

Meeting of the Board
PENNSYLVANIA HIGHER EDUCATIONAL FACILITIES AUTHORITY
May 12, 2015
Room 515 North Office Building
Harrisburg, Pennsylvania
11:31 a.m. Prevailing Time

MINUTES

1. Call to Order, Filing of Proof of Sunshine Notice and of Sending Notice of the Meeting, Roll Call and Announcement of Quorum.
2. Approval of the Minutes of the Meeting of April 9, 2015.
3. Old Business.
 - A. Gift Ban Resolution.
4. New Business.
 - A. Bond Counsel Appointment Policy.
5. Adjournment.

1. CALL TO ORDER, FILING OF PROOF OF SUNSHINE NOTICE AND OF SENDING NOTICE OF THE MEETING, ROLL CALL AND ANNOUNCEMENT OF QUORUM.

With a quorum of the Board being present, the meeting of the Board of the Pennsylvania Higher Educational Facilities Authority was called to order on Tuesday, May 12, 2015 at 11:31 a.m. prevailing time, in Room 515 North Office Building, Harrisburg, Pennsylvania. The proof of the Sunshine advertisement and certification in regard to sending the notice of meeting is attached to these minutes and identified as Appendix "A".

Board Members Present

Steven Heuer, (Proxy for Governor Thomas W. Wolf)
Senator Lloyd K. Smucker
Senator Andrew E. Dinniman
Alan Cohn, (Proxy for Representative Anthony M. DeLuca)
Executive Deputy State Treasurer Christopher B. Craig
Christal Pike-Nase, (Proxy for Auditor General Eugene A. DePasquale)
Secretary of General Services Curtis M. Topper
Ernie Helling, (Proxy for Acting Secretary of Education Pedro A. Rivera)

Board Members Absent

Speaker Mike Turzai

Authority Personnel Present

Robert Baccon, Executive Director
Beverly Nawa, Administrative Officer

Also Present

William McCarty, Esquire, Hartman Underhill & Brubaker LLC
Danielle Guyer, Director of Budgetary Affairs for the Speaker of the House of Representatives
Jennifer Langan, Deputy Chief Counsel, Pennsylvania Treasury
Kelly Phenicie, Executive Director, Senate Education Committee
Matthew E. Parido, Chief of Staff, Office of Senator Lloyd K. Smucker

Participated Via Conference Call

Lynn Freeman, Esquire, Buchanan Ingersoll & Rooney, PC

2. APPROVAL OF THE MINUTES OF THE MEETING OF APRIL 9, 2015.

A copy of the minutes of the meeting of April 9, 2015, was distributed to the board members prior to this meeting. It is therefore recommended that consideration be given to the adoption of the following Resolution:

RESOLVED That the minutes of the PHEFA meeting of April 9, 2015, be and hereby are approved as presented.

Upon **MOTION** by **Ms. Pike-Nase**, and **SECONDED** by **Mr. Helling**, and after full discussion, the above Resolution was unanimously approved at the PHEFA Board Meeting of May 12, 2015.

3. OLD BUSINESS.

A. Gift Ban Resolution.

Chairperson Heuer recommended that the gift ban discussion from the SPSBA Board Meeting also be reflected in the PHEFA minutes.

Chairperson Heuer said that at the April board meeting a discussion was held regarding members of the board, their proxies and staff of the Authority adhering to a gift ban policy. Senator Smucker suggested that the language in the policy be similar to the Governor's Executive Order 2015-01. A resolution was included in the agenda that authorizes the adoption of a gift ban policy. There were two suggested changes after the agendas were delivered to board members. He opened the floor for discussion of this resolution.

Mr. Cohn asked for an interpretation on the breadth of the resolution and an explanation of how it may apply to the board, legislators, staff and row office members in their business that has nothing to do with board business.

Chairperson Heuer asked if he was seeking to see if it only applies to SPSBA and PHEFA business.

Mr. Cohn said yes. He said there have been many outside discussions and different interpretations. But he thought that the board members should have an interpretation on how broad this is from board counsel before they vote.

Chairperson Heuer asked Mr. Baccon if there had been any interpretation from board counsel.

Mr. Baccon said there had not been any interpretation.

