

THE BOARD OF REGENTS
OF HIGHER EDUCATION
Montana University System

SPECIAL MEETING

MINUTES

DATE: JUNE 7, 1993

LOCATION: MONTANA HIGHER EDUCATION BUILDING
CONFERENCE ROOM 102
2500 BROADWAY
HELENA, MONTANA

REGENTS PRESENT: BILL MATHERS (CHAIRMAN), JIM KAZE (VICE CHAIRMAN), PAUL BOYLAN, SHANE COLEMAN, PAT DAVISON, CORDELL JOHNSON, AND KERMIT SCHWANKE; COMMISSIONER OF HIGHER EDUCATION JOHN HUTCHINSON

REGENTS ABSENT: NONE

PRESIDENTS PRESENT: BRUCE CARPENTER (EMC), BILL DAEHLING (NMC), GEORGE DENNISON (UM), MIKE MALONE (MSU), AND LINDSAY NORMAN (TECH); PROVOST MIKE EASTON (WMCUM); JUD FLOWER (MCC), HOWARD FRYETT (FVCC), AND DON KETTNER (DCC)

PRESIDENTS ABSENT: NONE

DIRECTORS PRESENT: JANE BAKER (BUTTE VT), GEORGE BELL (BILLINGS VT), ALEX CAPDEVILLE (HELENA VT), DENNIS LERUM (MISSOULA VT), AND WILLARD WEAVER (GREAT FALLS VT)

DIRECTORS ABSENT: NONE

Chairman Bill Mathers called the special meeting of the Board of Regents to order at 9:00 a.m. Roll call showed that a quorum was present.

- ▶ **Regent Kermit Schwanke moved that the Board approve the minutes of the April 14, 1993 special meeting, the May 3, 1993 regular meeting, and the May 7 conference call meeting as mailed. The motion passed unanimously.**

Chairman Mathers introduced two new Board members. Pat Davison from Billings replaced Tom Topel, and Shane Coleman from Bozeman, the new student

regent from Montana State University, replaced Travis Belcher. Chairman Mathers welcomed Regents Davison and Coleman to the Board.

Commissioner of Higher Education John Hutchinson introduced Dr. Jeff Baker, the new Interim Commissioner of Higher Education, and welcomed him to his first Board of Regents meeting.

Commissioner Hutchinson announced several agenda changes. Montana State University would be presenting a walk-on agenda item after the Board finished its discussion of the six-mill levy money. Also, because Governor Racicot had other commitments but wanted to be present for discussions on the student athletic fee and athletics expenditure limits, the "voluntary termination incentive" policy would be discussed before the athletics issues.

Chairman Mathers noted that although Regent Jim Kaze had been elected as the Board's new chairman at the May meeting, no vice-chairman had been elected. He asked for nominations.

Regent Kaze nominated Regent Cordell Johnson as the Board's new vice-chairman.

- ▶ **No other nominations were offered. Regent Schwanke moved that the Board elect Regent Johnson as its new vice-chairman. The motion passed unanimously.**

1. COLLECTIVE BARGAINING

a. APPROVAL OF TENTATIVE AGREEMENT WITH MONTANA NURSES ASSOCIATION

Sue Hill, Director of Labor Relations and Personnel, told the Board that all but one collective bargaining agreement would expire July 1, and the Montana Nurses Association's tentative agreement was the first of many that would be brought forward for approval. She said the contract changes were minor, and wages were consistent with the state pay plan.

- ▶ **Regent Paul Boylan moved that the Board approve the tentative agreement with the Montana Nurses Association. The motion passed unanimously.**

2. CONSENT AGENDA

a. ITEM 79-101-R0693—CONSTRUCT CRAIG CIRCLE OF SCHOLARS; UNIVERSITY OF MONTANA

University of Montana President George Dennison said that funding for this project, which involved the east end of the Oval, would come from private donations and non state-appropriated funds. He said UM had received legislative authorization to continue with renovation of the Oval, and Board approval was being requested so UM could have the project completed by fall.

