

Minutes of the Joint Meeting of the Board of Trustees and Athletics Association Board of Directors of the University of Kentucky, Sunday, February 5, 1989.

The Board of Trustees and the Athletics Association Board of Directors of the University of Kentucky met in the Board Room on the 18th floor of the Patterson Office Tower at 1:00 p.m. Lexington time on Sunday, February 5, 1989. The meeting had been requested by the Board of Trustees and notice issued by the Acting Chairman, Mrs. Edythe Jones Hayes.

A. Meeting Opened and Rolls Called

Mrs. Edythe Jones Hayes, Acting Chairperson of the Board of Trustees called the joint meeting to order at 1:00 p.m. and the invocation was pronounced by Judge Julia Tackett.

Board of Trustees

The following members of the Board of Trustees answered the call of the roll: Mrs. Edythe Jones Hayes (Acting Chairperson), Mr. Ted B. Bates, Professor Raymond F. Betts, Mr. William E. Burnett, Jr., Professor Mary Sue Coleman, Professor David R. Driscoll, Jr., Mr. Tracy Farmer, Mr. Lawrence E. Forgy, Jr., Senator Walter D. Huddleston, Dr. Nicholas J. Pisacano, Mr. James A. Rose (James), Judge Robert F. Stephens, Mr. Jerome A. Stricker, Mr. William B. Sturgill, Judge Julia K. Tackett, and Mr. Billy B. Wilcoxson. Absent from the meeting were Governor Albert B. Chandler, Mr. Foster Ockerman, Sr., Mr. James L. Rose (Jim), and Judge Henry R. Wilhoit, Jr. The University administration was represented by President David P. Roselle, Mr. Edward A. Carter, Vice President for Administration; Chancellor Peter P. Bosomworth, Dr. Wimberly C. Royster, Vice President for Research and Graduate Studies; Mr. Eugene R. Williams, Vice President for Information Systems; and Mr. John C. Darsie, General Counsel. In addition, Mr. James Park, Jr., Special Counsel, and Mr. Joseph Burch, Acting Director of Athletics, were in attendance.

Athletics Association Board of Directors

The following members of the Athletics Association Board of Directors answered the call of the roll: President David P. Roselle, Dr. Jack C. Blanton, Dr. Charles W. Ellinger, Mr. Lawrence E. Forgy, Jr., Dr. Art Gallaher, Mr. Phil Greer, Dr. James Kuder, Mr. Robert Lawson, Dean Peggy Meszaros, Miss Leah McCain, Dr. Ernest J. Middleton, Dr. Nicholas J. Pisacano, Mr. Bruce Rector, Professor Daniel R. Reedy, Mr. S. T. Roach, Dr. Paul Sears, Mr. Jerome A. Stricker, Mr. William B. Sturgill, and Dr. Charles T. Wethington. Absent from the meeting were Governor Albert B. Chandler, Mr. L. D. Gorman, and Dr. J. R. van Nagell, Jr.

Members of the media were also in attendance and Mrs. Hayes expressed appreciation for their interest in the affairs of the University.

B. Minutes of the Board of Trustees Approved

On motion by Mr. Sturgill, seconded by Senator Huddleston and passed, the Minutes of the January 28, 1989 meeting of the Board of Trustees were approved as written.

President Roselle stated that the rapidity of the Board meetings had not allowed much time for generation and digestion of the Minutes and expressed apologies for their being handed out at the recent weekly meetings.

C. President's Recommendation on Presiding Chairperson

With the permission of the Athletics Association Board of Directors, President Roselle ceded his chairmanship for the joint meeting to Mrs. Hayes. Mrs. Hayes stated that it would be for presiding purposes only and that the separate Boards may have to act as individual boards on certain matters as was the case at the January 28, 1989 joint meeting.

D. Remarks by President Roselle

President Roselle reminded the Board of the October 9, 1988 meeting when the Board adopted a Resolution regarding the NCAA allegations concerning the University's basketball program. He read the Resolution and stated that it was the Board's policy statement on the matter. He informed the members that the administration had been operating for the past several months according to the Resolution adopted.

President Roselle reminded the Board of its meeting on January 24, 1989 when it had voted to be briefed on the report to the NCAA prior to submission of the report and of the January 28, 1989 meeting when the Board voted that "the administration is directed to submit the report to the NCAA as soon as legally possible but not before the report is presented to the Board of Trustees."