Senator Dinniman said that what is done here establishes a precedent. The legislator's counsel tells him that they are not covered by the gift ban. Independent row officers would have to go to their own counsel to determine if they are covered. No matter the context of the resolution, he is perplexed how each independent board or authority can vote separately instead of having everyone covered in the same way. He said that he is in a bind if his leadership feels one way and the Board feels another way. He feels that there should be something that is consistent for everyone. He asked how Representative DeLuca feels.

Mr. Cohn (Representative DeLuca's proxy) said that they are looking for clarification on the policy. He was also hoping that board counsel could give more clear details before voting on this issue.

Executive Deputy State Treasurer Craig said that Treasury had a long standing gift ban policy. Originally their policy only applied to vendors or prospective vendors who did business with the department. When the Governor was elected they began broadening the policy to apply it absolutely. But they also added a \$25 de minimis exemption.

Executive Deputy State Treasurer Craig feels that the Governor's plan is more difficult. He thinks the motive and intent are good, but it does not apply to Treasury because they are not under the management directives in the Commonwealth. He said that he feels the Governor's gift ban policy is a good idea. But his gift ban does not apply to independent offices that are not under the Governor's jurisdiction.

Ms. Pike-Nase said that the Auditor General (AG) is also an independent row officer. The AG also had a very long standing gift ban which includes a nominal amount as an exemption. She said that the language in the current resolution is strong enough for the AG because it says it applies to business from and for the financial relations of the Authority. But she does understand the concern and she thought it would be wise to have a legal opinion from board counsel.

Secretary Topper understands the request for clarification from board counsel with respect to the gift ban boundaries. He said that he is under the current gift ban and likes the zero dollar threshold. He has been to events where he pays for his own lunch and dinner. He favors the message it sends to the general public. He would encourage the Board to move in this direction after clarification.

Senator Dinniman said that he needs more clarification from the Board and legislative leadership.

Senator Smucker said that he believes this resolution was written by staff. He thinks it is pretty clear what the gift ban would cover. He said it is outlined in section A1 of the Resolution. You can't take a gift from anyone seeking to obtain business

from, or that has financial relations to, SPSBA/PHEFA. He said it would pertain to activities associated with this board and not more broadly than that. He believes it applies to every staff member, board member, or proxy member of this board.

Senator Smucker did not feel that this was an adoption of the Governor's gift ban policy. He said this would be a gift ban policy adopted by this board and applies to all members of the board. He agrees with Senator Dinniman that if other state boards continue to adopt gift ban resolutions, there could be slightly different language which could result in conflict. But he felt that the language of this resolution applied to members of this board for activities of this board. He is very supportive of a common gift ban law that would apply to all state government, elected officials and employees which would simplify this. He would like to rebuild the public trust in the government institution. He thinks the language in the resolution is very clear and the board could vote in favor of this gift ban resolution today.

Senator Dinniman brought up the point that board members are proxies for their leaders. He thinks that board members should go back and check with their leaders before voting. He doesn't feel that the vote should be done today. He thinks that if the leaders say yes then it can be done for more boards in the state with the same leadership. He suggested that the vote be tabled until the next meeting.

Mr. Cohn thanked Senator Smucker for explaining the intent. He said that it seems everyone agrees the intent is positive and we support this action for the Board. He believes that everyone wants transparency and the Board supports that too. He also suggested a motion to table this resolution. He suggested that board counsel gives their opinion before the Board votes.

Senator Dinniman mentioned that this could be hard for Treasury and the Auditor General because they already have their own \$25 de minimis gift ban policies.

Executive Deputy State Treasurer Craig said that it is worse than that because Treasury sits on sixteen different state boards. He said that gift ban policies are important and he agrees with the concept. But he is afraid that this could extend farther than intended. He fears that someone could accidentally accept a gift from an entity that they didn't realize had attempted doing business with the Authority in the past. He thinks it would be a good protection to have some sort of de minimis exemption in place for real world situations. He doesn't want to have a problem over someone accidentally taking a water during an event. He does agree with stopping attempts to bribe someone.

Senator Dinniman said we do this in the Senate all the time. If we are voting on something and we have a connection we disclose it and ask the presiding officer for an opinion if the member should vote.

