

Meeting of the Board
PENNSYLVANIA HIGHER EDUCATIONAL FACILITIES AUTHORITY
October 31, 2013
Room 515 North Office Building
Harrisburg, Pennsylvania
10:40 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 September 19, 2013.
3. Audit Committee Report and Review of the Audit Committee Charter.
4. Old Business.
 - A. Legal Opinion – Financing of Student Housing Facilities for College or University Affiliated Organizations.
5. New Business.
6. 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 Pennsylvania Higher Educational Facilities Authority was called to order on Thursday, October 31, 2013 at 10:40 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

Brian Zweiacher, (Proxy for Governor Thomas W. Corbett)
Jennifer Smeltz, (Proxy for Senator Michael J. Folmer)
Lisa Felix, (Proxy for Senator Andrew E. Dinniman)
Sean Dempsey, (Proxy for Representative Warren E. Kampf)
Alan Cohn, (Proxy for Representative Anthony M. DeLuca)
Christopher Craig, (Proxy for Treasurer Robert M. McCord)
Christal Pike-Nase, (Proxy for Auditor General Eugene A. DePasquale)
James Henning, (Proxy for Secretary of General Services Sheri L. Phillips)
Nicole Duffy, (Proxy for Acting Secretary of Education Carolyn C. Dumaresq)

Authority Personnel Present

Robert Baccon, Executive Director
David Player, Comptroller
Beverly Nawa, Administrative Officer

Also Present

William McCarty, Esquire, Hartman Underhill & Brubaker LLC
Stephen Tuckey, General Counsel, Office of the Republican Leader, House of Representatives
Steven Heuer, Director, Bureau of Revenue, Capital and Debt, Governor's Budget Office

Participated Via Conference Call

Margaret Angel, Esquire, Buchanan Ingersoll & Rooney, PC

2. APPROVAL OF THE MINUTES OF THE MEETING OF SEPTEMBER 19, 2013.

A copy of the minutes of the meeting of September 19, 2013, 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 September 19, 2013, be and hereby are approved as presented.

Upon **MOTION** by **Ms. Pike-Nase**, and **SECONDED** by **Mr. Henning**, and after full discussion, the above Resolution was unanimously approved at the PHEFA Board Meeting of October 31, 2013.

3. AUDIT COMMITTEE REPORT AND REVIEW OF THE AUDIT COMMITTEE CHARTER.

Ms. Pike-Nase explained that the Audit Committee met on October 3, 2013. Craig Schwartz from Treasury, Steve Heuer, representing Governor Corbett were in attendance and Sean Dempsey participated by conference call.

The audit showed no concerns. The external auditors indicated that the staff was very accommodating. The only major issue that the Committee discussed other than the audit, was the seven percent increase in operating expenses because of legal fees. Ms. Pike-Nase put together a chart showing the increase. The Audit Committee decided that they would monitor the fees in future years. Legal fees are somewhat subjective because the complexity of projects comes into play. If it gets concerning they will bring it to the Board.

Upon **MOTION** by **Ms. Pike-Nase**, and **SECONDED** by **Mr. Henning**, and after full discussion, the PHEFA Board unanimously accepted the Audited Financial Statements for the fiscal year ended June 30, 2013 at the PHEFA Board Meeting of October 31, 2013.

Ms. Pike-Nase explained that the Committee revised the Audit Charter because it had not been looked at for approximately eight years. The revised charter was approved by the board in 2011 and 2012. The Committee looked at the charter again and there were no revisions.

Upon **MOTION** by **Ms. Pike-Nase**, and **SECONDED** by **Mr. Henning**, and after full discussion, the PHEFA Board unanimously renewed the Audit Committee Charter for another year, at the PHEFA Board Meeting of October 31, 2013.

4. OLD BUSINESS.

A. Legal Opinion – Financing of Student Housing Facilities for College or University Affiliated Organizations.

Chairperson Zweiacher explained that the Board received a legal opinion from Buchanan Ingersoll & Rooney and Hartman Underhill & Brubaker regarding the Board's ability to issue financing of Student Housing Facilities for College or University affiliated organizations.

Chairperson Zweiacher asked if Board Members had any questions or comments on the opinion.

Mr. Craig explained that the Treasurer was concerned about the issuance of debt through the Authority for entities that are created by the college but are not affiliated with the schools and whether or not it exceeded the authority of the board to issue debt and if it doesn't, what safe guards or due diligence do we have in place to routinely insure that they are compliant with the statutory authority of the Board.

