

Meeting of the Board  
**STATE PUBLIC SCHOOL BUILDING AUTHORITY**  
July 2, 2015  
**Room 515 North Office Building**  
Harrisburg, Pennsylvania  
10:33 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 May 12, 2015.
3. Financial Reports for the Months of April and May 2015.
4. Revolving Loan Fund.
5. Investment Activity.
6. Approval of Projects.
  - A. Resolution Authorizing the Undertaking of a Project on Behalf of the Montgomery County Community College.
7. Old Business.
  - A. Gift Ban Resolution & Legal Opinion.
  - B. Office of General Counsel Bond Counsel Appointment Procedure & Authority Marketing Plan.
8. New Business.
9. 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 State Public School Building Authority was called to order on Thursday, July 2, 2015 at 10:33 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  
Alan Cohn, (Proxy for Representative Anthony M. DeLuca)  
Christopher B. Craig, (Proxy for Treasurer Timothy A. Reese)  
Victoria Madden, (Proxy for Auditor General Eugene A. DePasquale)  
Secretary of General Services Curtis M. Topper  
Danielle Mariano, (Proxy for Secretary of Education Pedro A. Rivera)

**Board Members Participating By Conference Call**

Senator Andrew E. Dinniman

**Board Members Absent**

Speaker Mike Turzai

**Authority Personnel Present**

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

**Also Present**

William McCarty, Esquire, Hartman Underhill & Brubaker LLC  
H. Geoffrey Moulton, Jr., Deputy General Counsel, Governor's Office of  
General Counsel  
Shawn Smith, Deputy General Counsel, Governor's Office of General Counsel  
Lisa Felix, Executive Director for the Education Committee  
Robert Tomaine, Esquire, Department of Education  
Kelly Phenicie, Executive Director, Senate Education Committee  
Matthew E. Parido, Chief of Staff, Office of Senator Lloyd K. Smucker

## **Participated Via Conference Call**

LaToya Sawyer, Esquire, Buchanan Ingersoll & Rooney, PC  
Paul Clancy, Managing Director, RBC Capital Markets  
Dr. James Linksz, President, Montgomery County Community College  
Mike Mandrachia, Financial Analyst, Montgomery County Community College

## **2. APPROVAL OF THE MINUTES OF THE MEETING OF MAY 12, 2015.**

Ms. Madden said that at the May meeting Christal Pike-Nase mentioned when discussing the Department of the Auditor General's Code of Conduct that a \$25 nominal amount was included. She requested that the minutes reflect their Code of Conduct does not specify an amount. It just indicates nominal.

Secretary Topper indicated that although the minutes from the last Board meeting accurately reflect the discussion that occurred. That discussion inaccurately reflected some essential facts because the board members did not have complete information concerning the process that was used for the recent bond counsel appointment for the University of Pennsylvania Health System financing.

To ensure completeness of the record overall, Secretary Topper asked to submit the following:

As you are aware, on January 20, 2015, Governor Wolf as one of his first actions after being sworn in signed Executive Order 2015-02. Among other things, this requires that all contracts for outside counsel legal services be competitively procured. The Office of General Counsel (OGC) has since required all agencies under the Governor's jurisdiction to comply with this directive in accordance with procedures established by OGC. The OGC has also applied this directive to all situations in which OGC is required by law or policy to appoint the outside counsel for an entity not subject to the Governor's jurisdiction.

When PHEFA requested that Ballard Spahr be appointed counsel for the University of Pennsylvania Health System project, OGC directed that PHEFA issue a competitive request for proposals. The OGC supplied the necessary RFP and best value selection templates and authorized PHEFA to conduct the selection. Importantly, PHEFA staff and University of Pennsylvania representatives, not OGC, comprised the evaluation team.

As a result of the formal competitive process and evaluation, OGC did indeed appoint Ballard Spahr as the lead Counsel, awarding them 75% of the engagement, with the balance awarded to Obermeyer Rebman.

Although the full board may not have been sufficiently informed of the proceedings, PHEFA staff was an active participant in the process.

Geoff Moulton from the OGC's office is with us today to provide us with some greater clarity on how the bond counsel selection process is to be done going forward. My hope is that we'll be able to avoid any similar confusion in the future in terms of how the process will work.

Mr. Craig believed that it is appropriate to include Secretary Topper's comments in the minutes of the July 2<sup>nd</sup> meeting but he did not believe it was appropriate to include them in the prior minutes because those minutes accurately reflect the information that was provided to the board at the prior meeting. He believed it is reasonable to include them in the current minutes.

Secretary Topper agreed with Mr. Craig. His intent was to have the record reflect what actually occurred. He believed that the minutes submitted to board members accurately reflect the discussion. He did not believe that all board members were sufficiently aware at the time all of the detail.

It was decided that the May minutes would be changed to reflect Ms. Madden's request and Secretary Topper's comments would be included in the July minutes.

A copy of the minutes of the meeting of May 12, 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 SPSBA meeting of May 12, 2015, be and hereby are approved as changed to reflect Ms. Madden's request.

Upon **MOTION** by **Secretary Topper**, and **SECONDED** by **Mr. Craig**, and after full discussion, the above Resolution was unanimously approved at the SPSBA Board Meeting of July 2, 2015.

### **3. FINANCIAL REPORTS FOR THE MONTHS OF APRIL & MAY 2015.**

The Financial Reports for the months of April and May were emailed to Board Members prior to this meeting.

It is recommended that consideration be given to the adoption of the following Resolution:

RESOLVED That the Financial Reports of the State Public School Building Authority for the months of April and May 2015 as received by this Board, be accepted and filed with the minutes of this meeting.