Executive Deputy State Treasurer Craig said what we are trying to prevent is a lobbyist from taking someone out to dinner or a school from saying you can use our facilities for free. He understands that and in those situations the gift ban makes sense. In congress the de minimis exception is \$50. The Treasury de minimis is \$25. He said that maybe the de minimis amount here could be \$15. He worries about the trivial things. He said that there have already been two articles about state workers taking free trips on the Lebanon County bus line. He doesn't feel like that is necessary.

Senator Smucker said that there has been a gift ban on the executive branch for some time that seems to be work. The Turnpike, Liquor Control Board and other boards have already adopted gift bans. If those fairly big boards can do it successfully, then he feels that this board should be able to do the same.

Senator Dinniman reiterated that he needs to vote the way his leader wants him to vote.

Senator Smucker said that he has been appointed to serve as board member. His interpretation is that it applies to them as the appointed board member.

Senator Dinniman said he needs to clarify if he is voting for himself or voting for his leader.

Chairperson Heuer requested that they table this until the next meeting. He said that board counsel will give a legal opinion. He apologized to Senator Smucker, but he believed that some members were not comfortable voting on the issue now.

Senator Smucker said that he would vote no to tabling the gift ban resolution. He said a number of attorneys have already looked at it and he felt that there was enough information to vote on it today. He appreciated the interest in the resolution by the members of the board.

Senator Dinniman suggested that maybe the resolution be amended to include a \$25 de minimis exemption in line with the gift policies of Treasury and the Auditor General.

Chairperson Heuer asked for a motion to table the Gift Ban Resolution.

Upon **MOTION** by Mr. Cohn, and **SECONDED** by Ms. Pike-Nase, the Resolution was tabled until the next Board Meeting, with Senator Smucker voting against tabling the Resolution.

4. NEW BUSINESS.

A. Bond Counsel Appointment Policy.

The SPSBA board meeting included discussion about the appointment of bond counsel. That discussion is being included in the PHEFA minutes along with additional discussion that took place in this meeting.

There was a discussion regarding the new Office of General Counsel (OGC) policy for competitively selecting bond counsel through the use of an RFP. The Board had numerous questions about this policy since it was a significant departure from the previous policy of the schools selecting their bond counsel from a prequalified list. Additional comments were made during the PHEFA board meeting. Both the SPSBA meeting minutes and the PHEFA meeting minutes reflect the entire discussion.

Mr. Baccon explained that bond counsel will now be appointed following an RFP process.

Executive Deputy State Treasurer Craig asked if the RFP process was that of the Community College of Allegheny County or that of the OGC.

Mr. Baccon said that, from what we understand, there are two options for selecting bond counsel. The borrowing institution can do an RFP for bond counsel, review that, and then present that to the OGC. The other option would be for the OGC to do an RFP on behalf of the Authority, evaluate that, and make an appointment. Both options would need to use a list of prequalified bond counsel firms.

Executive Deputy State Treasurer Craig stated that this is the first time he is hearing of these two options.

Ms. Pike-Nase said that the Board should have the authority under the statutory provisions of the State Law. The Auditor General supports the RFP process. But the Auditor General feels that this process should not have been forced upon the Board. The Board has the authority and the fiduciary duties under the statute.

Ms. Pike-Nase also referred to the 2010 Board Resolution saying that you cannot have bond counsel selected after the approval of the project. She said that this board policy is listed on the website. She believes that is the reason that there was some concern brought up by the media.

Mr. Baccon agreed.

Secretary Topper said that he talked with the OGC about the Colonial IU project. The competitive process has been completed and the bond counsel selected was King Spry. That announcement will be made public momentarily. This process wasn't completed when the board materials were put together. The OGC has relied on one of the school's competitive processes. They have also completed two competitive processes on behalf of the Board through OGC. He said that the solicitation process can be done within 5-6 days which is within the standard cycle time for the Board. This proves that the process does not pose a disruption or delay from a scheduling standpoint or in terms of interrupting the business of the Board. He also stated that the process has significant benefits. He said that there was a cost savings of 20-30% in rate reductions for University of Pennsylvania Health System and for other schools that have used this competitive process. There was a 40% Small Disadvantaged Business (SDB) participation on the University of Pennsylvania Health System project since the last board meeting. He said that that was a huge benefit. He believes that adding competition to the process is delivering a large value and should be marketed as a significant benefit to all of our clients.