He stated that the administration is prepared to carry out the motion adopted by the Board at the January 28, 1989 meeting; however, several members of the Board have indicated that the motion should be reconsidered. He stated that by these conversations, the members had placed themselves in three groups:

1. those who desire to meet in Executive Session and hear a presentation of the report,
2. those who prefer individual presentations on the report before or after submission, and
3. those who want the report to be submitted to NCAA without first hearing any presentation.

President Roselle stated that the administration and the investigators were prepared to accommodate any of the desires. He

reminded the Board that the basketball problem was not part of the agenda he brought to Kentucky, but that he has had to deal with it. The October Resolution asked the administration to proceed in such a way as to protect the integrity of the institution. The administration has carried out the charge described in the Board Resolution adopted at the October 9, 1988 meeting. He stated that the administration's report has been completed and is ready to be submitted to the NCAA and the SEC. The administration will proceed as directed by the Board. For individual Board members who want to pursue other avenues to gain information about the report, he indicated that he would make the report, himself and members of his staff available for review and questions regarding the report.

President Roselle stated that should the decision be made by the Board to go into Executive Session, it is important that the members understand and observe the mandates of the open meetings statutes. He asked Mr. Darsie to review those mandates.

E. Review of Open Meetings Statutes

Mr. Darsie stated that open meetings are mandated by KRS 61.805 et seq, and there are certain narrow exceptions to the requirements for open meetings. He reviewed the exceptions that might be arguable:

Exception 3 -- Discussions of proposed or pending litigation for or against the Board.

Exception 6 -- Discussions which might lead to the appointment, discipline, or dismissal of an employee or student. In connection with this exception, the statutes note that the exception is designed to protect the reputation of individuals.

Exception 10 -- Meetings which federal or state law require to be conducted in private.

He continued that the statutes also provide for certain requirements for the conduct of closed sessions. Those are as follows:

1. A closed session of a public body is possible only after a motion is made and carried by a majority vote in open session.
2. No final action in the form of a vote may be taken in closed session, i.e. any vote on any matter must be taken in the public session.
3. No matters may be discussed in the closed session other than those which have been announced in the public session.

Mr. Darsie stated the following about the privacy of closed sessions:

Several questions have come up with respect to what may or may not be divulged from that which occurs in a closed session. He stated that the three newspapers had made a motion in the circuit

court to require that the proceedings of any closed session be video taped so that no evidence of what occurred in the closed session would be lost. In the process of overruling that motion, Judge Barker said that in the event of litigation growing out of that closed session, the deposition of anyone at the session could be taken to provide their best recollection of what occurred. There is no guarantee of perpetual secrecy in a closed session though the public and the media may be excluded at the time.

Professor Betts asked if the statement that no matter may be discussed in closed session which has not been announced in open session would almost suggest by implication that some aspects of the report would be announced in order for them to be discussed?

Mr. Darsie provided his opinion of the requirements of a closed session. He stated that one cannot announce that he is going into closed session to discuss things which might lead to the dismissal of an individual employee or student and then get into the closed session and talk about property acquisitions. In terms of the report, if one takes the view that any of the matters contained in the report may lead to personnel actions of one kind or another, then one could proceed on that basis. He indicated that there are contrary legal opinions.

F. Notice of Meeting Provision and Closed Meetings

Mr. Burnett stated that for the Board to have the benefit of the protection of the Commonwealth of Kentucky, the meeting has to be properly called in accordance with the Kentucky Revised Statutes. He asked Mr. Darsie to confirm to the Board that in his opinion the meeting had been properly called.

Mr. Darsie stated that he assumed Mr. Burnett was referring to the ten-day notice provision. He explained that a ten-day notice is mentioned in the statute relating to Board of Trustees meetings. In his opinion, the intent and spirit of the statute had been met. The matter of listening to the report or having it presented was the subject of a motion by Mr. Farmer on January 24, 1989. He noted that there had been three meetings within thirteen days. Therefore, he concluded that the notice provision had been effectively met. He said that the open meetings statute has a different provision for the notice. The open meetings statute provides that any public agency may hold a meeting with only 24 hours notice.

Mr. Burnett stated that he did not believe that the Board wanted to lose the protection afforded to it by the statutes of the Commonwealth of Kentucky nor did it ever want to be put in a position where there would be illegal Board meetings. Mr. Burnett then asked for Mr. Darsie's opinion regarding the Supreme Court of the Commonwealth of Kentucky and Judge Lambert's decision on closed meetings.