- ▶ **Regent Schwanke moved that the Board approve Item 79-101-R0693. The motion passed unanimously.**

b. ITEM 79-601-R0693—ENERGY RETROFIT PROJECTS; WESTERN MONTANA COLLEGE OF THE UNIVERSITY OF MONTANA

Western Montana College Provost Mike Easton said this item was being submitted so that Western could take advantage of Department of Energy monies that had become available late in the year and would be lost if not used by June 30, 1993. He said the roof project was authorized by the Long Range Building Program, and the infrared heating project would come from plant funds.

- ▶ **Regent Johnson moved that the Board approve Item 79-601-R0693. The motion passed unanimously.**

3. CAMPUS PLANS FOR RESPONDING TO THE RESCISSION

At the Board's May meeting, the campus presidents were asked to submit plans to the Commissioner's Office by June 1 showing how they would respond to the latest version of the 21 options previously approved by the Board as ways to meet legislative budget reductions. In response, the following were submitted:

- June 1, 1993 memorandum from Montana State University President Mike Malone (on file)
- June 1, 1993 memorandum from University of Montana President George Dennison (on file)
- May 25, 1993 memorandum from Montana Tech President Lindsay Norman (on file)
- June 1, 1993 letter from Eastern Montana College President Bruce Carpenter (on file)
- June 1, 1993 plan from Northern Montana College President Bill Daehling (on file)
- June 1, 1993 memorandum from Western Montana College Provost Mike Easton (on file)

Presidents Malone, Dennison, Norman, Carpenter, and Daehling, and Provost Easton briefly reviewed the plans for the Board.

The discussion that followed focused on the presidents' responses to Board questions concerning

- administrative cuts;
- potential problems that may result from faculty opting for early retirement;
- levels at which section cuts would be made and the resulting student progression rates because of those cuts;
- potential difficulties in meeting the 2 percent enrollment cap;
- feasibility of an earlier cutoff date for completed applications;
- additional revenue if the number of non-resident students increased and the number of residents decreased;
- applications running well ahead of last year, although expected to level off by July 1;
- whether moving people from General Fund money to indirect cost recoveries was being undertaken at all campuses; and
- shared services among campuses to meet budget reductions.

At 10:45 a.m., Chairman Mathers said the Board would recess for a 10-minute break.

When the Board reconvened at 10:55 a.m., Chairman Mathers asked the community colleges and the vo-tech centers if they had any comments on the budget reductions.

Miles Community College President Jud Flower, Dawson Community College Don Kettner, and Flathead Valley Community College President Howard Fryett briefed the Board on their institutions' efforts to meet budget cuts. Their remarks concerned space problems; inadequate resources to absorb increasing numbers of students; an increase in applications; omission from the state pay plan; telecommunications efforts; impacts of I-105; higher tuition; increased class sizes; and difficulties in undertaking long-range planning because of a state reduction from 51 percent to 48.7 percent.

The Board also heard brief remarks from Vo-Tech Directors George Bell (Billings), Jane Baker (Butte), Will Weaver (Great Falls), Alex Capdeville (Helena), and Dennis Lerum (Missoula). Directors Bell, Baker, Weaver, and Capdeville also distributed written summaries (on file) to the Board.

Chairman Mathers thanked the campuses for their plans to meet the budget reductions.

4. PRELIMINARY DISCUSSION OF THE DISTRIBUTION OF SIX-MILL LEVY MONEY

Commissioner Hutchinson said he had met with the presidents for preliminary

discussions on the expenditures of any excess six-mill levy revenue that might become available. Consistent with House Bill 2, any excess millage was to be appropriated to the Commissioner's Office for distribution to the campuses at the discretion of the Board of Regents. Commissioner Hutchinson said it was too early to know much would be available because a major collection was due in June. About \$1.6 million in excess money had been available previously. He said a general consensus had been reached for the excess millage to be used on campuses hit particularly hard by the 1993 legislative session. Once the dollar amount was known, his office would work with the campuses to come up with a distribution process for Board approval. Commissioner Hutchinson said if the Board agreed, his office and the campuses would begin that process.

On behalf of the Board, Chairman Mathers asked Commissioner Hutchinson and the campuses to proceed in that manner.