Executive Deputy State Treasurer Craig disagreed. He said that this process is not working. He felt the actions of OGC were a direct violation of the March board meeting. In March the Board adopted an authority resolution which identified, in writing, a bond counsel. Each board member voted in favor of a law firm that would represent the University of Pennsylvania Health System. Executive Deputy State Treasurer Craig said that he had no idea that another process had been completed and a different firm selected. This decision was brought to his attention by an article in the Tribune Review.

A few board members added that they were also unaware of the change in bond counsel appointment.

Executive Deputy State Treasurer Craig said that this is not a good thing. This is not an example of the new process working. The whole notion of an RFP is that it is a merit based idea. This is a process that Treasury has used in general obligation debt. But this is something that should be notified to the Board and discussed by the Board. Every board member should know the details of the RFP. The Board should be aware who has applied, the criteria for the RFP, how things are rated and who runs the RFP. None of these details were shared with the Board. The resolution of the Colonial IU says that a bond counsel will be approved following an RFP process. That language was omitted from the March resolution that the Board adopted. The resolution said that Ballard Spahr was selected as bond counsel.

Executive Deputy State Treasurer Craig is concerned with the notion that the indebted agencies, the schools and colleges, who actually pay for bond counsel fees and debt service are not the ones in charge of selecting bond counsel. For at least the last two administrations, it has always been the practice to have great deference to the schools that come before this board to present their own bond team. He asked if Mr. Baccon knew of any schools or institutions that had withdrawn since this policy.

Mr. Baccon said that he was aware of three institutions that had withdrawn due to the new policy.

Executive Deputy State Treasurer Craig asked if that is the mark of success for this Authority. He also asked who ran the RFP. He wasn't sure if it was the Colonial IU or OGC. He inquired how many people applied and what selection criteria was considered. He said that the Board should be advised before voting on these things.

Secretary Topper said he is in favor of building a process to make sure the Board gets better information about the firms that applied, the process by which the RFP is scored and the results of the RFP. He agrees that this information should be provided to the Board. He doesn't think that OGC will step back from awarding these bond counsel contracts competitively. He said that bond counsel firms are going to have to be bid competitively for the resolutions to be approved by OGC. That is a bottom line position of the administration.

Executive Deputy State Treasurer Craig said that their bottom line is that they don't have to vote for them. He said the real root of the question is who is running the RFP. He asked why the OGC is in charge of the RFP. He stated that it is not the Commonwealth's money, it is not the Commonwealth's debt issuance and it is not the Commonwealth's decision to create the debt. It is the school's money. Executive Deputy State Treasurer Craig said that he assumes that the University of Pennsylvania Health System has a long standing relationship with Ballard Spahr. Ballard Spahr knows the school's finances and they were probably part of the structure. They actually, according to the minutes, showed up to the board meeting. Then Executive Deputy State Treasurer Craig read in the paper that it was not Ballard Spahr that was selected as bond counsel. He was surprised that nobody notified the Board. And in the meantime, three schools have already withdrawn their business from the Board. He said that he doesn't view these as matrix of success. Executive Deputy State Treasurer Craig said that he appreciates the OGC's position. He is in favor of RFPs. He thinks that RFPs work. But he isn't sure that it is the business of the Commonwealth to decide who the schools transact their business with.

Secretary Topper stated that he believes it is a requirement that a competition occurs.

Executive Deputy State Treasurer Craig said that is fair. But that is a discussion that the Board never had. It was not brought to the Board. He finds it inherently offensive that the Board voted on something and later found out that there was a material incorrectness in the document that the Board relied upon. He thinks that there is an excellent staff that does a great job. But he shouldn't have to read in the Tribune Review that what the Board voted on is not correct. Executive Deputy State Treasurer Craig compared this situation to the General Assembly passing a bill and then at the last minute the Governor saying I am going to strike that provision before I sign it.

Ms. Pike-Nase said it was even worse than that. She said the Board cannot approve something unless they know about it. She said that it was great to know the information about the bond counsel for the upcoming project. But she inquired whether that information would be provided for every project.

Secretary Topper said that he is hearing, loud and clear, that more structure needs to be built into this process so that the Board is better informed, in a timely way, about the results of the competitive process. He feels that is an achievable goal that can be in place by the next time the Board meets.