Upon **MOTION** by **Ms. Mariano**, and **SECONDED** by **Ms. Madden**, and after full discussion, the above Resolution was unanimously approved at the SPSBA Board Meeting of July 2, 2015.

#### **4. REVOLVING LOAN FUND.**

Mr. Baccon explained that a loan to the Pennsylvania Highlands Community College closed in June. The loan, totaling \$149,000 will be used to purchase network equipment upgrades. There were no pending projects.

#### **5. INVESTMENT ACTIVITY.**

Mr. Baccon explained that there was an update regarding investment activity included in the agenda. Dave Player was in attendance to answer any questions from board members. There being no questions, Chairperson Heuer moved to approval of projects.

#### **6. APPROVAL OF PROJECTS.**

##### **A. Resolution Authorizing the Undertaking of a Project on Behalf of the Montgomery County Community College.**

Mr. Baccon explained that the Montgomery County Community College requested that we issue a maximum of \$63,000,000 in revenue bonds to finance certain capital projects of the College and to finance the advance refunding of all or a portion of the Authority's Montgomery County Community College Revenue Bonds, Series of 2008.

RBC Capital Markets will serve as Underwriter. After completing an RFP and at the request of the College, the Office of General Counsel has appointed Saul Ewing as Bond Counsel.

The Resolution in your agenda approves all of the actions necessary in connection with the issuance of the Bonds.

Paul Clancy, of RBC Capital Markets and Mike Mandrachia of the College are participating by conference call to answer any questions the board members may have.

Chairman asked if board members had any questions or comments about the project.

Mr. Craig said that his understanding was that approximately \$35,000,000 is being used to create classroom facilities dedicated to STEM related programs. He asked if the college provided enrollment projections to Authority staff or other types of forecasts involving demand for this curriculum.

Mr. Baccon indicated that the Authority had not received that information.

Mr. Craig's understanding that the support for the bonds is future tuition dollars. He asked if that study or analysis has been done by the school.

Mr. Clancy indicated that the renovations for the STEM program are about \$24,700,000 and that is what was approved by the Department of Education.

Dr. Links said that they had not provided that specific information to the Authority. They did make their normal projection process as part of this activity. The college has been in a steady enrollment state. They are projecting a 1.5% increase in enrollment for the fall of this year. STEM programs have been growing as part of their curriculum. They are just beginning to work on a health sciences building addition that will have several new programs in it. Those programs have a basic STEM requirement. The intention is to refurbish the science building with this project and to add a couple of labs to expand their capacity to deal with the health science program. The health science additions are expected to increase enrollment of the institution. They have done this analysis internally to the college but have not provided the information the SPSBA.

Mr. Craig if the debt is backed by future tuition dollars.

Mr. Clancy explained that in this case Montgomery County who is the local sponsor has agreed to pay 50% of the debt service on this project and the Pennsylvania Department of Education (PDE) is funding the remaining 50% through their capital project program. In theory, student revenues are important to the college from a revenue standpoint, but from a security standpoint, the funding of the projects are coming from these other sources.

Mr. Craig asked if the funding source from PDE is a grant or a direct appropriation.

Dr. Links explained that colleges must have a matching funding source for their projects. There is a community college capital fund which is managed by the 14 colleges together, along with PDE, who has to approve projects. Each of the colleges has a way of providing the matching funds for their projects. The county of Montgomery is the sponsor of the college and as a consequence will support 50% of the cost of these projects.

Mr. Craig asked if the Authority typically receives or requests copies of the commitment letters or statements.

Mr. Baccon said that we do not, but he believed it would be an excellent idea.

Mr. Clancy said that the offering document, the POS, does indicate that projects have been approved by PDE and it notes the date of the approval and the amount. In addition it is indicated that the county has approved their authorizing resolution for its support as well.

Mr. Craig indicated that it is just an internal board question as to whether or not they should have this information when they exercise their fiduciary responsibilities. He is suggesting that on a going forward basis it would be good to have the information.

Mr. Craig asked about the refinancing portion of the project. The information indicates that the refinancing will only take place if the college can reduce their debt service payments. He asked what the current rate was and the savings they were trying to achieve.

Mr. Clancy explained that it would be a partial refunding of about 70%. The current savings are about \$950,000. On a net present value basis it is about \$830,000 and a net present value percentage of 3.7%. Typically you would not want to go forward with a refunding unless there is a savings of 2%. That is the minimum threshold that you would look for. The college will also determine if the absolute dollar amount meets their requirements. There hasn't been anything specifically stated but the 2% has been discussed with the college. Right now the interest rates on the prior bonds are about 5%. The all in new rate is approximately 3.469%. There is a pretty good reduction in overall interest rate for the college.

Mr. Craig said that it is indicated that Saul Ewing was selected as bond counsel through an RFP. He asked if there was any other co-counsel associated with this transaction. He also asked the amount of the winning bid.

Mr. Clancy said that there was no co-counsel. The winning bid was \$18,500.

Chairperson Heuer asked if board members had any other questions or comments, and hearing none, he asked for a motion to approve the project.

