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Presidential Search, SOSC

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Meeting #542

STATE BOARD OF HIGHER EDUCATION

MINUTES OF REGULAR MEETING HELD IN THE GOLD ROOM,
ARNOLD DINING HALL, OREGON STATE UNIVERSITY
CORVALLIS, OREGON

November 21, 1986

Meeting #542

A regular meeting of the State Board of Higher Education was held in the Gold Room, Arnold Dining Hall, Oregon State University, Corvallis, Oregon.

ROLL CALL

The meeting was called to order at 10:30 a.m., November 21, 1986, by the President of the Board, Mr. James C. Petersen, and on roll call the following answered present:

Mr. Robert R. Adams  Mr. Louis B. Perry
Mr. John W. Alltucker  Mr. George E. Richardson, Jr.
Mr. F. David Crowell  Miss Mildred A. Schwab
Mr. Michael W. Hermens  Mr. James C. Petersen
Mrs. Janet S. Nelson

Absent: Directors Chao and Hensley were absent for business reasons.

OTHERS PRESENT

Centralized Activities--Chancellor William E. Davis; Secretary Wilma L. Foster; W. T. Lemman, Executive Vice Chancellor; Lawrence C. Pierce, Vice Chancellor for Academic Affairs; W. T. Slater, Vice Chancellor for Public Affairs; John Owen, Vice Chancellor, OCATE; R. S. Perry, Associate Vice Chancellor, Administration and Planning Services; Davis Quenzer, Associate Vice Chancellor, Fiscal Policies; Holly Zanville, Associate Vice Chancellor, Academic Affairs; Kay Juran, Assistant Vice Chancellor, Public Affairs; Virginia Boushey, Assistant to Executive Vice Chancellor; Roger Olsen, Director, OCATE; Jim Sellers, Director of Communications; Melinda Grier, Compliance Officer; James Casby, Assistant Attorney General; Joe Sicotte, Associate Vice Chancellor, Personnel Administration.

Oregon State University--President John Byrne; Stefan Bloomfield, Assistant to the President; W. T. Slater, Vice President, University Relations; Keith Mobeley, Assistant to President, Public Affairs; Caroline Kerl, Legal Advisor/Coordinator; T. D. Parsons, Vice President, Finance and Administration; Ed Coate, Vice President, Finance and Administration (effective 12-1-86); D. S. Fullerton, Associate Vice President for Academic Affairs; Craig Gregory, System Analyst; Sally Malueg, President-elect, Faculty Senate.

University of Oregon--President Paul Olum; Richard J. Hill, Provost; Dan Williams, Vice President for Administration.

Oregon Health Sciences University--President Leonard Laster; Peter Wollstein, Interim Vice President, Finance and Administration.
The Board dispensed with the reading of the minutes of the last regular meeting held on October 10, 1986, and approved them as previously distributed. The following voted in favor: Directors Adams, Alltucker, Crowell, Hermens, Nelson, Perry, Richardson, Schwab, and Petersen. Those voting no: None.

Staff Report to the Committee

Portland State University requests authorization to reactivate its Middle East Studies Center. The Center was closed in December 1981 as part of a systemwide set of program eliminations and suspensions required by budget reductions in 1982-83. Although the Center itself was closed, many parts of the program were continued. Instruction in Hebrew and Arabic languages continued at a reduced level in the foreign language department. Instruction in Turkish and Persian was suspended. The certificate in Middle East Studies remained with the advising provided by regular instructional departments.

In 1984, the certificate program was incorporated into an option in Middle East Studies in the new BA degree program in International Studies. Student interest in international studies is growing at Portland State University. The reactivation of the Middle East Studies Center will strengthen the current instructional offerings in Middle East Studies by adding new faculty and a mechanism for organizing new programs of research and public service. The reactivation of the Center supports the continued development of a center of excellence at Portland State University in international studies.
It will also enable Portland State University to assist people in the Portland community who are interested in the Middle East.

Resources to Reactivate the Center

Approximately $120,000 will be needed to adequately staff and equip the Middle East Studies Center at Portland State University. The funds would be used to hire a director for the Center, additional language instructors, and a part-time secretary. About $15,000 is requested for equipment and furnishings for the new Center.

