



**MINUTES OF THE
BOARD OF REGENTS
SPECIAL MEETING
Friday, April 24, 2015
9:20a.m**

CALL THE MEETING TO ORDER

The special meeting was formally requested in a written letter on April 23, 2015 by Regents Maria (Malua) Peter, Elaine Hocog Orilla, Frank M. Rabauliman, William Torres and Dr. Elizabeth Rechebei. The letter was forwarded via email on April 23, 2015, and addressed to BOR Chairman Juan T. Lizama and Acting President David J. Attao. An agenda and order of business was attached.

The proposed agenda was published in Marianas Variety's April 23, 2015 edition. Chairman Juan T. Lizama on April 23, 2015 appointed Vice Chairperson Elaine Orilla Acting Chairperson effective April 24, 2015 until his return on April 25, 2015. Acting Chairperson Orilla presided over the April 24, 2015 Special Meeting held at the NMC Board of Regents Conference Room on Saipan.

At 9:20 AM, Acting Chairperson Elaine Hocog Orilla called the meeting to order. Five members of the Board of Regents were present, and a quorum was present.

ROLL CALL

Board Members Present:

Acting Chairperson Elaine H. Orilla
Regent Frank M. Rabauliman, member
Regent Michaela U. Sanchez, member
Regent Maria (Malua) T. Peter, member
Regent William S. Torres, member

Board Members Absent:

Regent Elizabeth D. Rechebei: off island
Regent Juan T. Lizama, member: off-island

NMC Staff/Faculty Present:

Dave Attao, Acting NMC President
Helen B. Camacho, Board Secretary

NMC Legal Counsel:

Mark Scoggins, Law Firm of Mathew Smith, LLC

NMC Board Legal Counsel:

Jesus C. Borja: Off Island

Members of the Public present:

None.

PUBLIC COMMENTS

None.

REVIEW AND ADOPTION OF AGENDA

Regent Peter motioned, seconded by Regent Sanchez, to adopt the meeting agenda. All members voted yes, the motion passed.

Before the meeting proceeded, Regent Torres requested permission to have the board staff pass out copies of board membership for himself and Regent Orilla, in order to establish their official status as members of the NMC Board of Regents. Every member present during the special meeting received a copy, including Acting President David Attao and NMC Legal Counsel Scoggins.

Regent Torres asked that the record reflect the presence of Attorney Mark Scoggins, and to allow Mr. Scoggins to enter into the record the official capacity for his appearance at the special board of regents meeting. Regent Torres queried Mr. Scoggins whether his entry of appearance was as a Board of Regents legal counsel or NMC legal counsel, or both, serving in dual capacities.

Mr. Scoggins surmised there was an appearance of concern about whether he may be able to render specific legal advice to the Board of Regents that would be considered independent of NMC. Mr. Scoggins indicated that his answer to that question should be no, for Mr. Scoggins cannot render specific legal advice to the board in his capacity as counsel for NMC summoned by Acting President David J. Attao. Scoggins noted that he has been NMC's legal counsel for close to 9 years now, his role with regard to the board has been roughly the same for that entire period and that he understood that he was being asked to do two things with regard to the board. Number one is when he appears before the board when Mr. Borja is unavailable. Number two, the more frequent reason he is called to be in attendance at board meetings is to render or brief the board on NMC matters, or answer questions about matters that concern NMC generally. It is his role to provide advice and counsel in the best interest of NMC (not necessarily the board).

Regent Torres insisted for Mr. Scoggins to clarify the position he was taking for his appearance before the board because the matter before them had more to do with the board itself and not about NMC. And, that it was very important no ethical breach would be committed in the conversation with respect to rendering legal opinion to the board. Regent Torres went on to say that we need to be sure no conflict exists between NMC and BOR and asked Mr. Scoggins who directed him to attend the special board of regents meeting. Mr. Scoggins responded that it was Mr. Dave Attao, the Acting President who asked him to be present at today's meeting. Mr. Attao acknowledged that he did.

Regent Torres then indicated the reason for the question was that during the last retreat this year which involved the members of the board of regents, NMC president and board legal counsel Borja, it was made abundantly clear that the board legal counsel is the board legal counsel unless and until the board acts in specifically authorizing the board legal counsel to render legal advise or legal assistance to the college, making certain that the line of differentiation is made very clear. Mr. Scoggins indicated that the difference is clear. He added that should the board have any specific legal query that pertains only to the board, then it would be his advice to talk to board legal counsel Borja, not him.

Following the exchange, Regent Torres then requested to be privileged to enter a written statement into the record. Regent Orilla, Acting Chairperson acceded to Regent Torres' privilege request.

SUSPEND THE ORDER OF BUSINESS

Regent Torres motioned to suspend the order of business and seconded by Regent Rabauliman. All members voted yes, the motion passed.

OLD BUSINESS

Post Secondary Education Act of 1984 as Amended – Tabled.

NEW BUSINESS

OAGCOR: 2015 – 067

Dave Attao, NMC Acting President indicated that he as Acting President had received a letter issued by the Attorney General's Office yesterday, wherein the letter provided clarification sought by the board of regents regarding term of office, and that the letter identified two vacancies on the board of regents. A copy of the letter was shared among the board members.

The members indicated that this letter was a complete surprise to the members.

The board would like to know how and why the college sought the advice of the Attorney General when that was not recommended, nor acted upon by the board in a duly convened meeting of the board.

Regent Peter added that this was very troubling as the board retains its own board legal counsel.

Regent Rabauliman felt that all the pushback on previous calls for regular meetings is suspect only to find out that there is this letter from the Attorney General's Office regarding the legitimacy of the board's term.