**RESOLUTION OF THE  
STATE PUBLIC SCHOOL BUILDING AUTHORITY  
AUTHORIZING  
THE UNDERTAKING OF A PROJECT ON BEHALF OF  
MONTGOMERY COUNTY COMMUNITY COLLEGE**

**DOCKET NO. 2443**

**NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:**

1. The State Public School Building Authority (the "Authority") shall undertake a project (the "Project") on behalf of the Montgomery County Community College (the "College") generally anticipated to consist of one or more of the following components: (i) finance certain capital projects of the College including (a) improvements, renovations, upgrades and additions to spaces formerly housing Health Sciences programs into general purpose classrooms or additional lab spaces to support growing STEM programming and meet current pedagogical methods for instruction in the sciences; (b) improvements, renovations, upgrades and additions to the theater, including, without limitation, and addition to the backstage area for ADA compliance and improved support facilities, renovations to restrooms for code and ADA compliance, renovations and updates to the HVAC system and controls, energy-efficient lighting and other furnishings, fixtures and equipment; (c) the payment of capitalized interest on some or all of the projects discussed in (a) and (b) above and (d) the acquisition of the North Hall property, located on the College's West Campus; (ii) the advance refunding of all or a portion of the Authority's Montgomery County Community College Revenue Bonds, Series of 2008 (the "2008 Bonds"); and (iii) the payment of certain costs of issuing the 2015 Bonds (including bond insurance or other forms of credit enhancement if advantageous to the College) (defined below).

2. In order to finance the Project the Authority will enter a Trust Indenture with a trustee to be determined by the College and acceptable to the Authority (the "Indenture") and shall issue up to \$63,000,000 (exclusive of any original issue discount) in aggregate principal amount of bonds to be in one or more series as either taxable or tax-exempt (which may be issued on the same or different dates) to be designated "State Public School Building Authority, College Revenue Bonds (Montgomery County Community College Project), Series of 2015" (or such other designation, as appropriate) with the appropriate alphabetical series designation, as applicable (the "Bonds"). The Bonds shall have a term not to exceed twenty one (21) years and shall bear interest at a fixed rate acceptable to the College, shall mature in such principal amounts and at such times, and shall be subject to redemption and purchase, as applicable, all as approved by the Executive Director of the Authority in consultation with the College and further provided in one or more Bond Purchase Agreements (as hereinafter defined).

The Bonds shall be issued in such denominations and form and under such terms as shall be set forth in the Indenture used in connection with the issuance of the Bonds and approved by the Executive Director. The execution of the Bonds with the manual or facsimile signature of the President of the Authority and the Treasurer of the Authority



together with a manual or facsimile of the official seal of the Authority and the attestation thereof by the manual or facsimile signature of the Secretary or Assistant Secretary of the Authority is hereby authorized. The Executive Director of the Authority is hereby authorized and directed to deliver the Bonds to the trustee under the Indenture for authentication and to execute and deliver instructions to the trustee to deliver the Bonds when so authenticated, on behalf of the Authority, to or upon the order of the purchaser thereof against receipt of the purchase price together with any accrued interest, all in accordance with the requirements of the Indenture.

3. The proceeds from the sale of the Bonds shall be loaned to the College pursuant to the terms of Loan Agreement between the College and the Authority (the "Loan Agreement") and shall be applied by the College for and towards the costs of the Project including, without limitation, printing and reproduction costs, fees and expenses of bond counsel and underwriter's counsel, fees and expenses of the trustee, and administrative costs and expenses of the College and the Authority, all upon submission of the proper documentation thereof; the payment of the premium for a policy of municipal bond insurance if determined to be advantageous by the College; and the funding of funds established under the Indenture, to the extent necessary.

4. The President, any Vice President or the Executive Director is hereby authorized to negotiate with the underwriter hereinafter appointed for an acceptable proposal for the purchase of the Bonds issued hereunder, to enter into one or more purchase agreements (each, a "Bond Purchase Agreement") for such purpose in accordance with the terms of this resolution and the President, any Vice President or the Executive Director is hereby authorized to execute and deliver each Bond Purchase Agreement on behalf of the Authority and to take such further action as may be required or proper to carry out the obligations of the Authority thereunder.

5. The Authority does hereby authorize the execution and delivery of any documents to which the Authority is a party and which are required to be executed and delivered in connection with the financing of the Project and the issuance of the Bonds authorized hereunder, including but not limited to the Indenture, Loan Agreement, Bond Purchase Agreement and any escrow agreements required in connection with a refunding, provided that all such documents shall be in such form as shall be acceptable to Bond Counsel, the Office of General Counsel, the Attorney General of the Commonwealth and Authority Counsel and as shall be approved by the Executive Director of the Authority.

6. The appropriate officers of the Authority, including the President, the Vice President and the Executive Director are, and each of them is hereby authorized and directed to execute such further documents and do such further things as may be necessary or proper to carry out the intent and purpose of this Resolution or any document herein authorized.

7. The appropriate officers of the Authority, including the President, the Vice President, the Executive Director or any Assistant Executive Director are, and each of them is, hereby authorized to approve, and to execute and deliver any supplement, amendment or

agreement (an "Amendment") providing for any amendment or other change to any trust indenture, escrow agreement, loan agreement, bond, instrument or other document executed and delivered with respect to the financing of the Project (collectively, the "Bond Documents") requested by the College and approved by all other necessary parties, provided that (a) the officer executing the Amendment shall have determined that the Amendment will not adversely affect the Authority, such determination to be conclusively evidenced by such officer's execution of the Amendment and (b) the Authority shall have received an opinion of counsel in form and substance satisfactory to the Authority that (i) the Amendment is permitted under the Act and the Bond Documents, and (ii) the Amendment will not adversely affect the excludability from gross income of interest on the Bonds for purposes of federal income taxation, if applicable.

8. The President, any Vice President or the Executive Director of the Authority shall be, and each of them is hereby, authorized and directed to execute, acknowledge and deliver in the name of and on behalf of the Authority, and the Secretary or Assistant Secretary of the Authority shall be and each of them is hereby authorized and directed to attest and affix the official seal of the Authority (if any) to each of the aforesaid documents. The execution of the aforesaid documents as hereinabove authorized shall be deemed to conclusively evidence the approval of the Authority of the forms of said documents.