The source of funds needed to reactivate the Center has not been identified specifically. The most likely sources would be program enhancement funds from the 1987-1989 appropriation, State System revenues allocated to Portland State University, or reallocated funds from current Portland State University programs.

Staff Recommendation to the Committee

It was recommended that the Board authorize Portland State University to reactivate its Middle East Studies Center effective Fall 1987.

Discussion and Recommendation by the Committee

Mrs. Nelson summarized the proposal presented to the Committee.

Dr. Pierce said there had been considerable discussion with Portland State University about reactivating the Middle East Studies Center. He said the staff believed the program was very consistent with the mission assigned to the institution to emphasize and develop a center of excellence in the international area as an additional small piece of a larger design of strengthening international programs at Portland State University. Dr. Pierce indicated the program had been a very good one when it was operating and was one of very few programs in Middle East Studies in the nation. Dr. Pierce invited Dr. Margaret Dobson, Executive Vice President; Dean William Paudler; and Dr. Grant Farr, Head of the Sociology Department, to respond to questions about the proposal.

Dr. Dobson commented that the proposal contained information on the historical perspective relative to the activities of the center. She reviewed the past activities of the center, the certificates awarded, and the continuing interest of students in international programs and Middle East Studies. She noted that a center of distinction brings an acknowledgement relative to the stability and leadership in an area of study and serves a prominent role in the ancillary type of activities associated with
the discipline. She said she was convinced Portland State University could regain very quickly the national and international prominence which resulted from the center image.

Mr. Perry said the previous program had been an excellent one but he was going to vote against the proposal, not because of the program, but because his first priority was to improve faculty salaries. He commented that the state's economy was growing very slowly and that he expected numerous proposals from the various institutions, particularly with a new administration in Salem. Mr. Perry said he would prefer to improve salaries for existing programs and staff. He said it was essential to continue to employ distinguished professors and to reward those in the State System who were doing a good job. He said he was not opposed to the program but his priorities were a little different.

Dr. Dobson said the faculty and administration at Portland State University would support the salary priority but there was also relevance to the abilities of the institutions to generate additional dollars outside their legislative dollars by having distinctive academic units of high quality. This is particularly true of center type outreach activities which serve various publics and generate interest. The funds requested for use in the reactivation of the center have the potential for generating significant dollars from non-state sources.

In response to a question concerning the source of funding, Dr. Pierce indicated that additional money in order to reactivate the center was not requested. The institution sought authorization to reestablish the center and then identify money for it from one of three possible sources: (1) program improvement enhancement money which might be appropriated by the 1987 Legislature in the field of international studies as part of the budget request; (2) incremental money due to enrollment growth; or (3) a reallocation of existing money in the institution. The decision would be made by Portland State University with respect to the source of funding and the speed with which the increases identified in the program were to be implemented.

Dr. Paudler commented that, although the center would be reopened, the addition of faculty would be needed in any event, if money were available, because the institution needs the teaching ability of individuals in economics, political science, and foreign language to improve the teaching breadth of Portland State University in those fields.

Mr. Perry then inquired whether, if the Board were to approve reestablishing the center, the expenditures listed in the request could be postponed in the interest of more important budget priorities.
Dr. Paudler said he had difficulty in separating the priorities in terms of international studies and faculty salaries. However, he indicated the center could be reestablished and then implemented in phases.

President Sicuro said he shared the concern with respect to the priorities. He said the desire of the Portland community for Oregon to move ahead in international trade was one of the major reasons he believed the reestablishment of the center was so essential. It would focus on the national and international prominence of Portland State University in Middle East Studies. The program would assist in developing better trade connections with some of these countries. He indicated he had been very active in attempting to attract private dollars for this center from Arabic, Jewish, and the other Middle Eastern communities in Portland. He said it was his judgment the leadership of these communities would be very receptive to giving private dollars to the enhancement of the center if they had evidence that the center would be reestablished and be a top priority in terms of the international offerings.

Mr. Adams said the center appeared to be consistent with the mission of Portland State University. He asked whether there were other requests that would come to the Board in the near future.

President Sicuro said he did not anticipate requests for new degree programs but there might be some proposals following the extensive review of the university during the development of Portland State University's plans for the 1990's.