5. **ITEM 79-201-R0693 - RATIFICATION OF AGREEMENT WITH THE DEPARTMENT OF ADMINISTRATION, BOARD OF REGENTS, MONTANA STATE UNIVERSITY, AND MONTANA STATE UNIVERSITY FOUNDATION CONCERNING THE CONSTRUCTION OF THE ENGINEERING PHYSICAL SCIENCES BUILDING**

Commissioner Hutchinson pointed out that this was a late agenda item from Montana State University. Ratification of an agreement among the entities involved would authorize MSU to move ahead with construction of its Engineering and Physical Sciences building. Commissioner Hutchinson said Chief Legal Counsel LeRoy Schramm had found no problems with the agreement. He pointed out that the Board would also see a similar agreement from UM for its Business building.

President Malone said the agenda item was late because of a tight time frame. Since the building had been in the planning stages since 1983 and was now in its final phase, they were eager to begin construction and wanted to have an issuance of bonds as early as August if possible. Before they could issue the bonds, they needed to have an approved financing plan. President Malone said they needed an assurance to the Department of Administration that the funds were raised and guaranteed. Because MSU was a party to that commitment, Board approval was needed.

- ▶ **Regent Johnson moved that the Board approve Item 79-201-R0693. The motion passed—Regent Kaze voted no.**

University of Montana President George Dennison said UM was at the final stages of preparing a similar agreement and asked they could have a conference call to approve the agreement before the July 1993 meeting.

Commissioner Hutchinson said he didn't think a conference call would be necessary. Instead, his office would prepare and send a mail ballot for the Board's

approval of UM's agreement.

6. RESOLUTION RELATING TO FINANCING OF CERTAIN PROPOSED PROJECTS TO BE UNDERTAKEN BY THE BOARD OF REGENTS; NORTHERN MONTANA COLLEGE

Northern Montana College President Bill Daehling said this resolution was essentially the same resolution the Board adopted at its May 1993 meeting. Discussions with bond counsel had resulted in some minor wording changes, and the resolution was being resubmitted to the Board for final approval. President Daehling said it didn't authorize issuance of any bonds but would allow Northern Montana College to proceed with planning the projects and expending other funds. If bonds needed to be sold in the future, those proceeds could be used to reimburse some of the projects' costs.

- ▶ **After a brief discussion, Regent Kaze moved that the Board approve the resolution from Northern Montana College relating to financing of certain proposed projects to be undertaken by the Board of Regents. The motion passed unanimously.**

7. APPROVAL OF GOVERNOR MARC RACICOT'S APPOINTMENTS TO LOCAL EXECUTIVE BOARDS IN ACCORDANCE WITH MCA 20-25-303

Chairman Mathers referred to a June 3, 1993 letter from Governor Racicot (on file) requesting that the Board of Regents approve the following six local executive board appointees:

- Montana State University Local Executive Board: Rory D. Abraham, Kalispell, to succeed Cindy Shewey
- Western Montana College Local Executive Board: Joe E. Womack, Dillon, to be reappointed
- Montana College of Mineral Science and Technology Local Executive Board: Constance B. Lord, Philipsburg, to succeed Haley Beaudry
- University of Montana Local Executive Board: Col. Sam Roberts, Missoula, to succeed Bob Griel
- Northern Montana College Local Executive Board: David G. Rice, Havre, to succeed Robert D. Morrison
- Eastern Montana College Local Executive Board: James Sites, Billings, to succeed Dale Fasching

Regent Schwanke said he had a conflict of interest with the UM appointment and suggested the Board vote on UM's appointment separately.

- ▶ **A motion to approve all the local executive board appointments—except for the University of Montana's—passed unanimously.**

- ▶ **A motion to approve the University of Montana's local executive board appointment passed unanimously; Regent Schwanke abstained.**

Chairman Mathers recessed the meeting at 12:00 noon, and the Board reconvened at 1:55 p.m.

8. ITEM 56-004-R0787 - OPTIONAL RETIREMENT PROGRAM (REVISED 803.2)

Commissioner Hutchinson said this item was on submission and asked Dave Evenson, Director of Benefits, to address it.

Mr. Evenson said the Board's policy needed to be revised to bring it into compliance with recent amendments to the law. According to Mr. Evenson, Senate Bill 407 was the legislative response to the bill draft request from the Board of Regents and the Teacher's Retirement Board. He reviewed four amendments to the bill that would become effective July 1, 1993.