9. The form of any preliminary official statements, reoffering circulars and/or final official statements (collectively, the "Offering Documents") which may be used in connection with the sale and issuance of the Bonds shall be approved by the Executive Director with the advice of Bond Counsel and Authority Counsel. The Executive Director shall be and hereby is authorized and directed to execute any such final Offering Documents, and such execution by the Executive Director shall constitute conclusive evidence of the Authority's approval of the form of such documents. The Authority is hereby authorized to circulate and distribute copies of any such Offering Documents in connection with the Project.

10. RBC Capital Markets, LLC is hereby appointed Underwriter for the Bonds (the "Underwriter"). The Underwriter has selected Dilworth Paxson LLP as Underwriter's Counsel.

11. The appropriate officers of the Authority are hereby authorized to take such further action and to execute any and all other documents and certificates, in addition to those specified above, as shall be required in connection with the issuance of the Bonds and the implementation of this resolution.

Upon **MOTION** by **Secretary Topper**, and **SECONDED** by **Mr. Craig**, and after full discussion, the above Resolution was unanimously approved at the SPSBA Board Meeting of July 2, 2015.

**EXHIBIT A**

**MONTGOMERY COUNTY COMMUNITY COLLEGE**

<b><u>Docket Number</u></b>	<b><u>County</u></b>	<b><u>Project Description</u></b>	<b><u>Maximum Amount To be Financed</u></b>
2443	Montgomery	(i) financing certain capital projects of the Montgomery County Community College (the “College”) including (a) improvements, renovations, upgrades and additions to spaces formerly housing Health Sciences programs into general purpose classrooms or additional lab spaces to support growing STEM programming and meet current pedagogical methods for instruction in the sciences; (b) improvements, renovations, upgrades and additions to the theater, including, without limitation, and addition to the backstage area for ADA compliance and improved support facilities, renovations to restrooms for code and ADA compliance, renovations and updates to the HVAC system and controls, energy-efficient lighting and other furnishings, fixtures and equipment; (c) the payment of capitalized interest on some or all of the projects discussed in (a) and (b) above; and (d) the acquisition of the North Hall property, located on the College’s West Campus; (ii) the advance refunding of all or a portion of the Authority's Montgomery County Community College Revenue Bonds, Series of 2008 (the "2008 Bonds"); and (iii) the payment of certain costs of issuing the 2015 Bonds (including bond insurance or other forms of credit enhancement if advantageous to the College)	\$63,000,000*

**Term:** Not more than twenty one (21) years.

**Rate:** Fixed Rate not to exceed 6.50% per annum.

**Rating:** “A1” (underlying from Moody’s Investor Services, Inc.).

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\* Exclusive of any original issue discount.

**Minority, Veteran and/or female participation in this issue:** McElwee & Quinn (financial printer).

**Underwriter:** RBC Capital Markets, LLC.

**Bond Counsel:** After completing an RFP and at the request of the College, the Office of General Counsel has appointed Saul Ewing LLP as Bond Counsel.

**Trustee:** The Bank of New York Mellon Trust Company, N.A.

Approved at the SPSBA Board meeting of July 2, 2015.

## **7. OLD BUSINESS.**

### **A. Gift Ban Resolution & Legal Opinion.**

Chairperson Heuer explained that at the May meeting, board members asked for a legal opinion regarding the proposed gift ban. The opinion was included with the agendas that were delivered last week. The opinion confirms that the board has the authority to adopt a gift ban policy. The policy would apply to staff members, board members and proxies. If a legislative member of the board designates a member of the House or Senate to act in their stead, then the designee becomes the member of the board. Counsels suggested three revisions to the draft policy. Mr. Cohn also brought a revision which we will also discuss. A black lined copy of the revised policy is included in the agendas. The first revision clarifies that the policy pertains to Authority business. The second revision adds the acceptance of nominal items. The third revision clarifies who the policy covers. We can review the changes individually and vote on each change or vote on the revised policy in its entirety. Bill McCarty from Hartman Underhill & Brubaker is here to answer questions and LaToya Sawyer from Buchanan Ingersoll & Rooney is participating by phone. I will open the floor for discussion.

Mr. Craig said that the ban is consistent with what Treasury has had for several years. The only real difference is that the proposed ban decides not to define nominal, Treasury's ban defines nominal as \$25. The legal opinion makes the conclusion that constitutionally independent offices such as the Treasurer and Auditor General are subject to, because of their statutory ex officio status as board members to a governor's directive. There is no legal authority to make that assertion. It is Treasury's intention to vote for the policy. On behalf of Treasury, they do not agree and will continue to assert that there is no statutory, legal case law authority for the suggestion that the Governor's directives somehow apply to constitutionally independent row offices.

Senator Smucker did not believe that the adopting of the gift ban would get into the issue of whether the Governor's directives apply to the row offices.

Mr. Craig agreed. He was really speaking to the opinion. He believes that the gift ban is good public policy.

Senator Smucker appreciated the work that was done on the policy and he supported the end product. He encouraged other board members to support the policy. He felt it was important to include some of the exceptions that were included as items of nominal value and still gets to the point of the gift ban which is to have confidence in decisions that are being made without other influences.

Chairperson Heuer explained that the policy being voted on was the one that was handed out at the meeting. He asked Mr. Cohn to explain the minor changes.

Mr. Cohn said that on behalf of the House Democrats, they also planned to support Senator Smucker's proposal. Their Chief Counsel obtained a memo from the Governor's Chief Counsel which provided more direction and lead to two more changes in the resolution. He explained that in the first paragraph that indicates that the gift ban is very specific to their service on the board. Also the gift ban does not apply to campaign contributions to appointees which are regulated elsewhere in the law.

Senator Dinniman said that although he had assumed the part about campaign contributions, he thought that adding it to the policy makes it very clear.