Mr. Perry commented that the material submitted to the Committee had not given much information about the first-class program which had existed previously. He suggested that it might be useful to know something about that excellent program.

Dr. Farr described briefly the previous program and said it was somewhat unique in the nation. It produced a number of people who have been employed in excellent positions. With respect to the number of students, it was stated that, in the past, many were not actual majors in this field but were majors in some other area of study. This may have inflated the numbers. However, the course enrollments are large and there is substantial interest in international studies. Dr. Dobson then described the concentrated summer program involving a consortium of universities. It includes a large component of activities relative to the Middle East.

Mr. Adams inquired about the present status of Middle East Studies at the University of Oregon. Dr. Hill responded that there were courses in the departments dealing with the Middle
East but there was not an organized program. He said the University of Oregon supported the Portland State University program and viewed it as a complement to its own concerns in that area.

In discussing the recruitment of faculty, it was stated that some recruiting had been initiated in a number of areas in international programs with the hope of identifying dollars to support these positions.

Dr. Pierce said the reactivation of the center would be effective in the fall of 1987 and would be contingent upon the flow of dollars to higher education and the ability of the institution to identify the necessary funds to fill these positions.

The Committee recommended that the Board approve the staff recommendation as presented.

Board Discussion and Action

Mr. Perry presented the report and recommendation of the Committee.

The Board approved the Committee recommendation, with the following voting in favor: Directors Adams, Alltucker, Crowell, Hermens, Nelson, Perry, Richardson, Schwab, and Petersen. Those voting no: None.

Name Change for International Trade and Commerce Institute, PSU

Staff Report to the Committee

Portland State University requests authorization to change the name of the International Trade and Commerce Institute to the International Trade Institute (ITI).

The International Trade and Commerce Institute was established by the 1983 Legislature, and Representative Wayne Fawbush was active at that time in setting aside some funds to start the institute. The present title was included in the budgetary language. Representative Fawbush has concurred in the request for the name change to a less cumbersome title.

Staff Recommendation to the Committee

It was recommended that the Board authorize the change in name to the International Trade Institute.

Discussion and Recommendation by the Committee

The Committee recommended that the Board approve the staff recommendation as presented.
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Board Discussion and Action

Mrs. Nelson presented the report and recommendation of the Committee.

The Board approved the recommendation with the following voting in favor: Directors Adams, Alltucker, Crowell, Hermens, Nelson, Perry, Richardson, Schwab, and Petersen. Those voting no: None.

CHANCELLOR'S REPORT

The Chancellor indicated that during the retreat, the Board had received an excellent report from Dr. Richard Perry on the history pertaining to Board policy on intercollegiate athletics dating back to 1973. The report included the policy involvement since that time, a review of existing policy, and a financial survey of the institutions with respect to organization and expenditures and the number of coaches at the respective institutions. After consideration of the financing of intercollegiate athletics, and at the direction of the president, a statement was drafted for consideration by the Board, with subsequent language modifications suggested by Miss Schwab. The Chancellor then read the following proposed resolution for consideration by the Board:

Statement of the Board of Higher Education Regarding Intercollegiate Athletics

Recent public discussion regarding the role and status of intercollegiate athletics prompts the Board of Higher Education to issue the following statement:

The Oregon State Board of Higher Education reaffirms its commitment to intercollegiate athletics as an integral component of the total educational offerings of our state colleges and universities. The Board also reaffirms its Policy for Intercollegiate Athletics adopted in March 1983 and set forth in Section 8 of the Internal Management Directives.

With respect to institutions competing on the NCAA Division I level, the Board recognizes the benefits of affiliation with the Pacific 10 Conference and is strongly committed to continue the relationship.

Consistent with its adopted policy, the Board believes that football, and men's basketball at the Division I level should be self-supporting financially. Conversely, funds generated by those sports should be utilized to the extent reasonably practical to keep them competitive at the Pac-10 level.
Other sports at NCAA institutions and all sports at NAIA institutions should be supported to insure opportunities for wide-spread student participation. The Board strongly believes that funding for a sound and exemplary sports program for male and female students should not be solely dependent upon or primarily related to revenue generated by football and basketball.

