

Minutes are intended to note (a) the date, time and place of the meeting; (b) those members of the public body who were present and those who were absent; and (c) the substance of all matters proposed, discussed and/or action was taken on. Minutes are not intended to be a verbatim report of a meeting. An audiotape recording of the meeting is available for inspection by any member of the public interested in a verbatim report of the meeting. These minutes are not final until approved by the Board of Regents at the June 2016 meeting.

**BOARD OF REGENTS* and its
ad hoc COMMITTEE ON ATHLETICS
NEVADA SYSTEM OF HIGHER EDUCATION**
System Administration, Reno
2601 Enterprise Road, Conference Room
Thursday, February 25, 2016

Video or Telephone Conference Connection from the Meeting Site to:
System Administration – Las Vegas
4300 South Maryland Parkway, Board Room
and
Great Basin College – Elko
1500 College Parkway, Berg Hall Conference Room

Members Present: Dr. Jason Geddes, Co-chair
 Mr. Kevin J. Page, Co-chair
 Mr. Cedric Crear
 Mr. James Dean Leavitt
 Mr. Kevin C. Melcher
 Mr. Michael B. Wixom

Other Regents Present: Mr. Trevor Hayes
 Mr. Sam Lieberman

Others Present: Mr. Daniel J. Klaich, Chancellor
 Ms. Constance Brooks, Vice Chancellor of Government
 and Community Affairs
 Ms. Brooke Nielsen, Vice Chancellor for Legal Affairs
 Mr. Nicholas Vaskov, System Counsel and Director of
 Real Estate Planning
 Mr. Dean J. Gould, Chief of Staff and Special Counsel
 to the Board of Regents
 Dr. Michael D. Richards, President, CSN
 Dr. Len Jessup, President, UNLV
 Dr. Marc A. Johnson, President, UNR
 Ms. Tina Kunzer-Murphy, UNLV
 Mr. Douglas Knuth, UNR

For others present, please see the attendance roster on file in the Board office.

Chair Jason Geddes called the meeting to order at 1:03 p.m. with all members present except Regent Crear.

1. Information Only-Public Comment – None.

2. Approved-Minutes – Request is made for approval of the minutes from the November 30, 2015, meeting (*Ref. COA-2 on file in the Board office*).

Regent Page moved approval of the minutes from the November 30, 2015, meeting. Regent Wixom seconded. Motion carried. Regent Crear was absent.

3. Approved-Employment Agreement for UNR Athletic Director – The Committee recommended approval of a new employment agreement for UNR Director of Athletics Doug Knuth for a term of three years from July 1, 2016, to June 30, 2019 (*Ref. COA-3 on file in the Board office*).

Dr. Marc A. Johnson, President, UNR, proposed the contract for UNR Director of Athletics, Doug Knuth, be renewed for an additional three years from July 2, 2016, through June 30, 2019. He felt Mr. Knuth has done a commendable job specifically taking a fractious unit within the community to build strong community relations in support of athletics. President Johnson stated Mr. Knuth has emphasized academic performance of student athletes and has hired talented coaches. The integrity of the program remains strong with no major violations within the conference or National Collegiate Athletic Association (NCAA). Chair Geddes is impressed with Mr. Knuth's focus on graduation rates and the Academic Progress Rate (APR). Chair Geddes said Mr. Knuth attends every commencement, is cognizant of the budget and has enhanced all areas of athletics.

Regent Melcher moved approval of a new employment agreement for UNR Director of Athletics Doug Knuth for a term of three years from July 1, 2016, to June 30, 2019. Regent Wixom seconded.

Regent Hayes felt an athletic director has as much to do with filling the stands and generating revenue as the coaches' wins and losses do and thought an incentive and bonus based on that performance is appropriate and should be considered.

Regent Crear entered the meeting.

Regent Wixom agreed there should be a discussion regarding incentive and bonuses. Regent Page felt Mr. Knuth has done a great job and received one bonus in 2014 for academic success. Regent Page pointed out Mr. Knuth would not have received many of the bonuses as they were set. Regent Hayes suggested looking at how the bonuses are decided. Regent Leavitt does not mind looking at the templates, but felt coaches should negotiate their contract with the presidents of the institutions and did not feel all contracts have to be framed the same. Regent Crear felt Mr. Knuth has worked well for UNR and the Reno community. Regent Page thought some standard language should be in the contract as a safety net for the System.