Executive Deputy State Treasurer Craig said that the other important role is to make the Board accessible and easy for the schools, colleges and universities to do business with. He said that if the Community College of Allegheny County wants to conduct their own RFP and determine how they want to calculate cost then that is appropriate since they are paying the bill. It should be up to the school to decide if competency is more important than cost.

Executive Deputy State Treasurer Craig said that the board members need to know the details of the RFP selection. He referred to the Colonial IU documents which indicate a law firm. He stated that he has never heard of this law firm. Executive Deputy State Treasurer Craig said he is sure that they are qualified. He inquired if they have co-counsel. He mentioned that for five years he has noticed only one law firm doing the all of the work. Now suddenly he is seeing multiple firms doing the same work. He asks if there is more than one firm doing the work for the IU.

It was indicated by Mr. Shearer that there is not a co-counsel for the IU.

Senator Dinniman said the difficulty is that the Board is constructed to make sure that everyone is represented, each caucus is represented, and the two independent row officers are on the Board. Whatever is done in the process you are suggesting really needs to be put together because it is an Authority, it is not a subcommittee. There was an agreement, a long time ago, between all the players that be, similar to the Commonwealth's Finance Agency that has the four caucuses and the Governor's Representative. We are here because our leader selected us and sent us here. They assume that we are overseeing a process here. But if we don't know all of the information it makes it difficult for us to do our duty. This structure is based on everyone working together. He questioned if there was a way to work together and keep the notion of competitive bidding. He suggested working out a process for competitive bidding that is respectful to both the universities and the Board. He proposed requiring the universities to show us that they have done some type competitive bidding process on their own and then examining that. He said it would be better that they do the competitive bidding than us, if they are paying the bill. He suggested trying our best to allow the Authority to do what it has to do and at the same time maintaining the competitive bidding. He said there needs to be a way to share this responsibility. That is the nature of the composition of the Authority when

it was formed. These authorities were created to form a shared governance. The board members come together after speaking with their leaders to oversee a process. It is our responsibility, as board members, to preserve that authority in cooperation. He hopes to find a middle ground where we can still respect the colleges and universities and everyone's authority on this issue.

Senator Dinniman thought that maybe the Board and OGC could decide together that it would be better for the universities to do their own competitive bidding and then submit that to the Board since the universities are paying the bill. If there is an exception, the university could explain that to the Board. The university may have a reason, based on their experience, that something would cost less. He reiterates that he hopes everyone can find a middle ground on this issue. He said that the OGC can come back to the Board with ideas and concepts for this process.

Secretary Topper said that he thinks it is quite possible to build a process to provide transparency into how award decisions are made that is acceptable to everyone on the Board. He said the process may even include direct participation and involvement through a subcommittee. He would like to go back to the OGC and sit down with General Counsel Smyler to see if they can work out a process that provides the kind of input and participation that the Board is looking for. He agreed that the disconnect between what was approved at the last board meeting and the ultimate award of bond counsel should not have occurred. He feels that the Board needs a process to make certain that does not happen again. This process will need to be executed in a timely way. They need to be completed within a matter of days in order to make sure we can continue to meet the business needs of the clientele.

Senator Dinniman asked how the contract offered to this law firm was a legal contract when it was never approved by the Board. He asked if it would have to be brought back to the Board for approval. He inquired how the OGC could approve a contract without the Authority if the Authority has the responsibility. He said that he was asking because he is not a lawyer.

Secretary Topper said he is not a lawyer either. But he thought that was a good question for a lawyer. He stated that the position of the OGC is that this is their contract. They have historically appointed bond counsel for all of these projects.

Ms. Pike-Nase said that the OGC approves the bond counsel at the request of the entity.

Executive Deputy State Treasurer Craig responded that OGC has never, in the past two administrations, selected the bond counsel. He said that it has always been the school that has selected the bond counsel firm. As long as OGC says that firm is qualified, then they have approved that firm. The Commonwealth does not pay the bond counsel fees, those fees are paid by the school that selected the firm. So the cost savings are not that of the Commonwealth. This is a cost reduction to the college. Executive Deputy State Treasurer Craig feels that it should be up to the college to

determine if it is a good thing. If they are only saving a small amount, they may prefer to work with the more expensive firm that they have worked with for many years because they know their finances. Saving a small amount of money and going with a different firm may not be a good thing for the college.