The Chancellor and his staff are directed to prepare financing alternatives for consideration by the Board at its January 1987 meeting.

Mr. Richardson suggested modifying the words "to make them competitive" in the last sentence of the third paragraph so that they would read "to maintain their competitiveness" or "to keep them competitive." It was agreed the modified wording "to keep them competitive" would be incorporated in the resolution.

It was moved and seconded the resolution be adopted.

Mr. Alltucker said the proposed action, if adopted, would require language changes in the existing policy statement and also perhaps in the long-range plan. He moved that the motion be amended to request the staff to prepare the appropriate changes and bring them back to the Board for review at the next meeting so that all of the related documents would be in compliance with the resolution adopted by the Board. The motion was seconded by Mr. Adams.

Mr. Petersen said this was a rather significant step by the Board and invited the presidents of the institutions to comment if they wished. There were no comments.

The Chancellor indicated he had had an opportunity to meet with several of the presidents earlier in the morning. He said he planned to schedule a meeting with the presidents and their athletic directors prior to returning to the Board with financing alternatives at the January 1987 Board meeting. He said his intent would be to spend a day in reviewing the options and possible recommendations and proposals for rewording the policy. He said he understood this action to be a general directive to return with specific options for the Board's consideration.

The Board approved Mr. Alltucker's amendment, with the following voting in favor: Directors Adams, Alltucker, Crowell, Hermens, Nelson, Richardson, Schwab, and Petersen. Those voting no: None.
The Board then approved the motion as amended and adopted the above resolution. The following voted in favor: Directors Adams, Alttucker, Crowell, Hermens, Nelson, Richardson, Schwab, and Petersen. Those voting no: None.

Director Perry abstained from voting because he had not been present at the discussion during the retreat or had an opportunity to read the substantial amount of material in the report. He indicated he was not in disagreement with the action.

The Chancellor said Mr. Hensley, chairman of the search committee for the presidency at Southern Oregon State College, had reported that there was an excellent pool of candidates for the position. The closing date for applications and nominations for the position is December 1, but the committee already has begun to screen those which have been received and to collect background material on the candidates under consideration.

Mr. Petersen requested Dr. Pierce to summarize the discussion of academic issues during the Board's retreat.

Dr. Pierce said the discussion focused on three specific areas--strengthening undergraduate education, a proposal for the early semester system, and preliminary thinking on the implications of enrollment growth in the State System.

In discussing undergraduate education, the criticisms that have been appearing nationally on the undergraduate experience were reviewed along with the proposals in the Strategic Plan to strengthen undergraduate education. The staff was requested to survey existing undergraduate programs in the State System and make recommendations for strengthening them. A proposal for the study will be brought to the Academic Council and the Committee on Instruction at an early date.

With respect to the early semester system proposal, the Interinstitutional Faculty Senate has asked that a decision be made. The background of the academic calendar in the State System was reviewed along with national trends in the academic calendar and the advantages and disadvantages of moving to an early semester system, effective 1989-90. A proposal will be presented to the academic council in December with schedules for consideration by the Instruction Committee and the Board at the January 1987 meeting.

The third item raised the question of how the state would deal with possible increases in enrollment of 10,000 to 15,000 FTE students over the next 15 years. An effort will be made to identify the issues that enrollment would create for the State System and develop guidelines and proposals for addressing those issues, if and when they occur.
At the request of Mrs. Nelson, Dr. Pierce reported on the proposed agenda for the Committee on Instruction. In December, the Board will give further consideration to the proposal from Western Oregon State College with respect to public administration and will review the progress and problems with the nursing plan adopted last year. The early semester system will be discussed in January.

The Committee further agreed to consider during the spring of 1987 the report of the interinstitutional committee on computer science and look at the structure of computer science programs in the liberal arts colleges.

Other topics for Committee discussion include: (1) The study of the implementation of the foreign language requirements and the issues that will result when that policy goes into effect in 1989. (2) Study of tourism programs in the State System and the role higher education can play in promoting tourism in Oregon. (3) The quality of undergraduate education in the State System institutions. (4) The issues arising from the possibility of enrollment growth in higher education over the next decade. (5) The progress made in engineering education.

The engineering education committee of the Board will be reinstituted to accomplish the latter task.