Chairman Mathers said the Board would place this item on the July 1993 meeting's action agenda.

9. ITEM 79-002-R0593 - VOLUNTARY TERMINATION INCENTIVE POLICY; MONTANA UNIVERSITY SYSTEM

Commissioner Hutchinson said this was a new policy that had been on submission at the May meeting. Some changes had been made, and a revised version was now being brought to the Board for action. Commissioner Hutchinson said Chief Counsel Schramm would review the policy for the Board.

Chief Counsel Schramm said the policy was developed at the legislature's directive for the Board of Regents to "define" a voluntary termination incentive program for the University System's Teacher's Retirement System (TRS) employees by July 1, 1993. Schramm said the Commissioner's Office and campus staff had met subsequent to the May meeting to iron out several problems with the original version of the policy.

Chief Counsel Schramm then reviewed the policy's 12 sections and distributed a new Section IV (on file). This section had been left blank pending an opinion from tax counsel. The section's new title was "Tax Status of the Incentive."

Chief Counsel Schramm said Section IV had been difficult to draft because of potential IRS problems that might result depending on whether employees wanted the incentive as current taxable income or whether they want to defer it.

Regent Davison felt the language in Section IV was misleading. He said it seemed unusual for the Board to be telling the IRS what was and was not taxable.

Chief Counsel Schramm said he thought the campus payroll offices needed some guidance on the matter. If it wasn't included in the policy, they would have to do it some other way.

Regent Davison said he didn't think they should be giving tax advice. He suggested stating that the tax consequences were something each individual ought to explore and to work with the Teacher's Retirement System and whomever else necessary to resolve those particular instances.

Regent Johnson agreed that employees should be responsible for checking with their own tax advisors concerning the tax consequences of any transactions.

Chief Counsel Schramm said he would redraft Section IV to incorporate those suggestions.

Chairman Mathers said several people at the meeting has asked to speak to the Board about the policy.

Mike Dahlem, Staff Director for the Montana Federation of Teachers, reviewed his June 4, 1993 letter to Chief Counsel Schramm (on file). He said MFT believed the statute created an entitlement to employees who met the statute's eligibility criteria, and it really wasn't the Board of Regents' prerogative to de-limit or reduce those. Mr. Dahlem's memo suggested and provided reasons for deleting and/or modifying specific policy sections.

Montana Representative Bob Ream of Missoula said House Bill 17 had been introduced initially for PERS employees and was viewed by many as a cost-saving measure in the long run. Representative Ream said most of the people who would take advantage of the incentive were under TRS, and he wanted to make two points: (1) The one-third time retirement option should still be available even if people chose this incentive. (2) Subsection 1 of Section II of the bill said that the Board of Regents shall establish a voluntary termination incentive for all members of the Teacher's Retirement System. With that wording, and on the basis of fairness to faculty, he had some difficulty with Section V of the policy. He said to restrict some faculty members simply because they were more valuable in a department than other faculty was unfair and strayed from the bill's intent; the incentive should be available to any faculty member. Representative Ream also urged the Board not to overreact to the worst-case scenario figures of the number of faculty who would be choosing the option. Instead, the incentive should be viewed as a cost-saving measure for both PERS and TRS employees.

Arnold Silverman, Professor of Geology at UM, said he was representing the University of Teachers Union (UTU). He had helped draft some of the policy's earlier versions and had been involved with passage of House Bill 517's amendments. Professor Silverman said no one was served well by a policy that reversed the

written or implied language of a bill. He said the UTU and most of the faculty supported the recommendations for change outlined in Mike Dahlem's June 4 letter to LeRoy Schramm.

John McQuiston, Professor of Sociology at UM, said he had followed the voluntary retirement incentive bill as it made its way through the legislature. If implemented with the broadest possible scope, it would offer the University System an opportunity to organize its resources within campuses and allow a rethinking of exactly where those resources would be used without major disruption of campus life. He said the bill should be looked at as an opportunity rather than a liability.

After further discussion, Chairman Mathers asked for Chief Counsel Schramm's reaction to the retroactivity issue.