Ms. Pike-Nase stated that the Board already has a resolution that was approved in 2010. The Board would need to rescind that one and replace it with a new resolution that they can all agree on. She really appreciated Senator Dinniman's comments. She understands that the OGC wants to do this process, but feels that the entities also need to agree that is the way it should be done.

Executive Deputy State Treasurer Craig said that three schools have already said they didn't agree and walked away.

Chairperson Heuer agreed that we don't want to turn entities away.

Senator Dinniman reiterated that we must find common ground. He wants to respect the Authority and have the competitive bidding that the Governor's office wants. He believes that both can be done. He said that universities can make a decision and simply explain their decision. He said that there are many times when the lowest bid may not be selected for a variety of reasons. But at least everyone will be aware of what those reasons are. The Treasurer and Auditor General raise these questions and we, as legislators, make sure that the legislative body is involved in the process.

Chairperson Heuer says that we will discuss with OGC, Treasury, the Auditor General and the Authority to form a process together. He said we will have the Board come to an agreement on the process going forward.

Secretary Topper said that he will come up with a draft process that we can then distribute and consider as a business item for the next meeting.

Senator Smucker asked if the action taken in the bond counsel selection outside of the minutes that were passed was valid.

Mr. Baccon explained that the day before the University of Pennsylvania Health System issue was presented to the Board, the staff had been informed that it was anticipated that the appointment would be for the selected bond counsel. The staff had been trying to get the OGC to make the appointment. And then because of the process in progress to come up with the appointment of bond counsel they then said that we needed to go out with an RFP for this. So OGC issued an RFP on our behalf. It was evaluated and scored by the OGC. Our staff evaluated it with letters. The OGC equated those letters to a numeric value and came up with the results. That was how the firms that were appointed as co-counsel were selected. He said that as far as our bringing this to the Board, we were under the impression that this was something that we would hear about within the next day or two. We didn't want to

hold up the University because they were saving an incredible amount of money on the refunding portion of the bond issue.

Ms. Pike-Nase asked if Mr. Baccon believed that University of Pennsylvania Health System was happy with their bond counsel appointment.

Mr. Baccon said that he had not heard anything to the contrary.

Executive Deputy State Treasurer Craig referred to the minutes from the March board meeting. He said paragraph 14 from the adopted resolution says that at the request of the System the OGC has appointed Ballard Spahr as the bond counsel for this issuance. This was what we voted on.

Senator Dinniman says that we may need to change the minutes at a later time. Because the record doesn't reflect the action.

Chairperson Heuer asked if Executive Deputy State Treasurer Craig would like to further discuss the bond counsel selection.

Executive Deputy State Treasurer Craig said the resolution has already gone out. He wondered if the board needed to take some sort of remedial action. He said that maybe it was already too late. He inquired if the University had already gone to market.

Mr. Baccon said that yes, they have.

Executive Deputy State Treasurer Craig continued to say that the board has been relegated to a general bid of irrelevancy on this issue. He said he can't stress enough, as a fiduciary here, that this is a huge violation. The authority of this board was expressed in resolutions. A resolution is a legal document that authorizes certain activity as this board has directed. That resolution simply did not have impact. He is upset that board members were not told any of the details of the new competitive process and bond counsel selection. He had to read about it in the paper. He is displeased that three schools have already decided to take away their business because the bond counsel decision was being taken out of their hands. This is an issue of trust. There was something that undid board action without consultation or even notice to the board. That is a very big violation.

Senator Dinniman asked to have the minutes reflect that Secretary Topper is going to discuss these issues with OGC. The OGC will then bring back to the board a competitive bidding process that is respectful to both the board authority and the universities. He also wanted the minutes to reflect the fact that eventually there has to be something done to correct the resolution and the original minutes. He mentioned his concern for audit purposes. He asked Ms. Pike-Nase if the Auditor General audits this Authority.

Ms. Pike-Nase said no, because there is a conflict of interest.

Executive Deputy State Treasurer Craig expressed his concern over Harrisburg City and other authorities being investigated by the SEC and other law enforcement agencies for misrepresenting statements related to bond issuance documents. He doesn't think that OGC should be able to change bond counsel selections or make policy changes on their own. He thinks this establishes a dangerous precedent. He said that board members could get in trouble if they don't exercise their fiduciary obligation.