Mr. Craig asked an implementation question. If Treasury had a financial literacy program and Montgomery County Community College offered the use of their auditorium to the Treasurer to give the presentation. If the use of the facility was either at below cost or free, is it a gift that would otherwise be prohibited by the ban.

Secretary Topper thought that it would probably be a better question for counsel but he believed that based on the way they have been administering the gift ban in his department, the answer would be no. The benefit that is being derived from the use of the facilities is to the office of the Treasurer. It is not a gift to the Treasurer or Mr. Craig as the proxy.

Mr. Craig believed that was reasonable. He asked counsel what phrase would allow for that.

Mr. McCarty explained that it mentions that it prohibits personal use and in this example the benefit is to the department.

Chairperson Heuer thanked Senator Smucker for bringing this issue to the board and he thanked everyone who worked on the policy.

Chairperson Heuer asked for a motion to approve the gift ban resolution.

WHEREAS, the members of the board of SPSBA desire to adopt a gift ban pertaining to SPSBA staff and board members and their designees and proxies.

NOW THEREFORE BE IT

RESOLVED, that no staff member, board member or designee or proxy of a board member may knowingly solicit or accept for his or her personal use or the personal use of another, a gift, gratuity, favor, entertainment, hospitality, loan or any other thing of monetary value, including an in-kind gift, given or to be given to the staff member, board member or designee or proxy of a board member as a result of his or her employment with or service to SPSBA from a person who:

1. Is seeking to obtain business from or has financial relations with SPSBA; or
2. Has interests that may be substantially affected by the performance or nonperformance of the individual's official duty with SPSBA.

Exceptions to the foregoing are limited to the following instances:

(a) The solicitation or acceptance of something of monetary value from a friend, parent, spouse, child or other close relative under circumstances which make it clear that the gift is motivated by a family relationship or personal friendship rather than the position of the staff member, board member or designee or proxy of a board member. Relevant factors in making such a determination include the history of the relationship (for example, does the friendship pre-date employment/association with SPSBA) and whether the family member or friend pays for the gift.

(b) The acceptance of loans from banks or other financial institutions on customary terms of finance for proper and usual activities, such as home mortgage loans.

(c) Participation in widely attended gatherings free of charge is permissible when a staff member, board member or a designee or proxy of a board member is acting in furtherance of his or her official duties with SPSBA and acceptance of food or refreshment of nominal value on such occasion.

(d) Acceptance of unsolicited advertising or promotional material such as pens, pencils, note pads, calendars and other such items of nominal intrinsic value.

(e) A plaque, memento or gift of nominal value given as a token of esteem or appreciation on the occasion of a public appearance, speech, visit or the like, or on a special occasion such as marriage, illness or retirement.

(f) The solicitation or acceptance of campaign contributions.

Upon **MOTION** by **Senator Smucker**, and **SECONDED** by **Secretary Topper**, and after full discussion, the above Resolution was unanimously approved at the SPSBA Board Meeting of July 2, 2015.

## **B. Office of General Counsel Bond Counsel Appointment Procedure & Authority Marketing Plan.**

Chairperson Heuer explained that at the May meeting board members inquired about the Office of General Counsel's new bond counsel appointment procedure. In attendance are Geoff Moulton and Shawn Smith to explain the new process and answer questions.

Mr. Moulton apologized to the board and indicated that they should have attended an earlier board meeting. He explained that they wanted to address any questions or concerns that member had going forward with regard to the implementation of Executive Order 2015-02.

Mr. Moulton explained that the competitive bidding process can be run by PHEFA or SPSBA or it can be run, as was the case with Montgomery County Community College, by the institution itself. They can do it using the OGC's template and their help, but they ran the competitive bidding process themselves and selected the firm. With respect to the larger institutions that the Authority deals with, he suspects that they are going to want to run the process themselves. Bob Baccon, Shawn and Geoff met with the relative folks at Penn and had a discussion about this process going forward and they were very amenable to the process. He expects that they will want to use the OGC templates but engage in the RFP process on their own and report back to the OGC on the selection of counsel.

Mr. Moulton indicated Executive Order 2015-02 was one of Governor Wolf's first day executive orders and it had three goals. The purpose was first to make the process more open and transparent. Second, to increase participation by lawyers and firms that were previously closed out of the process, including small and diverse law firms and third, to save money. In the administration's first five plus months he believed that they have done well in all of those objectives. By way of example, Christopher Craig was part of the General Obligation Bond and the RFP for outside bond counsel resulted in an approximated \$50,000 reduction or a 36% savings in counsel fees over similar issues in the past. He recognized that whether the Commonwealth saved money on their issuances may not be a first priority for the Authority's clients, but the Governor believes that these institutions should engage in this process whether or not they use one of these authorities as a conduit issuer. For example Temple University recently used the Philadelphia Authority for Industrial Development (PAID) as their issuer, but used an RFP and competitively bid counsel.

He realized that things did not go as smoothly as they would have liked in April and he offered apologizes for the communications issues that took place. Based on OGC's understanding at the time, they believed that they had the obligation to use the competitive bidding process, otherwise the General Counsel was going to have to go to the Governor and say that Penn wanted out of the obligation to participate. They tried to proceed as efficiently as they could. Based on their meeting with Penn, they were happy with the outcome. Even though the process delayed them about a week, there was no adverse impact. Penn's concerns were about process, which the OGC addressed with them. Penn's concerns were not with respect to the end result. Mr. Moulton understood that the boards may have received conflicting messages as the process was unfolding and for that he apologized for not communicating as clearly as they should have. They have learned a lot since then. Part of the problem was that deal was already under way when the OGC got involved in the process. They now



believe they are fully in front of this and they can handle these matters. The board understands what is going on. The institutions understand what is going on. There has been discussion about meeting with other institutions similarly to how they met with Penn, to make sure they understand the process. The OGC is ready to help in whatever way possible, either to, with PHEFA, work on the RFPs or to provide information to the institutions and let them do it themselves and report back to the OGC just as Montgomery County Community College has done, with respect to their selection. If the board wants more detailed information on the steps involved in the process, Shawn can answer those questions.