Dr. Pierce said the Committee also had requested the staff to identify any issues in the Strategic Plan that should be addressed by the Committee with regard to implementing the policies in that document.

Mr. Lemman said the report on the biennial budget had been placed on the Finance Committee agenda because it was anticipated definitive information would be available by the time the Committee met. This was not the case. The Executive Department has issued a draft analysts report. The instructions to all budget analysts apparently were to dig into the base as much as possible and try to find additional funds that might be available to the transition team for financing of decision packages and new initiatives that the Goldschmidt administration might wish to undertake.

The analysts have accomplished this task with vigor, and the staff is now discussing some of their recommendations to invade the base budget where the staff believes they were in error, either arithmetically or from the standpoint of what was proposed. For example, one of the recommendations is to take the forecasted additional indirect cost recoveries of about $4 million in the next biennium and allocate those to the decision packages or
equipment and plant maintenance. That proposal would treat those indirect cost recoveries as if they were General Fund revenues or available for general purposes when, indeed, they are reimbursements for costs associated with research and other grant activities.

With respect to the budget request itself, Mr. Lemman said the transition team has been divided into task forces, one of which is for higher education and is expected to deal exclusively with that department.

Mr. Lemman listed the members of the task force and stated they had been provided with position papers describing activities in which they have a specific interest. The thrust of that group is in economic development and things related directly or indirectly to it. The first meeting of the staff with the task force will be December 1.

Mr. Alltucker expressed concern about the possible shifting of dedicated or allocated funds into the General Fund. He asked Mr. Lemman to explain that portion of his report again so that he would be certain he understood the recommendation of the analysts.

Mr. Lemman said the biennial budget request included a forecast of revenues from non-General Fund sources. These revenues include tuition, which is the largest and is an offset against the General Fund appropriation. It can be used as fungible with General Fund appropriations for any particular purpose. However, the staff views the direct cost recoveries associated with grants and contracts as reimbursements for expenses and not general revenue to the state to be apportioned in any way that someone might see fit to apportion them. For that reason, the staff is trying to reinforce that point of view with the budget analysts and to ask that they recede from that position. The effect of the recommendation from the budget analysts would be to deny the State System the reimbursement for the purpose for which it was given. The expense still would be incurred, but there would be no revenue to offset it. It would also make it appear that the request for equipment and plant maintenance had been taken care of when it had not.

No recommendation from the Committee was necessary.

Board Discussion

Mr. Alltucker reported on the Committee discussion as set forth above. No action was required.
Meeting #542 November 21, 1986

PRESIDENT'S REPORT

Mr. Petersen announced that the next regular Board meeting would be held on December 19, 1986, on the campus of the University of Oregon and would be preceded by a visit to the institution.

Next Meeting Dates

Mr. Petersen called attention to the revised schedule for 1987 Board meetings. The February meeting will be held at Southern Oregon State College, and the April and May meetings will be held at Portland State University and Western Oregon State College respectively.

H. Flanagan, Funeral Services

Mr. Petersen reported that President Gilbert, Dean Hottois, and he had attended the funeral services for Mrs. Harriett Flanagan, a former member of the Board, and had expressed the sympathy of the Board, the staff, and the presidents.

Affirmative Action Report

The Chancellor is scheduled to report to the Board in December on the affirmative action program for the year, and Mr. Petersen requested that each president be prepared at that time to make a five-minute oral presentation on the status of affirmative action on their individual campuses.

Legislative Activities

Mr. Petersen requested Mr. Post to explain the developments in connection with planning for the 1987 Legislative Session.

Mr. Post reported that the transition team would be in full operation by the following Monday and there has been one meeting with the transition team appointed to deal with higher education. He identified the appointments and possible appointments to legislative committees. He indicated there will be substantial contact between now and the start of the Legislative Session with the transition team as it prepares the Governor-elect's budget recommendations.

Mr. Post said efforts were under way to develop an alumni organization and to plan for a higher education day early in the Legislative Session. He indicated the Chancellor had talked with a number of legislative candidates prior to the election and many would be returning or going to Salem as the elected legislator. These candidates received information on the budget proposed by the Board for higher education, the capital construction requests, faculty salaries, and national studies.