Ms. Pike-Nase said that she has been on this board for about 10 years. She stated that Auditor General supports the RFP process, but he feels that he was blindsided. The Auditor General is on the board, not OGC. It is not the Governor that we represent. The governing statutes of SPSBA and PHEFA have been in place since 1947 and 1967 respectively. It is very clear that the board has the authority to choose bond counsel, the solicitors and everything else. She is not sure why the OGC thinks they have authority over the board.

Secretary Topper said he cannot speak for OGC. But he assured the board that this will be his next topic of conversation with OGC. He wanted to reassure the board that there is no intent to use what transpired in the University of Pennsylvania Health System deal as a precedent. And there is no intent to do the same with future projects. He thinks that OGC felt conflicted between the various public announcements that were made, the executive order and different competing themes in play at the time this decision was made.

Senator Dinniman asked if there was an executive order for competitive bidding.

Secretary Topper informed him that there was.

Executive Deputy State Treasurer Craig said it is not just an actual violation of trust. He said there is also a real public appearance problem. The bond work went to General Counsel Smyler's former law firm. She worked at that firm four months ago. It may be a matter of coincidence. But it looks really bad, particularly when it was done without the knowledge of the board. That only compounds the public perception problem. The whole point of the gift ban was to increase public perception. But this bond counsel appointment is way more destructive to public perception than a de minimis gift ban item as trivial as a bottle of water.

Senator Smucker agrees and thinks that this point has been made effectively. He questions whether the board should send a letter expressing their displeasure to OGC. He questions the point of board meetings and decisions if they aren't going to mean anything. He feels that the board has a fiduciary responsibility with real impact. A violation of that has real bearing. He said this problem has been talked about a lot

at the meeting but maybe the board should also put their displeasure into writing.

Chairperson Heuer requests that the board has a discussion with General Counsel before writing a letter.

Secretary Topper agrees that would a good idea. He thinks the board will get further by approaching this as a discussion as opposed to a formal letter.

Executive Deputy State Treasurer Craig said he also agrees because he doesn't want to purposely embarrass anyone. But if someone comes back to the board and says that they are OGC and they can do what they want, then he will lose patience very quickly.

Senator Dinniman suggests that since Ms. Pike-Nase has been on the board for a long time and she quoted the statutory authority, it would be helpful if that was given to Secretary Topper when he goes to talk to the General Counsel Smyler. That way she is aware of the statutory authority. The last people who should ignore the statutes is the General Counsel's office because they are supposed to enforce these statutes. Then if there is a negative response, there is no choice but to do a letter.

Ms. Pike-Nase says that she has a legal opinion that was done in 2010.

Secretary Topper said please feel free to share that and anything else in terms of support materials. He will have this conversation with OGC as soon as possible. He thinks that the General Counsel should be made aware of the discomfort that this situation has caused. The process that we build going forward should be as informed as possible. He suggests inviting General Counsel Smyler to the next meeting.

Senator Smucker agrees that inviting her to the next meeting would be great. He is not suggesting that we have to do a formal letter because it is not the intent to embarrass anyone. But there is a situation where a decision was made, that relates to this board, which is questionable at best. There has already been some public scrutiny and may be more to come in terms of how that decision came about. He feels the need to state publicly that the board members are dissatisfied and were not a part of the decision that was made. He said that perhaps that could be done with the board meeting minutes.

Chairperson Heuer said that the minutes of this meeting will reflect this discussion. And when the board approves the minutes at the next meeting, it will be with any additions or changes to everyone's satisfaction.

Chairperson Heuer asked if there was any other new business to come before the board, and hearing none, he asked for a motion to adjourn.

5. ADJOURNMENT.

There being no further business to come before the Board at this time, upon **MOTION** by **Ms. Pike-Nase**, and **SECONDED** by **Mr. Helling**, the PHEFA Board Meeting was adjourned at 11:48 a.m.

SUNSHINE ACT MEETING NOTICES

Thursday, April 30, 2015

If you need an accommodation due to a disability,

please contact the ADA contact name listed below

Dept. of Banking and Securities - Banking and Securities Commission Meeting:

May 6, 2015, 1:00PM. 17 N. Second St., 1st Fl. Hearing Rm., HBG. Contact Name: Cathy Fagan 787-5383

State Civil Service Comm. Hearings: May 11, 2015 10:00 AM. 320 Market St.,

4th Fl. Hearing Rm., HBG. Add'l Hearings scheduled on 5/12/15 at 10 AM,

5/18/15 at 10 AM, 5/19/15 at 9:30AM, 5/21/15 at 10 AM, 5/22/15 at 10 AM,

5/26/15 at

10 AM, same location as above. State Civil Service Meeting is scheduled on

5/20/15 at 10:30 AM.

