

Minutes
Council on Postsecondary Education
Special Meeting
July 18, 2018

The Council on Postsecondary Education met in a special meeting on Wednesday, July 18, 2018, at 10:00 a.m., ET, at the Council offices in Frankfort, Kentucky. Chair Sherrill Zimmerman presided.

**WELCOME AND
ROLL CALL**

Chair Zimmerman called the special meeting to order and welcomed everyone.

The following members attended in person: Robert H. Staat, Sherrill Zimmerman, and Interim KDE Commissioner Wayne Lewis.

The following members attended by teleconference: Ron Beal, Joe Ellis, Kim Halbauer, Lori Harper, Lucas Mentzer, Donna Moore, Kristi Nelson, Vidya Ravichandran,.

The following members did not attend the meeting: Ben Brandstetter, Shawn Reynolds, Sebastian Torres, and Carol Wright.

The purpose of the special-called meeting was discuss and make a recommendation to the Governor regarding Kentucky State University Board of Regent's petition to remove regent Dr. Karen Bearden, in accordance with KRS 63.080(2).

**ACTION:
RESPONDENT
BEARDEN'S
REQUEST FOR
STAY OF
PROCEEDINGS**

Respondent Dr. Bearden requested a stay of the proceedings pending her formal request for an Attorney General Opinion on legal issues concerning the following: (1) Whether the Council on Postsecondary Education ("Council" or "CPE") has a conflict of interest disqualifying it to investigate and oversee the removal process for Dr. Bearden; and (2) Whether KRS 63.080(2)(c)(3) violates Dr. Bearden's rights to due process by not providing an opportunity for an evidentiary hearing.

Mr. Travis Powell, CPE's general counsel and associate vice president, presented the staff's recommendation that Dr. Bearden's request be denied due the fact that Executive Vice President Dr. Thompson recused himself from any involvement in the investigation which eliminated any concerns raised that the decision made by the Council could be made with unfair bias

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against her. Additionally, the statute provides appropriate latitude for the Council to perform investigations into claims made by institutional boards or the Governor for removal of a board member depending on the particular facts and circumstances at hand. Considering that the underlying facts of this case are not in dispute, the Council's investigation process appropriately addresses any due process concerns Dr. Bearden may have in its making of a non-binding recommendation to the Governor.

MOTION: Ms. Nelson moved that Dr. Bearden's request to stay the proceedings be denied. Dr. Ellis seconded the motion.

VOTE: In a roll call vote, the Council passed the motion unanimously.

DISCUSSION:
FINDINGS FROM
INVESTIGATION
CONDUCTED BY
STAFF ON BEHALF
OF CPE

Mr. Powell reviewed the process of KRS 63.080(2)(a), which provides that individual members of public university and community college systems boards of trustees or boards of regents shall not be removed except for cause. Subsection (3) states that a member may be removed for cause for conduct, including but not limited to, malfeasance, misfeasance, incompetence, or gross neglect of duty.

In order to initiate the removal of a board member, the Governor or the board of trustees or board of regents, as applicable, shall notify, in writing, the member and the Council that the member should be removed for cause and shall specify the conduct warranting removal. The member shall then have seven (7) days to voluntarily resign or to provide evidence to the Council that the member's conduct does not warrant removal. Within thirty (30) days after receipt of notice from the Governor or the board, the Council on Postsecondary Education shall review the written notice, investigate the member and the conduct alleged to support removal, and make a nonbinding recommendation, in writing, to the Governor as to whether the member should be removed, a copy of which shall also be provided to the Legislative Research Commission. KRS 63.080(2)(c). The Governor then makes a determination, in writing, whether the member should be removed

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and notifies the member, the applicable board, the Council, and the Legislative Research Commission of the determination. If the Governor's determination is to remove the member, the Governor shall remove the member by executive order, and shall replace the member with a new appointment according to the applicable statutes for the board of trustees or board of regents.

On June 18, 2018, both the Council and Dr. Karen Bearden, member of the Kentucky State University (KSU) board of regents, had received official notice that the KSU board unanimously adopted a resolution on June 7, 2018 to remove Dr. Bearden from its board. In its resolution, KSU argued that Dr. Bearden “created an impermissible conflict of interest by filing a lawsuit against Kentucky State University and that said conduct may warrant removal from the Kentucky State University Board of Regents.”

At its regular business meeting on June 22, 2018, General Counsel and Associate Vice President Travis Powell briefed the Council on the receipt of the resolution and stated that if Ms. Bearden did not resign on or before June 25, 2018, staff would commence an investigation as directed in the statute. KSU would be asked to submit a brief providing detail as to why it believes the filing of the lawsuit by Dr. Bearden against the institution is cause for removal. KSU would serve a copy of its brief to Mr. Powell and Dr. Bearden, and Dr. Bearden would then submit her response. CPE staff would review each submission, request any further information it deemed necessary, and provide a recommendation to the Council for board action on or before July 18, 2018. The Council would review the materials submitted, the staff's recommendation, and then make its nonbinding recommendation to the Governor in a specially-called meeting.

On June 25, 2018, Dr. Bearden, through counsel, indicated to Mr. Powell that she would not resign from her board position. The following day, Mr. Powell contacted counsel for both Dr. Bearden and KSU to provide a briefing schedule as part of the Council's investigation. KSU was instructed to provide information and discussion to support its request for removal to Mr. Powell and Dr.

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Bearden's counsel by midnight July 3, 2018. Dr. Bearden would then have until midnight July 10, 2018, to provide her response. Both parties complied with the briefing schedule and each submission has been reviewed and considered.

A full explanation of the staff's findings and analyses can be found in the agenda materials.

**ACTION:
RECOMMENDATION
TO GOVERNOR
REGARDING
KENTUCKY STATE
UNIVERSITY
BOARD OF
REGENT'S
PETITION TO
REMOVE DR.
KAREN BEARDEN**

In accordance with KRS 63.080(2), the Kentucky State University (KSU) Board of Regents petitioned for the removal of Regent Dr. Karen Bearden from the board due to the conflict of interest created by the filing of a lawsuit against KSU.

MOTION: Dr. Staat moved that the Council submit a recommendation to the Governor that Dr. Bearden be removed. Ms. Moore seconded the motion.

The Council engaged in a lengthy discussion regarding the matter including the status of the formal legal proceedings, the punitive damages demanded in the lawsuit, how Dr. Bearden's lawsuit created a conflict to a board member's fiduciary duty of loyalty, and whether or not the court's final dismissal of the lawsuit had any impact on KSU's petition for removal.

VOTE: In a roll call vote, seven members voted yes, two members voted nay, and one member abstained. The motion did not pass.

Council member Kristi Nelson had to leave the meeting at this time.

The Council discussed the matter further, including Dr. Bearden's duty of loyalty to KSU and how it could be continually questioned after the filing of this lawsuit if she continued to serve. CPE President King provided additional context on the matter, and Mr. Powell stated the findings of fact are complete and in order to make a formal recommendation to the Governor on the matter.

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MOTION: Dr. Staat again moved that the Council submit a recommendation to the Governor that Dr. Bearden be removed. Ms. Moore seconded the motion.

VOTE: In a roll call vote, eight members voted yes. Kim Halbauer abstained from the vote. The motion passed.

Council staff will provide the Council's nonbinding recommendation in writing to the Governor, a copy of which shall also be provided to the Legislative Research Commission.

ADJOURNMENT

The meeting adjourned at 11:15 a.m., ET.



Robert L. King
President



Heather M. Faesy
Associate, Board Relations
& Special Projects