



University of Nevada, Reno

Brian Sandoval
President

MEMORANDUM

To: Board of Regents, Nevada System of Higher Education
Chancellor Melody Rose

From: President Brian Sandoval, University of Nevada, Reno

Date: July 20, 2021

RE: Responses to questions posed by Regent Carter regarding Sierra Nevada University

MOA 501C3 Questions:

1. *Why were the specific names of people and not their titles chosen for board composition?*

Response: The proposed composition of the future SNU Board was identified by the SNU Trustees in the MOA (as modified by the most recent SNU Board action regarding the MOA) to facilitate the transfer process by including specific individuals from UNR's leadership team. (Please see the answer to question number 2 below regarding changes to this Board post-transfer). The members of the SNU Board will not change until such time as i) the Department of Education and the Northwest Commission on Colleges and Universities ("NWCCU") approves that action, and ii) the transfer of SNU operations to UNR is effectuated.

2. *Who has the power to name/remove names from the SNU 501C3?*

Response: The authority to name/remove names from the board of directors of the SNU 501(c)(3) will be addressed directly via amendment to the SNU bylaws, which amendment(s) will be drafted following Board of Regents approval. It is anticipated that as part of this amendment, the three UNR personnel/administrators to be assigned to the SNU board will be identified by their titles and express authority. The amendment to the SNU bylaws will also provide that their successors will succeed to the SNU board appointment.

NRS Chapter 396 governs generally the Nevada System of Higher Education as authorized under the Nevada Constitution. NRS 396.110 expressly authorizes the BOR

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to prescribe rules for its own government and the government of NSHE. *See* NRS 396.110(1)(a)-(b). Accordingly, the BOR has broad legal authority to promulgate rules that implement its plans for NSHE, including plans for its expansion as outlined in the MOA. NRS 396.255 specifically empowers the BOR to establish policies governing the contracts that employees of NSHE may enter into and benefit from. *See* NRS 396.255. The BOR may also prescribe the curriculum for NSHE, *e.g.*, the course of study, the commencement and duration of the terms, and the length of the vacations for NSHE. *See* 396.440. The BOR is encouraged by the legislature to review periodically their mission for higher education, as the focus of each institution is defined and further redefined, to determine the nature and scope of the programs or courses. *See* NRS 396.504(1)(b). The statutory scheme outlining the BOR's authority is thus broad in scope. *See generally, King v. Board of Regents*, 65 Nev. 533, 200 P.2d 221 (1948); *Board of Regents v. Oakley*, 97 Nev. 605, 637 P.2d 1199 (1981).

The BOR's broad authority also extends to appointing administrators and prescribing their duties and responsibilities. *See generally*, BOR Handbook, Title 2, Chapter 1, Section 1.6.1. This authority extended to the Board of Regents would implicitly and logically include the authority for the Board of Regents to direct that NSHE employees and administrators serve NSHE by serving on related non-profit boards as contemplated in the MOA and to effectuate the MOA itself. The BOR's conflict of interest policy confirms that it has the authority to authorize the president of a university that is part of NSHE to serve on a corporate board as it expressly authorizes such service provided proper notification and approval are made and obtained. *See* BOR Handbook Title 4, Chapter 3, Section 8 ("Outside service subject to this policy, may include, but is not limited to service on corporate boards."). UNR's conflict of interest policy is similar. *See* UNR Conflict of Interest Policy 2,050. This provision also contemplates service by UNR employees on other corporate boards. Specifically, it states that "Management positions with fiduciary responsibilities such as a board member, director . . . with an outside entity that has a business relationship with the University" must be disclosed but are otherwise authorized. *Id.*

UNR's conflict of interest policy regarding classified employees having secondary employment under certain guidelines similarly reflects the authorization for the kind of service contemplated under the MOA. *See* UNR Conflict of Interest Policy 2,237. Nevada ethics law similarly contemplates an employee being able to serve in this capacity. *See* NRS 281A.4303(3). A full or part time faculty member or employee of NSHE may bid on or enter into a contract with an agency, or may benefit financially or otherwise from a contract between an agency and a private entity, if the contract complies with the policies established by the BOR pursuant to NRS 396.255. This again suggests that provided an employee follows the BOR policies, the employee is authorized to have the kind of relationship outlined in the MOA.

As a director of a non-profit board, the three UNR personnel/administrators are expressly authorized to dissolve voluntarily the corporation should that decision be

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made. Voluntary dissolution for such non-profit corporations is governed by NRS 82.446, 451 and 456.