3. Approved-Employment Agreement for UNR Athletic Director – *(continued)*

Motion carried.

Mr. Knuth thanked the Committee and said there is a lot of exciting work yet to be done. He stated his three years of working and helping grow the university has been a tremendous opportunity.

4. Approved-Coach Contract Template and Guidelines – The Committee recommended approval of the new NSHE Basketball/Football Coach Contract template, Contract Checklist, and Guidelines for inclusion in the Procedures and Guidelines Manual. *(Ref. COA-4 on file in the Board office).*

Chair Geddes explained the goal of the contract is to develop a base for the coaches and athletic directors to have a template to work from.

Vice Chancellor for Legal Affairs, Brooke Nielsen, said she expounded on the initial template based on comments and recommendations from the Committee. Page 38 contains a summary of various clauses common in coach contracts in Division 1 athletics, in particular. She thought the list reads similarly to the incentive package contained in the System's template of past contracts the Board has approved. Vice Chancellor Nielsen noted there are other categories like use of private planes, life/disability insurances, and vacation homes which has never been covered in an NSHE contract.

Vice Chancellor Nielsen said page 31 showed a chart which looks at three basketball and three football contracts comparing the template and its clauses. She said the new item is a head basketball and football coach contract checklist which would be used when hiring a new coach. The blanks that would otherwise appear in the template are filled out on the checklist which shows all of the major terms and dollar amounts of the contract. Another significant clause is the liquidated damages the university will pay to the employee when the employee is let go because of convenience, and the liquidated damages the employee will pay to the university if the employee chooses to terminate for convenience. She felt this information would be helpful to the Regents when being asked to approve the contracts.

Vice Chancellor Nielsen explained the Committee is being asked to approve the template which contains all of the basic clauses with some flexibility built in. The primary guideline is for the universities and CSN to use the template. She noted if the language is varied it is stated on the top of the checklist – in other words, if a different negotiation has been made – it will be explained on the checklist and immediately identified. Vice Chancellor Nielsen continued that approval is also being requested for the checklist form and to direct the institutions to use those items when bringing a new coach contract to the Committee and then to the Board. The template, checklist and guidelines would be added to the Procedures & Guidelines Manual for everybody.

4. Approved-Coach Contract Template and Guidelines – (continued)

Vice Chancellor Nielsen said the athletic director template base clauses are the same as the template for coaches without an incentive package. She indicated the guidelines for athletic director incentives have to be addressed, and then a proposal for athletic director incentives and checklist can be brought to the Committee's next meeting.

Regent Leavitt moved approval of the new NSHE Basketball/Football Coach Contract template, Contract Checklist, and Guidelines for inclusion in the Procedures and Guidelines Manual. Regent Page seconded.

Regent Crear asked if the intentions of the athletic director incentives package were synonymous with each institution to outline as possibly providing as incentives and, if so, to be careful because not everyone agrees with its importance. Chair Geddes felt it would be the parameters and then, based on the hiring priorities and needs of the institution, could be rated differently. Vice Chancellor Nielsen offered to work with the athletic directors and lawyers to draft language for the clauses and a checklist with options.

Regent Wixom asked the participating institutions' athletic directors if they were comfortable with the structure of the contract, and if they thought it was workable to negotiate with coaches. Ms. Tina Kunzer-Murphy, Athletic Director, UNLV, felt the contract was workable. Mr. Knuth felt comfortable with the contract as a good mechanism to bring to the Committee. Dr. Michael D. Richards, President, CSN, said the institution never had this type of sophisticated contract. He felt it was a good template.

Regent Wixom would like to know that the template works for the clients and is a functional document. If so, he will vote to approve. Chair Geddes is supportive of the contract but would like the athletic directors to look at liability associated with assistant coaches now that there are multi-year contracts for assistants. He thought comprehending the additional liabilities would be helpful for the Committee to understand and suggested an annual report or a report once the team is solidified. Vice Chancellor Nielsen thought it could be added as a discussion for another Committee meeting. President Johnson stated he spoke with Mr. Knuth about the liability of a coach who leaves early and the type of payment that needs to be big enough to cover the cost.