Chief Counsel Schramm said the bill was not totally clear on that. He said he felt there were two reasons for not making it retroactive: (1) Language stating that the Board of Regents shall establish a voluntary termination incentive during the 1994-95 biennium. Since that biennium would begin July 1, he didn't think people who weren't working in this biennium were qualified for it. (2) Language stating that the Board of Regents shall define the terms of the voluntary termination incentive by July 1, 1993, which provided the basis for not making it retroactive.

Regent Davison expressed some concerns about Section V, Deferral of Termination.

After further discussion, Governor Racicot suggested a language change in Section V that a unit or center may "request by mutual agreement an eligible employee . . ." instead of "require an eligible employee . . ."

Regent Kaze agreed and suggested that Section V be modified to reflect the change. He also agreed with the earlier suggestion made by Regent Davison that Section IV be revised to reflect that the Board wasn't rendering any tax advice. He then moved that the Board approve the policy as amended.

UM President Dennison said he wanted to make sure the Board was intent on saying there would be no retroactivity.

Regent Kaze said he was intent on saying that, but he wasn't making a motion to modify the policy's language to reflect that. He was only suggesting amendments to Sections IV and V.

EMC President Carpenter asked whether anything in the policy would preclude post-retirement employment under the Board's current guidelines.

Chief Counsel Schramm said a statement could be added in the voluntary retirement incentive policy to indicate that.

Regent Kaze said he would add that change as the third amendment to the policy.

- ▶ **Regent Kaze restated his motion that the Board amend Item 79-002-R0593 as follows: (1) Section IV would be modified so that the University System would not be placed in the position of rendering tax advice; (2) Section V would be modified so that a unit may enter into a mutual agreement with an employee; and (3) A statement would be added to indicate that this policy did not preclude the Board's post-retirement contract policy. The motion passed—Regent Johnson voted no.**
- ▶ **Regent Kaze then moved that the Board approve the amended version of Item 79-002-R0953. The motion passed—Regents Johnson and Boylan voted no.**

10. **STUDENT ATHLETIC FEE**

- a. **ITEM 19-101-R1277; STUDENT ACTIVITY FEE (REVISED 940.8)**
- b. **ITEM 79-003-R0593—ATHLETIC FEE POLICY (NEW)**

Commissioner Hutchinson said these two policies had been submission items at the May 1993 meeting and were being brought forward for action.

Commissioner Hutchinson said he had met with UM President Dennison and MSU President Malone, and they agreed an athletic fee was critical at that time. Although they were fully aware of the student referenda on the matter, in order for them to remain part of the Big Sky Conference, remain in Division I, and comply with NCAA gender equity requirements, they felt the fee was necessary. The two universities were requesting a \$30-per-semester fee for all students taking seven or more credits. In return, students paying the fee would be given free admission to most athletic events. MSU and UM proposed adding a paragraph to Item 79-003-R0593 that would allow them to do that. Commissioner Hutchinson said the college presidents were not proposing an athletic fee at that time.

Concerning athletic expenditure limits, Commissioner Hutchinson said the presidents had agreed to slash system current unrestricted fund expenditures for intercollegiate athletics by \$450,000—nearly 10 percent (excluding fee waivers). He said the two university presidents agreed to cut their respective athletic programs by \$160,000 each. The colleges would share the balance of the cuts (\$130,000) in proportion to their institutional current unrestricted fund expenditures (excluding fee waivers) as follows:

| Institution | CUF Expenditures on Athletics | Percentage of Total College Expenditures | Proposed Cuts |
|--------------------------|-------------------------------------|--|------------------|
| Eastern Montana College | \$ 433,420 | 32.44% | \$ 42,172 |
| Montana Tech | 309,656 | 23.17% | 30,121 |
| Northern Montana College | 270,360 | 20.23% | 26,299 |
| Western Montana College | 322,827 | 24.16% | 31,408 |
| TOTAL | \$1,336,263 | 100.00% | \$130,000 |

Presidents Dennison and Malone reviewed past discussions on such factors as reduced state funding, maintaining Division I status, NCAA gender equity requirements, grants in aid, other members of the Big Sky Conference having student athletic fees, and the MGT study's recommendation of an athletic fee to help fund athletics. President Dennison noted that the student referendum vote might have been different if not for the hurried time frame.