Mr. Craig bristled at the description that this was a matter of miscommunication. This was a matter of no communication. This board adopted a resolution after distributing it to board members, they discussed it and voted on it at an open public session, it was adopted and a month and a half later Brad Bumsted (Pittsburgh Tribune Review reporter) was the guy that informs him that resolution identifying counsel is not correct and to this day there were three or four counsels involved in the transaction. He was not advocating for any law firm but it was a fundamental collapse when an authority has the legal statutory right to adopt a resolution approving debt issuance transactions. The question is whether or not that resolution can simply change by the Office of General Counsel. He took the position as a member of the board, that they cannot do that. He agreed that it was a communication issue, but he questions whether it was a legal overreach. He asked if it was the position of the General Counsel's office that they may change a resolution formally adopted by this board.

Mr. Moulton acknowledged that the General Counsel does not have the authority to change a resolution adopted by this board. The board operates independently of the General Counsel. In terms of communication, there is a matter of public record, there is a memorandum that describes the process. He wasn't sure if it was posted on the Authority's website. It is posted on OGC's website and DGS's website.

Mr. Craig asked if the OGC had submitted the memorandum to the Authority's website and asked that it be posted there. Mr. Craig said that he was not advocating for the staff. He wanted to make it clear that this was not communicated to the board.

Mr. Moulton said that he was not aware that they had.

Mr. Moulton said that they had communication with Mr. Baccon about this. He indicated that their communication was with the staff and he apologized for not having communication with the board.

Mr. Craig wanted to express to the OGC an unprecedented concern that a resolution adopted by the board was changed and the board did not know about it and wasn't consulted about it and did not consent to it. It may have been a well-meaning,

well purposed change, but it was an important change and it represented a significant over reaching of authority.

Mr. Moulton said that their understanding, which was incorrect, was that the resolution was to approve the deal contingent upon the selection of counsel pursuant upon an RFP. Obviously that was not the case but it was their understanding going in. They should have known about that, they didn't and he was sorry.

Mr. Craig explained that people can see the value of competitive bidding. Long before the Governor took office, the Association of Governmental Officers adopted as a best practice the notion of competitive bidding. They would argue in their documents that you have to give huge consideration to qualifications not just price. There were three objectives of the executive order, to be open and transparent, to increase participation of firms that may not have had an opportunity to participate in the past and to save money for the Commonwealth. His concern at this point is that this struck out on all three. In the April case it was the antithesis of open and transparent especially to the board. You can increase participation but there has to be a level of competency. All of the firms are very competent. Since it is the client, the school, that is paying the bill, they should have the final say as to who is or isn't competent. That could go back to simple relationships. Edinboro University may have a small town attorney that they have worked with for the last 20 years and know their business in and out. He did not understand why, as a matter of public policy, this board should get in between that relationship. Lastly, this has nothing to do with saving money for the Commonwealth. The Commonwealth doesn't pay the bill. It is the school that pays the bill. If Edinboro, for example, wants to spend \$20,000 more for their legal counsel because they have a relationship with them and they are comfortable with them, he did not believe it is a matter of good public policy to interfere. As the board had learned at the last meeting, three schools had already walked away from this authority. If you believe the Inquirer, the Philadelphia Industrial Development Corporation (PIDC) board is now considering filling in the void that we are creating at this Authority. His concern is that the Authority serves clients. These clients have to be comfortable coming before us. He asked if the staff is aware of clients who had concerns over the last several months who have not come to this board because of the change in policy.

Mr. Baccon said that there had been clients that have not come to the Authority because of this change in policy.

Mr. Craig felt that was significant. The agency is self-funded. The Authority does not receive an appropriation. It is not funded by PDE or DGS. It is supported by the fees generated by clients. Even with good intention, if we make it more difficult for these entities to come before the board, he is concerned that we are cutting our nose to spite our face. That is a dramatic change from the last two administrations. He does believe we should encourage competitive bids, but the impact of this policy is going to be counterproductive.

Mr. Craig asked Mr. Smith if he had anything in writing as to the policy and how it would apply to these two boards.

Mr. Smith provided a hand out of how the RFP process worked. He said that they are encouraging institutions to do it on their own. Agreed with Mr. Craig that it is better that a firm be good than cheap. He noted that 60% of the score is for technical expertise.

Mr. Craig asked if the OGC is encouraging the entities to complete the RFP process themselves, can they score it the way they want to.

Mr. Smith answered that they are encouraging people to use the Governor's template. That includes 60% of the score is technical merit, 20% is cost and 20% small and diverse business participation. They are encouraging a culture of diversity in this process.

Mr. Craig asked what encouraging means. He was trying to understand the rules.

Mr. Moulton said that encourage means encourage. They had the conversation with Penn and went through this process to explain and walk through it with them. They invited Penn as they will invite others to make suggestion if they believe the template needs adjustment. The OGC will listen to suggestions and make adjustments as necessary. The OGC's preference and Penn and Temple seem fine with it, will be for them to use the OGC's template for purposes of consistency, score it on their own, report the results and then counsel gets appointed. Montgomery County Community College had their own process. The OGC's central concern is that they engage in a competitive bidding process. The OGC is going to give them the tools to make it as easy as possible, but they would like it to be consistent with the process that they are using in house, but if they have a preference to do it a different way, that will not be a problem.