Mr. Darsie stated that the Supreme Court had not voted to reconsider Judge Lambert's opinion. The Supreme Court had issued an order which states that it will hold a hearing within a few days, as provided in the statute, to decide whether they will reconsider Judge Lambert's opinion.

Mr. Darsie stated that he had heard arguments that there really is no effective remedy should it be later found that a session is illegal. He stated that, in his opinion, the most that could occur, if the meeting were later found to have been improperly attended, is that any action taken would be voided. Since there is no action contemplated at the meeting, there will be no action to void.

President Roselle stated that he did not know that there was an easy answer. A lot of people in a lot of organizations had spent a lot of time trying to find leaks and generally it is not very productive. There were people briefed on the report during the last week. He explained that the idea was to get agreement from all people named in the report that they had current, complete information and no further questions about information related to them that went into the report. There were complete briefings of the people named in the allegations and some may want to look at the administration as having leaked the report. A number of people could have leaked the report. It might, however, be productive to look to some of the other people because what was leaked was kind of selective.

G. Motion to Close Meeting and Forward Report

Mr. Forgy stated that he intended to make a motion that the meeting be closed and the report be discussed. Before making the motion, he discussed some of the background. He stated that he feels the people of the state want both Boards briefed on the report. An action to brief the Boards would not be a diminution of the trust and confidence that the Boards have placed in the University's administration. He continued that he does not feel it is an unreasonable request on the part of the University's Board of Trustees to be briefed on the matter. It is in the best interest of the institution that the Boards hear the administration's summary or outline of the report and that the Board act on the report. He made a motion that the administration forward the report to the NCAA forthwith. He said that the people of the state are getting tired of the matter, and it is creating a spectacle that the University does not need.

Mr. Forgy emphasized that no perception should be drawn by anyone that any secret votes or watering down of the report in the private session is either contemplated or legal. The purpose of a closed meeting is to hear the report. It is not to attempt to alter or subvert the truth. In his opinion, the people of the state expect the Board of Trustees to know what is in the report and for that reason he moved that the Board of Trustees go into executive or closed session in order to discuss matters which might lead to the appointment, discipline or dismissal of certain individual employees or students and to discuss assorted pending litigation and to engage in discussions with attorneys representing the University in several pending matters. He stated that if there are those who do not feel they do not want to hear the briefing, it is their prerogative to conduct themselves as they see fit. He stated, however, that there should be a substantial number of the Board that hear the briefing. His motion was seconded by Judge Tackett.

H. Amendment to Motion

Mr. Stricker stated that one of the positions is to protect the people who are named in the report. He stated that things should not be leaked and that names should not be mentioned in a public session until the courts rule that it can be done. One of the advantages of a closed session is that everyone gets to hear the same thing at the same time and questions may be asked. He continued that on the other hand, there is a perception by the NCAA or the press that the purpose of the closed session is to alter the report, and the net effect is that the University's penalties, if there are any, may be more severe than what they would be otherwise. He felt that going into a closed session could do no harm. He stated that he was torn between hearing information as a group versus the other side that possibly the University could be hurt in the long run. He stated that he would like to have a compromise that may cover all of the things that Mr. Forgy had made in his motion. He made the motion that Mr. Forgy's motion be amended as follows: that the University administration be instructed to send the report intact, as it is written prior to the meeting, and to have a closed session to be briefed on the report.

A discussion followed regarding Mr. Farmer's motion of January 24 and whether his motion was still in effect. Since several motions and amendments to motions had taken place after the January 24 meeting, Mrs. Hayes informed Mr. Farmer that his motion was no longer in effect. Mr. Stricker repeated his motion to amend Mr. Forgy's motion, and Professor Coleman seconded the motion. She stated, however, that it is not an ideal motion and indicated her preference. She said that she did not think the Board is a part of the investigative process. The Board voted not to be a part of the investigative process; therefore, there is no reason for the Board to look at the report before it goes to the NCAA. Her preference would be for the Board not to look at the report and to only deal with the situation that results when the Board knows the NCAA's ruling. The Board's job is to look at the athletics program after the NCAA has made its decisions.

There was a discussion as to whether the closed session would be held on February 5 or at a later date. Mr. Stricker explained that his motion meant that the report be mailed as soon as possible in the form that it is written as of 1:00 p.m., February 5, 1989 and that the Board go into a closed session to be briefed as Mr. Forgy described in his motion.

Judge Stephens stated that he did not feel the Board should have a meeting on the report. The report should be sent, and if anyone wants to know the contents, they should go meet with the President or the attorney. He stated that he would perhaps join in the motion if the motion was to mail it and then reconsider the question at some later date after the report had been mailed and received by the NCAA. He expressed that the Board should not be restricted.