Regent Page wondered, as UNLV is now looking for a new coach, if any problems were anticipated with the new contract. Ms. Kunzer-Murphy stated a lot of time was spent on the contract and felt it allows for flexibility and, with that, she did not foresee problems. Dr. Len Jessup, President, UNLV, felt the document was good structurally, and if anything will be questionable it will be with the dollar amount.

Motion carried.

5. Approved-College of Southern Nevada Athletic Program Expansion (Agenda Item #7) – The Committee recommended approval of the report and plan by the College of Southern Nevada to expand its athletic program (*Ref. COA-7 on file in the Board office*).

Dr. Michael D. Richards, President, CSN, stated CSN organized its sports program through the office of Intercollegiate Athletics and Recreation. The program is probably close to a club sport program – not a Division I or Division II program.

Dr. Richards continued CSN currently sponsors five sports: baseball, softball, women's volleyball, men's soccer and women's soccer. He said there are several shortcomings, such as a lack of women's team sports, and CSN needs to be proactive. The institution wants 80 percent of students coming from the local area and persisting to their academic completion. Student athletes would be full-time and pay full fees. Dr. Richards felt, under these guidelines, additional opportunities would be available for local students – these sports exist for the student's success – and there are positive results already. The 13 members on the volleyball team, for example, are from Las Vegas, none are on an athletic scholarship and they maintain a 3.75 grade point average (GPA). The current funding model is based on student athletic fees and private donations.

Mr. Dexter Irvin, Athletic Director, CSN, noted CSN has undertaken a model and hired a fundraising director for athletics. He stated raising money has been successful and, as the sports get better, the money is easier to raise.

Regent Lieberman left the meeting.

Chair Geddes thought the price for the start-up and ongoing expense of the programs was very inexpensive and wondered if there was enough money to cover all the travel and infrastructure that would be required. Mr. Irvin said the coaches receive a minimal salary of \$15,000 per year. He continued the other costs are equipment and conferences and, seeing that it is a bus league, the budget of \$75,000 is functional.

Regent Wixom thought it important for these young extraordinary people from disadvantaged backgrounds to be included in the CSN programs. Mr. Irvin assured the Committee that CSN's coaches are taking a diverse look, and an aggressive approach, to not neglect those who do not have the finances. He noted there is a high percentage of first generation Hispanic students. Regent Wixom does not want to see these young people overwhelmed and stated the community takes an amazing, enthusiastic interest in sports. Mr. Irvin agreed and said CSN will reach out to all facets of the community.

Regent Wixom moved approval of the report and plan by the College of Southern Nevada to expand its athletic program. Regent Melcher seconded. Motion carried.

6. Information Only-Litigation Involving the NCAA and Potential Congressional Involvement in Intercollegiate Athletics – Vice Chancellor for Legal Affairs Brooke Nielsen and Mr. Nicholas Vaskov, System Counsel and Director of Real Estate Planning, provided an update on recent litigation involving the NCAA and its impact on intercollegiate athletics (*Ref. COA-6 on file in the Board office*).

Mr. Vaskov explained this item was to update the Committee on a report previously discussed at the September 2015 meeting.

Mr. Vaskov said there are three notable cases involving the NCAA and its member institutions that are impacting college sports: *O’Bannon vs. NCAA*; *Jenkins/Kessler/In Re NCAA Athletics Scholarship Antitrust Litigation*; and *Sackos/Anderson/Berger vs. NCAA*.

Mr. Vaskov stated the updates are as follows:

1. *O’Bannon vs. NCAA*

- The first time the chart was presented the federal district court had issued an order/injunction: (1) prohibiting the NCAA from enforcing its amateurism rules that prevents schools from offering “full cost of attendance” to student athletics; plus (2) up to \$5,000 per use for use of the student athlete’s name, image and likeness.
- That decision is notable because it was the first time a court had found that the NCAA’s amateurism rules violated anti-trust laws.
- Since that time the Ninth Circuit Court of Appeals issued an opinion that affirmed in part and overturned in part the district court order.
 - Affirmed that: (1) the NCAA’s amateurism rules are subject to anti-trust laws, and (2) that the NCAA cannot prohibit schools from offering student athletes “full cost of attendance.”
 - Overturned the portion of the district court order allowing schools to pay student athletes for use of their name, image and likeness. The Ninth Circuit determined that there was a lack of evidence demonstrating that such payment would not have an adverse impact on consumer demand for college sports.
- Of course, the NCAA had already revised its rules to allow schools to provide athletes “full cost of attendance” – so the practical effect of the Ninth Circuit’s ruling is minimal.
- With *O’Bannon* now decided the anti-trust battle now shifts to the *Jenkins* case.