Mr. Smith handed out a scoring sheet that they would provide to the institutions and an evaluator's guide to give the institutions an idea of what is an A, what is a B, what is a C. The form is very fluid. Technical merit can be how well someone knows the institution, how well someone knows the market that they are playing in. There is fluidity so that institutions are not having a law firm crammed down its throat.

Mr. Moulton said that they are not planning to check their grading. They are going to give OGC the score sheets. They are going to report back the outcome so that they can see that a competitive bidding process occurred. He is sure that large institutions are going to do this. Small ones may want the OGC's help. The OGC is going to allow them to do the grading on their own. They will not interject themselves

in the process.

Mr. Smith said that in the cases where institutions have asked for help, he nor anyone from the OGC is on the evaluation team.

Mr. Craig appreciated that but he thinks this gets to the point of making the board as fundamentally accessible as humanly possible to client schools. He asked if a client says that they want to score cost at 30 points and take 10 points off for understanding the process and they divert from the OGC's selection criteria is that fine as long as they have a competitive process.

Mr. Moulton said that the OGC is not going to get in the way of using these boards for the work that they need to do if that is how they prefer to do it.

Mr. Smith's intent, especially for those institutions not familiar with procurement, is to make this as easy a lift as possible. That is why it is a very simplified form which is usually very complex when they do their own internal 1000 point procurement form. He realized that it wasn't going to look easy to Temple and Temple was very complementary of the process.

Mr. Craig indicated that Temple has a very sophisticated operation. Penn also has a sophisticated operation. If a school, a Bucknell, a Millersville, a Lebanon Valley College wanted to make adjustments to the selection criteria to better reflect what they place value upon, they can do so.

Mr. Moulton said that they are very concerned and don't want institutions to walk away from these boards. That is why they have agreed to go to any institution and speak to them about the process. As long as the institutions engage in a bona fide competitive bidding process that addresses the Governor's concerns that he has outlined then the precise method of scoring is up to them.

Mr. Craig appreciated receiving the policy. He confirmed that the school scores the RFPs. He indicated that he did not want to pick their lawyer. Mr. Craig said that from the perspective of the newspaper article, it looked like the OGC was picking the firm and a law firm was getting treated well because their prior relationship. He was not saying that is right but he asked if they realized that it creates an impression issue.

Mr. Moulton agreed that the article did create an impression issue. They do not want to leave that impression in any way. They are learning as they are going and one of the things that they would find very attractive is to turn the whole process over to them. If they are the ones engaged in the RFP process and they are the ones scoring the firms and they are the ones that tell the OGC, that is the best for everybody.

Senator Dinniman said that if they truly want transparency then everyone that

submitted a bid, their bid and every scoring sheet that is shared with the board should be shared with the public. If it is not then you get the image problem that there is a possibility that something unfairly was done. The results of the process should be shared.

Mr. Smith agreed with Senator Dinniman. He indicated that where the line is drawn is to the personal scoring sheets. The aggregate scoring sheet is made public and they publish the actual Recommendation for Counsel Memorandum which was never made public before.

Secretary Topper thought that the Senator was getting to the process and procedures that the board should follow independent of what Commonwealth agencies might do with guidance from OGC. It is really up to the board to decide if they would like to see score sheets from the Universities, he believes OGC is perfectly willing to make all of that documentation available.

Senator Dinniman agreed that the competition should be known to the public and the board.

Mr. Moulton said that the OGC is willing share the aggregate scoring sheets, but not the individual scoring sheets for all of the firms that submitted bids and the results of that.

Senator Dinniman indicated he is not concerned with the individual scoring sheets. The board should understand the process. If the board has to vote on that then the board should have access to the same information because they have to attest to the same information that this truly was bid competitively.

Mr. Smith explained that they draft a memo that is approximately three to five pages long that describes exactly what happened, exactly what the criteria was, exactly what all of the bids were, their scores, exactly why we are recommending or the institution is recommending the firm that is being selected. That is presented to the General Counsel who signs it and then it is presented to the Executive Director of the Authority, who acknowledges and signs it. That document could be shared with the board. The document is then published.

Senator Smucker asked how Mr. Moulton would characterize the relationship between the board and the OGC.

Mr. Moulton said that the board has its own counsel. The OGC does not supply counsel to the boards. The OGC designates counsel. That is the way it was done in the past. Now the OGC is only going to agree to designate counsel after going through the competitive bidding process. The OGC has always been asked to sign off on the selection of counsel on these deals. What has changed is that as of January 21<sup>st</sup>, Executive Order 2015-02, which constrains them in the approval of the selection of

counsel to assure that there was a competitive bidding process in that selection.

Senator Smucker asked if the OGC did not feel that there was a need prior to come to the board before that policy being adopted to come to the board and ask for approval of the board in terms of that policy.

Mr. Moulton indicated that they had been talking to staff in February as to how this was going to be implemented. In retrospect it would have been better to come to the board and talk directly about it and that was a mistake on their part. The OGC is being asked to approve counsel and their obligation under the executive order is to assure counsel is selected through a competitive bidding process. It would have been better if they had this conversation at a meeting in February as opposed to a meeting in July.

Mr. Craig explained that the Commonwealth Attorney's Act allows for the OGC to select representation for all executive agencies. That is the authority on book that the current and prior administrations would say that they have to sign off on all counsel appointments. Even the independent counsel was signed off on by them. The tradition has always been for at least the last two administrations, as long as the counsel that was selected by the school has been on the qualified identification list the OGC would sign off on it.

Mr. Craig asked if the OGC was asking the board to adopt this policy or were they saying that this is the policy and we are going to go forward with the OGC.