Regent Peter also inquired if there was a formal letter written to the Attorney General requesting for review of the board's term. To which Acting President David J. Attao indicated he was unaware of any such letter.

The query followed by discussion on institutional autonomy and thus, should there be a dispute then a certified question may be necessary. Regent Torres openly disputed the content of the A.G.'s letter and asked that the matter be placed in a certified question to the court. He then asked to be privileged to speak to the record.

"The Northern Marianas College (NMC) maintains a "constitutionally created autonomy" separately granted in and through Article XV, Section 2(a) of the CNMI Constitution (1985), in order "that it (board) can fully control the administration of its affairs." *N. Marianas Coll. V. Civil Serv. Comm'n II, 2007 MP 8.*

The Northern Marianas College Board of Regents is the governing authority of and fiduciary body for NMC. In that capacity, the Board of Regents retains "the sovereign authority to govern itself" (State v. Mallan, 86 Haw. 440, 469 n.19 (1998) pursuant to Article XV, Section 2(a) of the CNMI Constitution, which states: "(t)he board of regents...shall have autonomy in the administration of its affairs."

In other words, the board MUST ensure and carry out its DUTY in preserving the institution's separately created autonomy granted in the administration of its affairs. The board's internal decisions over its affairs may not be infringed. See also *2010 MP 14 DPL v. CNMI*, Oct., 4, 2010.

Among the board's duties is referenced in Article XV, Section 2(a), which requires that "(t)he president of the college shall be appointed by a representative board of regents." In accordance with applicable statute (i.e., PL 4-34 as amended) and BOR policy.

Article XV, Section 2(a) in Nov. 1985 also requires that "(t)he board of regents shall be appointed to staggered terms (re. PL 4-34, Section 6; PL 4-34, Section 7; PL 4-34, Section 10(a) in March 1985 in re. meetings) by the governor and shall have autonomy in the administration of its affairs.

Source: Second Const. Conv. Amend. 38 (1985); subsection (a) amended by House Legislative Initiative 15-1 (2007); subsection (b) amended by House Legislative Initiative 17-12 (2012).

Commission Comment: House Legislative Initiative 15-1 amended subsection (a) of this section by removing "and shall formulate policy relating to the higher education needs of the Commonwealth of the Northern Mariana Islands" from the third sentence and adding the last sentence. House Legislative Initiative 17-12 amended subsection (b) by replacing "mission" with "purpose" in the first sentence and adding the last sentence.

PL 4-34, Section 10(a) on meetings of the board of regents mandates "(t)he board shall hold its first meeting within months of the enactment of this Act(1985)", in which Section 7(a) of the same stipulates that "(m)embers of the Board shall serve staggered terms of four years; Provided at the first meeting of the first board, the members shall by choosing lots designate three members who shall serve for four years, two members who shall serve for three years, and two members who shall serve for two years."

The board of regents was first established in PL 3-43 (Jan. 19, 1983) and in PL 4-34 (March 28, 1985) pursuant to Amendment 25 of the CNMI Constitution as an autonomous governing authority for and fiduciary body of the Northern Marianas College with the capacity to retain its independent legal counsel.

Seeking an opinion outside the college board likely compromised the autonomy and independent legal authority of the board that is critical to its accreditation.

Seeking an opinion outside the college board likely waived the autonomy of the college, contrary to the accreditation requirements.

It is also a breach of the regents' fiduciary in defending NMC's "constitutionally created autonomy" and usurpation of the board's authority to seek legal advice outside of the college or board legal counsel NMC is unique to the extent the CNMI Constitution grants its autonomy and upheld by the CNMI Supreme Court in its holding "that NMC is a fully autonomous agency under the CNMI Constitution." not within an agency of the executive branch.

Article XV, Section 2(a) of the Constitution grants separate autonomy to NMC to fully control the administration of its affairs. Autonomy is defined as "the sovereign authority to govern oneself. *State v. Mallan*, 86 Haw. 440, 469 n.19 (1998)", and NMC must have autonomy in the administration of its affairs."

The board of regents has a duty to preserve and advance the autonomy of NMC so much so that even the board is granted no authority or waiver to waive this mandatory constitutional requirement in the

constitution. The board has a fiduciary duty as a trustee for the Northern Marianas College. What has transpired which purported involved individuals who were purportedly directed or had assumed was/were acting under color of office are discoverable and should be discovered to establish the factual basis(es) a directed action for an intended resulted or residual outcome notwithstanding. That is for the board of regents to perform its due diligence in good faith acting as a board.”

End-of-Regent Torres Statement to the Record.

Following Regent Torres’ statements for the record, there were additional concerns raised about the AGO’s letter with regard to the board’s term. Counsel Scoggins suggested that the board take this up with their counsel. There were discussions about how back in as far as 2009 the accrediting body had concerns with the board’s staggered term. Regent Rabauliman raised the issue of the actions of the board in the past. Counsel Scoggins said that it is a significant and legitimate concern. So, therefore legal counsel should look at the following matters:

1. The content of what’s contained in the AGO’s letter.
2. What are the implications (where you used the word “henceforth” and also spoke to the past).

Recess called at 10:35 a.m.

EXECUTIVE SESSION (At any time during the scheduled meeting of the Board of Regents may be required to enter into executive session to discuss matters deemed privileged and confidential) .

- a. Legal Matters
- b. Personnel Matters
- c. Real Estate/On-Going Negotiations

The regents did not go into executive session. This portion of the meeting was tabled.

ADJOURNMENT

Regent Peter motioned to resume the meeting and moved to adjourn, seconded by Regent Sanchez. The meeting adjourned at 12:30 p.m.