Senator Huddleston stated that there was merit to Mr. Stricker's suggestion. He expressed the opinion that Mr. Stricker was not hamstringing the Board any more than the Board did itself at the October 9 meeting when it suggested that the administration be charged with the

responsibility of conducting the investigation, preparing the response and sending it on without the involvement of the Board. He feels there is also merit and legitimacy to the idea that members of the Board, the governing body of the University, should have some knowledge of what is being done on behalf of the University. He reminded the members that part of the October 9 Resolution was also that the Board would act in the best interest of the University. He does not feel that having knowledge and being aware of the contents of the report is going to jeopardize that responsibility. He opined that the Board needs a certain amount of knowledge in order to carry out its responsibility. The leaks that are occurring do bother him; however, the direction or the policy of the administration cannot be changed on the basis that there might be leaks. There are always going to be leaks. The Board should make its policies on the basis of its responsibilities and interest in the University. He stated that he would like for the report to be sent to the NCAA as soon as possible. The purpose of the Board is not for looking behind the very competent attorneys and trying to second guess them. He said that it would be wrong and that he did not feel anybody on the Board seriously wanted to do that. There is, however, an interest in hearing about the problems. He personally felt that Mr. Stricker had perhaps hit upon a procedure that would meet the Board's need.

Senator Huddleston said that he did not like the perception that if a member of the Board of Trustees knows something about the report, it is somehow jeopardizing the integrity of the University. One of the newspapers castigated several Board members for voting in favor of having a closed session strictly for informational purposes and two days later filed a suit to let the whole world know what was in it. It does not make a lot of sense that it is alright for everybody to know about the report except the Trustees. He stated that he did not see how the NCAA could in any logical process believe that because the Trustees saw the University's report that the response was compromised.

Senator Huddleston stated that he feels that all of the Trustees, the University family, and the people of Kentucky owe a great debt of gratitude to President Roselle, his staff, Dr. James Park, and all the people involved in the investigation, for the manner in which they have conducted this investigation. He indicated that he did not know what was in the eight books and that he had not had a personal briefing from the President on the report. He does know, however, that they have gone about it in a very serious, competent way and have tried very hard to defend the University. He feels they will defend the University and make the best presentation that is possible given the facts.

Senator Huddleston added that the University has not been on trial just for the eighteen allegations made by the NCAA. The University of Kentucky has been on trial by the NCAA, which is the prosecutor and the jury, for the manner in which it has conducted the investigation. The investigators and President Roselle have done the job in such a way as to reflect credit on the University.

Professor Betts expressed his views on the motions made by Mr. Stricker and Mr. Forgy and indicated that under the complicated circumstances the Board should not have a closed session.

President Roselle stated that at the meeting on January 24 he made the proposal to convene the Board to hear a briefing on the report and that may have gotten lost in the process. It would have been in complete conformity with Mr. Stricker's amendment.

Mr. Wilcoxson asked for clarification on Mr. Forgy's motion regarding when the report would be sent to the NCAA.

Mr. Forgy replied that his motion was "forthwith", which indicates with all due haste or with all deliberate speed.

Mr. Wilcoxson stated that President Roselle and his staff have been charged with the duties concerning the issue; the NCAA and their staff have been charged with their duties, and he believes that as a member of the Board he is charged with the duty to see the report.

Mr. Forgy stated that there was a point being missed that needed to be understood. Under the open meetings law that had been explained by Mr. Darsie, there could be no change in the report in the closed session without violating the law. If someone started to violate the law in the closed meeting, he felt that there would be an exodus of people on the Board. He confirmed with Mr. Darsie that the Board could not change, alter, amend or in any way cause the report to be changed without a motion in open session. He explained that the Board would have to meet in closed session, reconvene, and in the presence of witnesses in an open session, vote on any changes. Mr. Stricker's amendment would have the Board approve the report prior to hearing it, and he expressed that such a course of action would be a mistake. He stated that the Board and the Board of Directors of the Athletics Association should hear the report, come back into open session, and instruct the administration to forward the report.