Mr. Moulton said that they are not asking the board to adopt the policy. He explained that it is a work in process and to the extent that the board has suggestions as to how to make this better for the institutions that you serve, they are very interested in that. If the board or the institutions that the board serves believes there is a better way, they are very amenable to that. They are not asking for action by the board.

Mr. Smith asked if the board had suggestions as to other places that the information could be published. They already publish it on the DGS website and the e-market website.

Mr. Craig indicated that receiving the information today is helpful. He believes that this is a potential directive for the board and staff. He asked the staff that at each meeting, five minutes be set aside to inform the board as to what the experience has been as to the impact of this, since it is the fiduciary obligation of the board. He would like to know the stumbling block and if and how they were resolved. The board needs to independently be informed by staff as to the practical effect of this policy. He believes that is very important for this board to exercise its duties, to know the impact of the decisions that are being imposed or suggested upon us.

Mr. Baccon agreed that we would do that.

Mr. Baccon explained that staff drafted a letter and showed it to the OGC. The OGC revised it and gave it back to us earlier today. It contains pretty much what was included in our original draft. It is simply a letter that we plan to send to the institutions that we have done business with to explain the change in procedure with regard to the selection of bond counsel. It also says that we would be happy to meet with them and discuss how the process works. The OGC has agreed to join us at any meeting we would like them to attend. The policy is different and it has had an impact on the Authority to date. We have had a number of institutions that said this is an additional process that we have to go through. There are positives to it as well. Mr. Baccon agreed to keep the board posted. He also asked the board to review the letter and to offer any suggestions or questions.

Chairperson Heuer asked board members to submit their suggestions or comments to get back to Mr. Baccon within two weeks.

Chairperson Heuer agreed with Mr. Craig that this would be discussed at every meeting going forward.

Ms. Madden said that the letter provides that there has been a new selection process adopted by this board.

Secretary Topper said that is the board's letter and not OGC's letter. To the extent that members need to further edit the letter to make it consistent with what the board should be saying, please submit edits to Mr. Baccon to make certain the board's letter is the board's letter.

Chairperson Heuer said that nothing will go out until all board members are satisfied with the letter.

Secretary Topper agreed with Mr. Craig's suggestion that we have a routine assessment of where the board is relative to the market place. He would like to broaden the conversation beyond the impact of the OGC's new policy. It would be wise for the board to have the staff report what is going on in the market. This could include deals that didn't happen or inquiries from customers that came and went. It would be interesting to know where we are in terms of our own market penetration. Having staff's assessment of where we are and how successful we are in the market place would be valuable to the board.

Mr. Moulton thanked the board for the opportunity to attend the meeting. He indicated that if the board had additional questions and wanted them to attend another board meeting let them know. They stand ready to help with the marketing front, to make the institutions comfortable with the process and to answer additional questions of the board.

Ms. Madden explained that the Auditor General intends to reach out to a number of the entities and institutions now that the contacts have been provided to him as a board member. They will be happy to share the information with any of the board members. He felt it necessary to reach out to them to get an understanding as to what process would work.

Chairperson Heuer asked if there was any other old business to come before the Board, and hearing none, he moved to new business.

#### **8. NEW BUSINESS.**

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

#### **9. ADJOURNMENT.**

There being no further business to come before the Board at this time, upon **MOTION** by **Secretary Topper**, and **SECONDED** by **Ms. Mariano**, the SPSBA Board Meeting was adjourned at 11:45 a.m.



## SUNSHINE ACT MEETING NOTICES

Thursday, June 11, 2015

**If you need an accommodation due to a disability,**

please contact the ADA contact name listed below

SPECIAL: State Board of Podiatry Committee Meeting: June 17, 2015,

8:30AM. 2601 N. Third St., HBG.

Contact Name: Nicole Thurstin 787-6604

**Pre-meeting Executive Session of the Public Employee Retirement**

**Commission Meeting:** June 17, 2015, 9:00AM. 8E-A East Wing,

Main Capitol Bldg., HBG. Regular Meeting of the Public Employee

Retirement Commission is at IOAM. Contact Name: Rose Hutchison

783-6100

SPECIAL: Board of Finance and Revenue Statutory Meeting: June 25, 2015,

10:15 AM. 1101 S. Front St.,

Suite 400, HBG. Contact Name:

Jacqueline Cook 787-2974

**PA Game Commission Board of Commissioners Meeting: June 29, 2015, 8:30AM.**

PA Game Comm. Bldg., 2001 Elmerton Ave., HBG. Also scheduled at 8:30AM on

6/30/15. Purpose of meeting: To discuss Game

Commission business. Contact Name: Joan French 787-

7836

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SPECIAL: State Public School Building Authority and PA Higher

Educational Facilities Authority Meetings: July 2, 2015, 10:30

AM. North Office Bldg., Rm. 515, HBG.

Contact Name: Bev Nawa 975-2204

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Appeared in: *Patriot-News* on Thursday, 06/11/2015

STATE PUBLIC SCHOOL BUILDING AUTHORITY  
PENNSYLVANIA HIGHER EDUCATIONAL FACILITIES AUTHORITY  
Notice of the Meeting of the Board to be Held  
July 2, 2015

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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, July 2, 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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Harrisburg, PA

I CERTIFY that the notice on the previous page for the July 2, 2015, meetings was dispatched to the following on June 8, 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 – 18<sup>th</sup> 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, Secretary of General Services  
515 North Office Building, Harrisburg, PA  
Pedro A. Rivera, Secretary of Education  
333 Market Street - 10th Floor, Harrisburg, PA

GIVEN under my hand and seal this 8th day of June 2015.

/s/ Robert Baccon

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