This appeared to be something that was done by way of custom but not by way of any in depth analysis. He asked if in Counsels' research, they found any prior Board policies related to these kinds of transactions.

Mr. McCarty said that there was no request for a thorough opinion other than the opinions given by counsel for each of the transactions which go back to 2000.

Mr. Craig asked if these entities are actually affiliates of the colleges.

Ms. Angel said that they are all supporting organizations. They are not legally controlled by the colleges.

Mr. Craig said that in fact they are not affiliates from a legal perspective.

Ms. Angel said that they are supporting organizations. That is their mission.

Mr. Craig thinks that it is extremely misleading to call them affiliates because they are in fact separate legal entities. The reason why that is important

is because it goes to the remedies that may or may not be available to the Authority or the Commonwealth if something were to happen if bond payments were not made. Through looking at the nexus between the related organization or foundation and the college, you identified a couple of elements that related to that nexus. One of the first ones is that they had to be at or near a college. He asked if there was a sense that in all cases in the past it has been on land that is owned by the college and leased to the foundation or moving forward, is that how it should be.

Mr. McCarty said that the majority have been on land owned by the institution itself and leased by the college to the foundation and it clearly provides for at the end of the lease the facilities to revert to the land owner which is the college. But that has not always been the case.

Mr. Craig asked if it would be counsels' recommendation, moving forward, to have that as an element.

Mr. McCarty said that it would be a determination that the Board would have to make.

Ms. Angel did not think it would be required because there are other safeguards in their governing documents.

Mr. McCarty agreed.

Mr. Craig asked in the Management Agreement, if it is in all cases that college controls the management of the capital facility.

Ms. Angel said that to their knowledge that was true.

Mr. Craig asked if the Board were to continue to entertain these structures would counsels recommend that the Board verify and require that the college maintain management and control over the capital facility.

Mr. McCarty said yes, but it comes in varying degrees of control. In some instances it is participation in the entity which controls the facility. It is not always that they are directly contracting the control.

Mr. Craig is trying to identify those elements that at a minimum, this Board should be requiring if it is to entertain these in the future. He asked to what degree of control is necessary to insure that the Board is acting within its authority.

Mr. McCarty agrees that there should be that element of control. It is a question of how the transaction is structured as to whether that is absolute control or some element of it.

Mr. Craig asked if there are any requirements as to how the entity should be organized. Is it always supposed to be a nonprofit, 501(c)(3) or can it be a for profit company and what are the tax implications if it is a for profit?

Mr. McCarty said that if it is not a 501(c)(3) then it cannot take advantage of a tax exempt financing. The Authority is empowered to do taxable financing as well.

Mr. Craig stated that counsels identified that upon payment of the debt there is usually a reversion clause that the ownership moves to the college. Did that always exist or is it sometimes.

Mr. McCarty said that it is a sometimes thing. It depends upon whether it is a lease transaction, then it normally is there because it is the end of the lease, if the lease matches the term of the debt. If it is not a lease transaction that normally means that it is not on site. Then you are looking at the documents that created the other entity.

Mr. Craig said that from a legal perspective these organizations are not affiliates.

Mr. McCarty said that they are not from a tax perspective as well. He will call them supporting organizations. In some of the transactions they have not been on ground owned by the university, which means that the lease provision is not available. So we must look to the creating documents for the supporting organization as to what happens to their assets upon disillusion. That does not equate however to the asset immediately going to this institution upon the termination of the debt.

Mr. Craig wants to focus on remedies when things go bad. The opinion said that if this were with the college, if there would be a missed payment, according to statute, all the Treasurer would have to do is write a letter and then grab the money that was due to that college from the Commonwealth and pay off the bond. He asked if that were a fair characterization.

Mr. McCarty said that if they were subject to the intercept, then yes.

Mr. Craig said that he was talking about subject to the statute.

Ms. Angel believed that the Authority has to request the Treasurer to do that.

Mr. Craig agreed. He believes that that remedial tool is not available as it applies to these types of transactions that involve an unaffiliated entity.

Mr. McCarty said that was correct.

Mr. Craig said that was a real concern. He said that the opinion points to bond holders and note holders, which is not the Authority, remedies that may be available, all of which require finding of default by a court which would be defined by the underlying documents, going into court and the assuming of litigation. Under those circumstances, this Board would be one of the defendants. We would also file against the foundation but more than likely the foundation will have zero in the form of assets. This structure fundamentally shifts the risk of investment from the college, because the college doesn't want this on their books, to this Authority. The only thing this Authority can look to for payment of the debt is future student enrollment, not at the school necessarily, but in that dormitory. He is not saying that this risk is huge, but there exists at least reputational if not financial risk to this Authority. When the debt is incurred by the college, all this board has to do is write to the Treasurer and the Treasurer would have the statutory authority without court order to grab the money that would be due to the college.