Governor Racicot was concerned that the athletic fee would be used to supplant funds already cut. He asked whether UM and MSU could say that the intent of the fee was not to supplant cuts already made but instead to bring the universities into conformance with NCAA demands.

Presidents Dennison and Malone said that bringing the universities into conformance with NCAA demands was the main thrust, although some funds would be supplanted.

Governor Racicot said a policy decision needed to be made as to whether it was important for UM and MSU to compete at the level they had been in light of the state's current financial condition. He wondered how authorizing an additional \$300,000 expenditure to meet gender equity requirements could be justified if the University System was asked to give back \$25 or \$30 million to the General Fund if a special session was held.

Regent Johnson said Item 79-003-R0593 left the option of enacting a student athletic fee up to the presidents if they felt it necessary. He didn't think the Board of Regents should say that the campuses couldn't impose an athletic fee. He also pointed out that because fewer than 20 percent of the total student population voted on the referenda, it wasn't fair to suggest that most of the students were against it.

Governor Racicot said if he were authorized to assess an athletic fee, he may do that to conform to new requirements being placed on the institution. However, he wouldn't do it to supplant revenues already downsized in another area.

After further discussion, Chairman Mathers said the Board would first vote on Item 19-101-R1277, which would remove the prohibition against athletic fees.

- ▶ **Regent Jim Kaze moved that the Board approve Item 19-101-R1277, Student Activity Fees (REVISED 940.8). The motion passed unanimously.**

Chairman Mathers then called for a motion on Item 79-003-R0593.

- ▶ **Regent Johnson moved that the Board approve Item 79-003-R0593, Athletic Fee Policy (NEW), with the following language:**

The units of the Montana University System may assess students an athletic fee dedicated to the support of intercollegiate athletic activities only under the following conditions.

Procedures

- A. *The campus administration requests the Regents to approve a fee and indicates the amount of the proposed fee;*
- B. *The results of a recent campus referendum or vote of the student governing body on the proposed fee are made known to the Board; and*
- C. *The Regents authorize the fee.*

The motion passed—Regent Jim Kaze voted no.

- ▶ **Regent Schwanke moved that the Board then amend Item 79-003-R0593, Athletic Fee Policy (NEW), to add the following language, and that Fall Semester 1993 be the effective date:**

Montana State University and the University of Montana may assess students taking 7 or more credits an athletic fee of \$30.00 per semester dedicated to the support of intercollegiate athletic activities. Payment of this fee shall allow the student to be admitted to campus athletic events to the extent deemed practical by the campus administration.

Before a vote was taken, Todd Mitchell, EMC student body president; J.P. Betts, UM student body president; and Travis Rothwiler, MSU student body vice-president, spoke against the enactment of any athletic fee and urged the Board to vote against the motion.

Regent Johnson said it should be made clear that the Regents weren't voting to impose an athletic fee but instead authorizing UM and MSU to do so if they felt it

was necessary.

- ▶ **After further discussion, a roll call vote was taken. The motion passed 5 to 2—Regents Schwanke, Johnson, Coleman, Boylan, and Mathers voted in favor of the motion; Regents Kaze and Davison voted against the motion.**

11. STRUCTURAL STUDY

Interim Commissioner of Higher Education Jeff Baker told the Board that academic quality was something he took very seriously. They must be prepared to address changes in higher education by clearly determining objectives to provide the best education for students with the resources available. He said they needed to (1) clearly define higher education's mission; (2) focus on program delivery; (3) rise above conventional thinking; and (4) work toward being more responsive to all constituencies—particularly students and taxpayers. Baker said during the weeks ahead his office would be talking with a number of people throughout the state to hear concerns and solicit ideas. He said he also wanted to thank Commissioner Hutchinson for his help and kindness and looked forward to the challenges ahead.

Before the Board adjourned, Regent Johnson said he wanted to again thank Chairman Mathers for his service not only to the Board of Regents but also to the state of Montana for the past 40 years.

Chairman Mathers adjourned the Board at 5:55 p.m.

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