2. *Jenkins/Kessler/In Re NCAA Athletics Scholarship Antitrust Litigation*

- The *Jenkins* plaintiffs are trying to do what the *O’Bannon* plaintiffs failed to do – produce evidence showing that allowing payments to student athletics for use of their name/image/likeness will not harm amateurism and the market for college sports. If they can do that, the NCAA’s rules preventing such payments may be found to violate anti-trust laws.
- The district court judge hearing the case recently granted class action certification to three classes of plaintiffs.
- Discovery is continuing and is likely to be lengthy.

6. Information Only-Litigation Involving the NCAA and Potential Congressional Involvement in Intercollegiate Athletics – (continued)

3. *Sackos/Anderson/Berger vs. NCAA*

- Just a few days ago the federal district court judge entered an important order.
- In the *Sackos*' case the plaintiffs argue that student athletes are effectively "employees" of the schools and therefore should be paid minimum wage under the Fair Labor Standards Act (FLSA) (i.e., NCAA led conspiracy to violate wage and hour provisions of the FLSA).
- On February 16, 2016, the court dismissed that claim and the entirety of the plaintiff's case – citing a long time Department of Labor rule that student athletes are not employees.

Mr. Vaskov felt the Committee would be interested in an update of the University of North Carolina (UNC) fraud scandal that was centered on former athletes alleging UNC set up "dummy classes" for athletes and deprived them of a legitimate education. To date those cases and the public records requests related to the scandal have cost UNC more than \$10 million in legal fees alone.

President Johnson noted that on the heels of the UNC event, the UNR athletic director, academic staff and chief counsel have worked on an ethics in academics set of guidelines which the athletics department follows. The academic unit in athletics looks at all the courses the student athletes are taking to make sure there is nothing unethical going on.

7. Approved-Review of Responses to Athletics Competitiveness and Benchmarking RFP (Agenda Item #5) – The Committee recommended approval to select College Sports Solutions (CSS) to conduct both phases of the Athletics Competitiveness and Benchmarking Study of the UNR and UNLV athletic departments in the amount of \$108,000 (Ref. COA-5 on file in the Board office).

Mr. Vaskov explained the Committee asked for a Request for Proposal (RFP) to get pricing for the NSHE Athletics Competitiveness and Benchmarking Study for the athletic departments of UNR and UNLV. The RFP was issued on December 16, 2015, and included a scope of work containing two phases. Phase 1 called for benchmarking the various factors of competitiveness against other institutions within the Mountain West Conference. The optional Phase 2 called for expanding that analysis to various institutions within the Pac-12 and Big-12 conferences. Mr. Vaskov said a total of six responses were received from companies with experience in college sports consulting. The prices ranged from \$52,000 to \$190,000 for both phases of the study. Mr. Vaskov said Phase 1 prices went from \$36,000 to \$135,000.

Mr. Vaskov stated the decisions that now need to be made include: (1) whether to proceed with one or both phases of the study; (2) which firm to award the study to; and (3) to authorizing the Chancellor to execute the contract with the company selected by the Committee and approved by the Board.

7. Approved-Review of Responses to Athletics Competitiveness and Benchmarking RFP (Agenda Item #5) – (continued)

Regent Hayes reviewed the references and all seemed experienced but two stood out: College Sports Solutions (CSS) and Collegiate Consulting. He did not think the bid of \$190,000 from Conventions, Sports and Leisure International (CSL) was worth it. Regent Crear felt expertise was needed along with the level of knowledge the firms have. He has experience with CSL and thought their skill could tie into what NSHE is looking for. Regent Crear is interested in CSL and, though the price was high, it could probably be negotiated. Mr. Vaskov noted the price was based on the scope of work provided in the RFP.

Chair Geddes stated one option was to do Phase 1 only. He did not feel Tripp Umbach or Victus had enough experience in the sports world and thought CSL's price was too high. His choices are CSS and Cedric Dempsey.