Mr. McCarty said that there are two points. In both forms of transactions, the normal ones and these as well, the Authority's obligation, under the documents, is limited to receipt of funds in connection to the projects that are financed. They are receipt of funds that are to be paid under the loan agreements, no matter who is on the other side of the loan agreements and the only obligations is to the estate that is created through these financings. It is not a general obligation. They are limited obligations of the Authority.

Mr. Craig said that assuming all of that is iron clad and stands up in court, we still would be brought into court. The bond holders are going to sue us and we will have incurred costs. It will definitely have a reputational risk that will impact future debt issuances from this Authority. He believes that we can all agree that it will have an impact that is not happy.

Mr. McCarty said that there has been one default on any financing ever done by the Authority.

Mr. Craig said that we are in a new world now. Even if there is no default, public officials get sued if they are not completely open. He is very concerned about these because they fundamentally shift risks. It shifts risk away from the college to this Authority. The risk being big or small can be debated. He does not think the degree of risk was ever identified. There is no hard and clear criteria and policy that has been adopted by the Board saying we want the property to be transferred back to the college or we want strong management control or we want

this to be on college land or will be transferred to the college. If this is going to be done in the future, that is the degree we should do. He also feels firmly that we should be disclosing very clearly that in the bond documents the Treasurer's authority, section 5502 is inapplicable under those circumstances. He wondered if anybody rating this debt in the past ever really understood that. There is no clear authority for us to do this kind of debt. There is an acceptable, reasonable argument saying that we are to broadly interpret the Authority Act particularly when it comes to fulfilling educational purposes, college dorms are clearly an educational purpose. There is nothing that clearly says that we can do this with no affiliated entities. We are in a decent area but an area that will be challenged by somebody if it goes wrong. We don't have the tools that we typically would have to remedy the situation if this were directly with the college. The remedies that are available are kind of useless particularly in the real world with a foundation that is going to have nothing in the way of assets except for a bunch of college students paying rent. These transactions are a concern and at a minimum we should consider in the future the development of a policy that mitigates some of the due diligence risks that they may have.

Mr. McCarty said that these transactions normally have a mortgage in place and under the indenture there is collateral. Not every college that the Authority provides financing for is subject to state intercept.

Mr. Craig agreed that they are private schools. The only difference he can see is that they are a purposeful created foundation for the college. For example Elizabethtown College clearly has endowments, buildings and assets. The Treasurer can't grab it instantly, but at least they have an asset. The likelihood of the Authority holding the bag is less under that circumstance than it is here. There is less likely a default when you are dealing with a college or university.

Mr. McCarty said that for every financing the Authority does, its obligation is limited under the documents. It is limited to payment of the flow of funds whether it is under a loan agreement or a lease that are received from the borrower for payment of the debt. It is not a general obligation of the Authority. That element of, if the borrower doesn't pay you could result in a negative market reflection on the credit, abilities or the reputation of the Authority as a financier is true in every transaction. It may be higher in these if that is your point of view because it is based upon a rent flow, it is that kind of project and is otherwise not an institution of other functions and broader assets.

Mr. Craig believes that these are specifically structured to transfer the risk of the debt and the cost of the debt away from the college and that risk is now born by us. We can debate upon the degree. The college is unwilling to do this so they create this foundation that is unaffiliated and they purposefully don't want it affiliated with the college.

Mr. McCarty does not know what the State System's reason for the original structure was and they may be elements of that. He would be happy if there was a clear procedure, policy of this board as to how these financings are to be done because they come in every sort of variety. He believes a policy would be a good idea.

Ms. Angel agreed with Mr. McCarty. She also explained that the bonds are typically rated and there are securities granted to the bondholders. The colleges typically have an agreement with the supporting organization to provide students as a way to indirectly guarantee payment of the bonds through the requirement that students will be sent there. Sometimes there is even a lease back that the college has to pay the rent if they don't get enough students. There are different ways to secure the bonds to make the bondholders comfortable.

Mr. Craig feels that these things should be requirements going forward if this Board is to entertain this kind of financing. We should require even beyond what the bondholders may or may not require. These types of at minimum criteria makes us a lot more palatable. He thinks we should start putting on paper at least the minimum criteria and elements to satisfy at least the nexus argument that you put forth in your opinion. He also thinks it should be disclosed affirmatively that typical statutory remedy under section 5502 is not available.