I. Remarks by Mr. Sturgill

Mr. Sturgill stated that he had read the Minutes of the Board and its actions for the last calendar year and in the October 9 Resolution, it was obvious that the authority granted to President Roselle and his administration was all encompassing. He believes that President Roselle and his administration have followed the authorization in the Resolution by conducting the investigation with professional, competent people and with people whose honesty and integrity cannot be questioned. He complimented President Roselle and his administration. He stated that Mr. Farmer's motion on January 24, Mr. Burnett's amendment of January 28 and Mr. Forgy's motion of February 5 are consistent with the October 9 authorization. He, therefore, encouraged the Board to vote for Mr. Forgy's motion and get on with the Board's duties, working to support the University of Kentucky. He remarked that the basketball matter should be put behind, and the Board should get on with its business of looking about the affairs of the University. He noted that he was probably the only person around the table who had played on a University of Kentucky national basketball championship team and knows what it means.

Senator Huddleston stated that Mr. Forgy's comment that implied that the closed meeting would be for the purpose of approving or disapproving the report bothered him. The Board was removed from getting involved in the substance of the report in the October 9 Resolution. He emphasized that he did not want anything to imply that the Board of Trustees did in fact endorse or approved the report itself. The Board would be approving the submission, the responding and the method by which the administration went about preparing the report.

Mr. Forgy replied that he could not agree more, that the meeting is for informational purposes, and he accepted it as a legitimate correction.

J. Vote on Mr. Stricker's Amendment

Mr. Stricker clarified his amendment and Mr. Darsie was asked to call the roll. Upon a vote being taken on the amendment, the result was as follows:

Yea's for the Amendment

Raymond F. Betts
Mary Sue Coleman
David R. Driscoll
Walter D. Huddleston
Nicholas J. Pisacano
James Rose
Jerome A. Stricker

Nay's Against the Amendment

Ted B. Bates
William E. Burnett, Jr.
Tracy Farmer
Larry Forgy
Robert F. Stephens
William B. Sturgill
Julia K. Tackett
Billy B. Wilcoxson

Mrs. Hayes stated that the amendment failed by one vote.

K. Action to go in Executive/Closed Session

Mr. Forgy then moved that the Board meet in executive or closed session in order to discuss matters which might lead to the appointment, discipline or dismissal of certain individual employees or students and to discuss assorted pending litigation and to engage in discussions with attorneys representing the University in several pending matters. He stated he made his motion on behalf of the Board of Trustees.

Mrs. Hayes asked for a vote on Mr. Forgy's motion. The motion passed. Judge Stephens asked that the record show that he voted nay on Mr. Forgy's motion.

L. Athletics Association Board Invitation

President Roselle stated that the sense of the meeting on January 24 was to invite the Athletics Board of Directors to be briefed at the same time that the Board was to be briefed and he sought the counsel of the Board as to whether that invitation was still in effect.

Mr. Darsie stated that the Athletics Board is primarily responsible for the operation of the Athletics program. It does have a different Board of Directors but it is, of course, directly involved in the operation of the program whether it be in accord with NCAA rules or not in accord with NCAA rules.

President Roselle stated that it would be the intent of the administration to have a briefing of the type being discussed for the members of the Athletics Board. If that is the desire of the Trustees, the Athletics Board would be asked to go into executive session and join the members of the Board of Trustees for the briefing. If not, a briefing of the Athletics Board would have to be held at some separate time.

Mr. Farmer asked if going into executive session with another Board that is outside of the Board's jurisdiction would present legal problems?

Mr. Darsie stated that it is within the discretion of the Board, if it wishes, to invite the Athletics Board to hear the report at the same time, or if it does not, it does not have to.

Professor Coleman moved that the Athletics Board of Directors be invited to the executive session, Mr. Stricker seconded the motion and it carried.

M. Closed Session

Mrs. Hayes stated that the Board would go into executive session at 2:05 p.m. following a six-minute recess.

Dr. Pisacano and Judge Stephens left the meeting and did not participate in the executive session.

N. Meeting Reconvened

The meeting reconvened at 4:25 p.m. and Mrs. Hayes assured the public that the Board had carried out both the spirit and the intent of the Board when it went into closed session.

Mr. Sturgill stated that he felt the agenda of the meeting had adequately been covered as the members had listened for four hours and seen the administration carry out the charge of the Board. He thanked the administration for the briefing that they gave to the Board through the very professional staff that had been assembled to conduct the investigation. He stated that it was a fair presentation, and the Board supports completely the responses that are going to be filed. He then moved that the meeting be adjourned.

O. Meeting Adjourned

There being no further business to come before the Board, the Acting Chairman adjourned the meeting at 4:26 p.m.

Respectfully submitted,

John C. Darsie
Assistant Secretary
Board of Trustees