To ensure that the three UNR personnel/administrators maintain their indemnification protections as state employees when they serve on the non-profit board, it will be critical that such service be deemed and described as serving within "the scope of their public duty or employment." See NRS 41.0349(3). Further protective actions to ensure the indemnification include the bylaws amendment(s) referenced above.

3. *How is it not a conflict of interest for the President of UNR (fiduciary) to also serve as a fiduciary to a competing 501C3 educational institution (at least through 2022)?*

Response: It is not a conflict of interest in this circumstance because BOR approval is expressly conditioned on the assumption that the three assigned UNR personnel/administrators (including the President) will be acting in the course and scope of their employment with UNR. See above response to item 2. Such an assumption protects both the assigned personnel/administrators and the BOR. Importantly, UNR personnel/administrators won't assume control of the Corporation until regulatory approval has been received and UNR is responsible for the campus operations, so SNU won't be operating in such a way that there would be a conflict.

Operational Questions:

If the MOA is to operate the 501C3 as a separate institution under a separate board:

1. *Who represents SNU legally? - It would not be NSHE/UNR. Does the foundation have adequate council and liability coverage to represent a private institution (SNU)?*

Response: SNU currently has its own counsel, and I would recommend that SNU keep its own counsel for the foreseeable future. SNU will have its own D&O insurance coverage. It should be noted that most of the component corporations within NSHE (primarily the respective institutions' foundations) do have separate counsel.

2. *What service level agreements do you anticipate between UNR and the SNU 501C3? If it is separate than NSHE/UNR would need to be compensated for work done for SNU.*

Response: For the transition period, a temporary service level agreement will be developed for activities that are provided by UNR to SNU. These may include back-office and support functions such as the phone system, information technology/network, facilities/grounds/building management and safety/security. For this transition period, which is anticipated to be approximately Fiscal Year 22 (pending the NWCCU and US Dept. of Ed approval processes), a clearing account will be established at UNR for expenses borne directly by the University. This account will be reimbursed by the SNU

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Corporation on a monthly basis. At the end of the transition period all operating activities will then be within UNR and the SLA will sunset.

3. *Would the NSHE code for public institutions apply to an institution not directly controlled by the Board of Regents?*

Response: This should not be an issue given that by the time UNR takes over the operations of SNU, SNU will not be operating. Until then, SNU would operate as is. NRS 396.020 also provides that the “System is comprised of such branches and facilities as the Board of Regents deems appropriate” and, further, NRS 396.110 authorizes the BOR to prescribe rules for the government of the System, presumably including rules governing UNR’s acquisition of the SNU operations as contemplated by the MOA.

4. *Could a public higher education institution legally exist in the state, not under the control of the Board of Regents?*

Response: Technically, this should not be an issue given that, at the time UNR takes over SNU’s operations, SNU will no longer be operating as a separate entity and will be a satellite campus of UNR.

5. *Is there a business plan for this institution under this scenario?*

Response: Please see above. Currently, a business plan has not been developed. However, following the transition, SNU will no longer exist as a separate institution of higher education and its business operations will be under UNR.

If the plan is to operate as a branch campus of UNR:

1. *What benchmarks need to be met to transfer the academic control of SNU to UNR and NSHE?*

Response: Approval by the Northwest Commission on Colleges and Universities, the US Department of Education, and the Nevada Commission on Post-Secondary Education are the necessary approvals.

2. *What will be the process for hiring/transfer of employees to NSHE and public benefits? Any information is helpful, even if a full plan is not crafted?*

Response: Those qualified current SNU employees will transition to UNR through a search exception process and will become NSHE professional or classified employees, as appropriate. Maintaining continuity of key employees is a strategic goal of UNR and these employees will be identified early in the transition process although the actual transfer may not occur until later in the transition year due to the accreditation approval

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timeline. All employment liabilities of the current corporation (such as accumulated leave and severance packages) will be settled during the operational wind-down and will not transfer to UNR.

Employees of SNU will not fall under the NSHE Code until they are transitioned and become NSHE employees.

3. ***When would we see the UNR Tahoe campus on the master plan? Do you foresee this delaying any projects on the main campus?***

Response: This year, as UNR begins its strategic planning process, including its facilities plan, this new campus will be incorporated into that discussion and the plan will be subject to BOR approval as currently required by BOR policies. No impact or delay to main campus projects is anticipated.

4. ***How do you anticipate having a campus with much higher tuition and fees than the main campus or does the business plan for this campus reflect a change to UNR tuition and fees?***

Response: Once the transition is complete, all students will be considered UNR students and will be subject to consistent tuition and fees, as approved by the Board of Regents.