Ms. Pike-Nace indicated that she has been on the Board for nine years and she knows that there were questions raised occasionally on these financing deals. The Department of the Auditor General would support the Treasurer on this issue and perhaps legal counsel could put together a first draft of the policy so that the Board could review and comment on it.

Chairperson Zweiacher asked if there is a motion for the Authority staff to work with the Authority counsel to draft a policy for the Board's consideration that would have the requirements necessary when the Board is considering executing a financing with a college's supporting organization.

Upon **MOTION** by **Mr. Craig**, and **SECONDED** by **Ms. Pike-Nace**, and after full discussion, the PHEFA Board unanimously approved the Authority staff working with the Authority counsel to draft a policy for the Board's consideration that would have the requirements necessary when the Board is considering executing a financing with a college's supporting organization at the PHEFA Board Meeting of October 31, 2013.

5. NEW BUSINESS.

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

6. ADJOURNMENT.

There being no further business to come before the Board at this time, upon **MOTION** by **Mr. Dempsey**, and **SECONDED** by **Ms. Pike-Nase**, the PHEFA Board Meeting was adjourned at 11:10 a.m.

SUNSHINE ACT MEETING NOTICES

Thursday, October 24, 2013

If you need an accommodation due to a disability,

please contact the ADA contact name listed below.

SPECIAL: PEDFA Board Meeting: October 28, 2013, 11:00 AM.

Commonwealth Keystone Bldg., PUC Hearing Rm. #4, 400 North St.,

HBG. Contact Name: C. Alan Walker 720-1355

Labor & Industry, PA Workforce Investment Board Meeting: October 30, 2013,

9:30AM. PA Training & Technical Assistance Network, Conference Rm. I,

6340 Flank Dr., Harrisburg, PA 17112, Time: 9:30AM- 1 PM. For persons

with **disabilities who require special accommodations, please contact the**

PA Workforce Investment Board Office at 717-772-4966 or TTY# 717-

783-8445. Contact Name: Michael Leister 705-7650

SPECIAL: PA Higher Educational Facilities Authority Meeting: October 31, 2013,

10:30 AM. North Office Bldg., Rm. 515,

HBG. Contact Name: Bev Nawa 975-

2204

SPECIAL: State Public School Building Authority Meeting: October 31, 2013,

10:30 AM. North Office Bldg., Rm. 515, HBG.

Contact Name: Bev Nawa 975-2204

State Civil Service Commission Hearings: November 1, 2013, 9:30AM.

4th Fl. Hearing Rm., 320 Market St., HBG. Additional SCSC Hearings scheduled:

11/18/13, 11/21/13, and 11/22/13 same above time and

location. Contact Name: Michael Sullivan 787-5343

Appeared in: ***Patriot-News*** on Thursday, 10/24/2013

STATE PUBLIC SCHOOL BUILDING AUTHORITY
PENNSYLVANIA HIGHER EDUCATIONAL FACILITIES AUTHORITY
Notice of the Meeting of the Board to be Held
October 31, 2013

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 **Thursday, October 31, 2013**, 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 October 31, 2013, meetings was dispatched to the following on October 16, 2013, 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. Corbett, Governor of Pennsylvania
225 Main Capitol Building, Harrisburg, PA
Peter J. Tartline, Proxy for Governor Corbett
7th Floor, Verizon Tower, Harrisburg, PA
Michael J. Folmer, Designated by the President Pro Tempore of the Senate
170 Main Capitol Building, Harrisburg, PA
Andrew E. Dinniman, Designated by the Minority Leader of the Senate
183 Main Capitol Building, Harrisburg, PA
Warren E. Kampf, Designated by the Speaker of the House of Representatives
422 Irvis Office Building, Harrisburg, PA
Anthony M. DeLuca, Designated by the Minority Leader of the House of Representatives
115 Irvis Office Building, Harrisburg, PA
Robert M. McCord, State Treasurer
129 Finance Building, Harrisburg, PA
Eugene A. DePasquale, Auditor General
229 Finance Building, Harrisburg, PA
Sheri L. Phillips, Secretary of General Services
515 North Office Building, Harrisburg, PA
Carolyn C. Dumaresq, Acting Secretary of Education
333 Market Street - 10th Floor, Harrisburg, PA

GIVEN under my hand and seal this 16th day of October 2013.

/s/ Robert Baccon

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