and the board.

Garvy made a motion that the board engage Bryan Cave and specifically Joseph Burby as the lead to move forward with the investigation, subject to a rewrite of the engagement letter and

with the understanding that their recommendation of a forensic accountant is subject to Seay's approval. Marchena added that the investigation would specifically be into the inappropriate utilization of educational and general funds for capital projects. He also read the following specifics into the record:

- Was there anyone beyond Mr. Merck involved in the decisions to utilize E&G funds for capital projects where it was not allowed?
- Did anyone personally profit from this?
- Were there projects beyond the projects already identified in which E&G funds were inappropriately utilized?
- Were there controls in place that were missed or violated?
- Do you have any recommendations for additional controls that should be put in place?
- The firm's cooperation with the Office of Inspector General of the Board of Governors in connection with this investigation.

Bradley seconded the motion. Marchena opened the floor for additional discussion. Marchena suggested that as part of the motion, the board authorize Seay to execute the engagement letter with the law firm on behalf of the Board of Trustees, which is a delegation of Marchena's powers. Garvy agreed to the addition of this to his motion and Bradley seconded it.

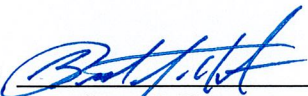
A motion was made to approve BOT – 1 as outlined above, and it was approved with one opposition from Walsh. Walsh stated that although he fully support the good work and good words shared today, he opposes on a process basis.

Marchena clarified Seay will be in charge of the investigation and approval for any content on the website dedicated to the investigation. He also confirmed that he and Seay would be in charge of external communications. Asked for final comments, Walsh stated his belief that the annual presidential review should be sent to a third party rather than to our associate vice president for Human Resources. Bradley asked that this be calendared to the Compensation and Labor Committee. Trustee Self made a recommendation for more detailed minutes going forward. Marchena suggested that we look to an upcoming Association of Governing Board's review for that recommendation.

ADJOURNMENT

Marchena adjourned the board meeting at 3:15 p.m.

Respectfully submitted:



Grant J. Heston
Associate Corporate Secretary

Date: 1/16/19