Regent Leavitt was impressed by CSS and asked the Committee to consider going straight to Phase 2 and skipping Phase 1. He thought answers to Phase 1 have already been provided by the athletic directors. He does not see value in Phase I. Mr. Vaskov noted separate pricing was provided for each phase. Chair Geddes wondered if Phase 2 was based on information from Phase 1. Mr. Vaskov said there were no comments indicating Phase 1 had to be done in order to complete Phase 2.

Chancellor Klaich did not feel renegotiating the scope of the contract with one vendor was possible without re-bidding the RFP entirely. Ms. Nielsen thought a renegotiation could be proposed after the company was chosen.

Regent Melcher is struggling and does not know if the process is necessary. He does not see the study doing anything to go forward or backwards. He thought the institutions could make the decisions.

Ms. Kunzer-Murphy thought having an outside group conduct this type of study would be helpful. Mr. Knuth agreed it would be valuable to look ahead to see what it would take to move forward and in what direction.

Regent Wixom strongly supports the study because there is a difference in accumulating information and understanding it. A third party coming in with this type of analysis is beneficial and it would be helpful to have an outsider provide that perspective. Money does not solve all problems and importantly, along with this comes policies, procedures and perspectives. Regent Wixom definitely believed the study should be done, sequentially, Phase 1 and Phase 2, in that order. He favors College Sports Solutions because they have more resources and can respond more effectively to our needs.

7. Approved-Review of Responses to Athletics Competitiveness and Benchmarking RFP (Agenda Item #5) – (continued)

Mr. Knuth suggested the athletic directors and Regents have a conversation with the consultants. Chair Geddes said two or three companies can be interviewed at the next meeting. Regent Hayes agreed that both studies were needed. Regent Page concurred about bringing some finalists in. Regent Melcher thought doing the studies would be fine and hoped there is information on like-institutions.

Regent Leavitt thought it was a pivotal time in athletics and there should be improvement in every program – it is a changing landscape and information and knowledge is power – and the institutions must be proactive.

Regent Leavitt recommended approval to bring in two to three companies for an interview. Regent Page seconded.

Regent Crear asked if it was fair for the companies to come and spend their own money, approximately \$3,000, and maybe not get the contract. Regent Wixom recommended this be done telephonically. Regent Page thought if they want the business they would make the trip. Regent Crear would like CSL to make a presentation, but because of working with other organizations in the city, he was not sure if there would be a conflict.

Chair Geddes said there is a motion to bring two to three companies back and if they do not want to they will be excluded. He felt Victus and Tripp Umbach were eliminated. Regent Melcher recommended making a choice for one company now.

Regent Leavitt amended the motion to recommend approval to select College Sports Solutions (CSS) to conduct both phases of the Athletics Competitiveness and Benchmarking Study of the UNR and UNLV athletic departments in the amount of \$108,000. Regent Page seconded. Motion carried.

8. New Business – Chancellor Klaich mentioned the State Higher Education Executive Officers (SHEEO) had a panel on athletics at its national convention which was facilitated by the Executive Director of the Knight Commission, Amy Perko. He has been in contact with Ms. Perko who is putting together a tool kit for boards and presidents in dealing with athletic issues in the current context of changing landscapes. Chancellor Klaich said he was asked to participate and will report to the Committee

Regent Hayes asked if it was possible to look at the 42 acres of land recently purchased by UNLV and if the intentions are to build a stadium. Chair Geddes will relay the question to the Chair of the Board as it is not in the purview of this Committee.

8. New Business – *(continued)*

Regent Page asked about the information previously requested from UNR. President Johnson believed a response had been provided and will investigate the emails and reports sent to make sure the questions have been answered.

Regent Hayes said there have been other questions about numbers that have never been answered from UNLV and there has been no response. If we ask questions there is not much use if never answered. Chair Geddes thought he saw some responses but will go back through the minutes to make sure the answers are provided.

9. Information Only-Public Comment – None.

The meeting adjourned at 2:47 p.m.

Prepared by: Nancy Stone
Special Assistant & Coordinator
to the Board of Regents

Submitted for approval by: Dean J. Gould
Chief of Staff and Special Counsel
to the Board of Regents