Contact Name: Michael Sullivan 787-5343

SPECIAL: State Public School Building Authority and PA Higher

Educational Facilities Authority Meetings: May 12, 2015, 10:30 AM.

North Office Bldg., Room 515, HBG.

Contact Name: Bev Nawa 975-2204

RESCHEDULED: Fee for Service Subcommittee Meeting of the Medical

Assistance Advisory Committee: May 13, 2015, 10 AM - 12 PM. Bureau of Fee

for Service Programs, Cherrywood Bldg., #33, 49 Beech Drive, HBG. Contact Name: David Fitzkee 257-7792

SPECIAL: Small Water Systems TAC Board Meetings: May 18, 2015,

9:00AM. SCRO, 909 Elmerton Ave., 1st Fl., Conf. Rm., HBG. Also scheduled

on 5/26/15 at RCSOB, Rm. 105, HBG. at 9 AM.

Contact Name: Christina Ackerman 783-9712

Organ Donation Advisory Committee Meeting: June 4, 2015, 10 AM - 3

PM. Giant Community Center, 2nd Fl. Giant Center Food Stores, 3301

Trindle Rd., Camp Hill.

Contact Name: Serina Gaston 787-6214

Appeared in: ***Patriot-News*** on Thursday, 04/30/2015

STATE PUBLIC SCHOOL BUILDING AUTHORITY
PENNSYLVANIA HIGHER EDUCATIONAL FACILITIES AUTHORITY
Notice of the Meeting of the Board to be Held
May 12, 2015

Notice was in letterform, as follows:

This letter advises that a meeting of the State Public School Building Authority and the Pennsylvania Higher Educational Facilities Authority Boards will be held on **Tuesday, May 12, 2015**, at **10:30 a.m.**, in **Room 515 North Office Building, Harrisburg**, Pennsylvania, for the purpose of: (a) approving certain projects for financing; and, (b) consideration of such other matters as may properly come before the Board.

Enclosed herewith is a copy of the notice that has been posted on the bulletin board in the Authority office, in accordance with Act No. 213, 1957.

I would appreciate it if you would make the appropriate notation on the attached slip, indicating whether or not you plan to be present at the meetings and return same to us.

Sincerely,

/s/ Robert Baccon

Robert Baccon
Executive Director

Enclosures

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Appendix A

Harrisburg, PA

I CERTIFY that the notice on the previous page for the May 12, 2015, meetings was dispatched to the following on April 24, 2015, at the addresses indicated, constituting all of the members of the Board of the State Public School Building Authority and the Pennsylvania Higher Educational Facilities Authority.

Thomas W. Wolf, Governor of Pennsylvania
225 Main Capitol Building, Harrisburg, PA
Steven S. Heuer, Proxy for Governor Wolf
333 Market Street – 18th Floor, Harrisburg, PA
Lloyd K. Smucker, Designated by the President Pro Tempore of the Senate
351 Main Capitol Building, Harrisburg, PA
Andrew E. Dinniman, Designated by the Minority Leader of the Senate
182 Main Capitol Building, Harrisburg, PA
Mike Turzai, Speaker of the House of Representatives
139 Main Capitol Building, Harrisburg, PA
Anthony M. DeLuca, Designated by the Minority Leader of the House of Representatives
115 Irvis Office Building, Harrisburg, PA
Christopher B. Craig, Executive Deputy State Treasurer
129 Finance Building, Harrisburg, PA
Eugene A. DePasquale, Auditor General
229 Finance Building, Harrisburg, PA
Curtis M. Topper, Acting Secretary of General Services
515 North Office Building, Harrisburg, PA
Pedro A. Rivera, Acting Secretary of Education
333 Market Street - 10th Floor, Harrisburg, PA

GIVEN under my hand and seal this 24th day of April 2015.

/s/ Robert Baccon

Robert Baccon, Executive Director
State Public School Building Authority
Pennsylvania Higher Educational Facilities Authority