Mr. Post then indicated that the American Electronics Association, the Oregon Business Council, other public groups, the Association of Oregon Faculties, and the Oregon Student Lobby had all been helpful in presenting the needs of higher education and supporting its requests in the last Legislative Session. The groups have expressed their support of the requests to the 1987 Legislature.
The Oregon Court of Appeals issued its decision in the above-cited case on November 12, 1986, holding that the plaintiffs did not have standing to bring the case and remanding the case to the Circuit Court for dismissal. For the benefit of Board Members who are not familiar with the case, the following chronology is offered.

The 1975 Legislative Assembly passed a bill which added to the duties of the Oregon Investment Council the "investment (of) funds of the State Board of Higher Education lawfully available for investment or reinvestment." Then-Chancellor R. E. Lieuallen asked the Attorney General a series of questions including whether the State Board of Higher Education had a responsibility to establish guidelines to be observed by the Oregon Investment Council in managing the investment of Department of Higher Education funds. The 18-page opinion (38 Op Atty Gen 271) held, briefly and among other things, that the Board did have the responsibility to give guidelines to the Oregon Investment Council, although the decision largely focused on how best to carry out instructions given in will and trust instruments. The opinion generally concluded that the State of Oregon is the trustee, that the Board is the agent of the trustee, and that the Investment Council is a sub-agent of the Board for purposes of making investments.

The Board of Higher Education adopted its divestiture resolution on November 18, 1977, instructing the Oregon Investment Council to divest all Endowment Fund investments in companies doing substantial business in South Africa, Zimbabwe, and Namibia in order to demonstrate its opposition to and withdraw its support of apartheid. A full copy of the Board's resolution was distributed to the Board.

The Board's staff instructed the Oregon Investment Council to proceed in an orderly manner to sell endowment investments in the 27 companies which had been identified as having substantial activity in Southern Africa and to do so in a manner which was both prudent and which would not jeopardize the integrity of the endowment funds.

Apparently discussions with the Investment Council led the Chancellor to believe that the Council would not follow the advice of the Board, and the Chancellor again sought advice of the Attorney General, asking whether the Board's divestiture resolution was a "command or a recommendation" to the Investment Council and whether implementation of the Board's divestiture resolution would violate the prudent investor rule contained in
ORS 293.726. The Attorney General advised in a written opinion (38 Op Atty Gen 2017) that the Board's resolution "has the legal effect of a recommendation" which the Investment Council could ignore and which investment managers were not required to follow even if the Investment Council were to transmit the recommendation to the investment managers. The Attorney General advised that the divestiture was "probably" a violation of the prudent investor rule and further advised that it is "...inappropriate and irrelevant for investment managers to consider any factors other than the probable safety of and the probable income from investments as required by statute. Only after investment managers deemed that the political factors affected either the safety of or return on investments could those factors be considered in making investment decisions."

After the issuance of the second opinion of the Attorney General on May 2, 1978, the Oregon Investment Council voted on June 21, 1978, not to follow the resolution because it (the OIC) must follow the prudent investor rule. The lawsuit by ASUO and other plaintiffs followed seeking to enforce the Board resolution.

The Board was named as a defendant "as a necessary party." A number of motions were filed, some of which were granted and some of which were denied, after which the suit languished until it was finally brought to trial in December 1984. Lane County Judge George Woodrich issued his opinion on January 21, 1985, holding that the Oregon Investment Council indeed is obligated to follow the lawful instructions of the State Board of Higher Education regarding the investment of such funds, but also holding that the Board's resolution directing divestment of investment in firms doing substantial business in Southern Africa violates the statutory prudent investor rule.

The matter of whether the plaintiffs had standing to bring the lawsuit was posed when the suit was first filed. The court, at that time, held that the plaintiffs did have standing. The decision of the Oregon Court of Appeals of November 12, 1986, held that "...plaintiffs have failed to allege a legally recognized injury or a sufficiently special interest to give them standing to maintain this action." Briefly the court opined that Endowment Funds are charitable trusts by definition and that the primary beneficiary of charitable trusts is society generally and that the plaintiffs had not alleged or proved that they had a special interest distinguishable from the interest of society as a whole. The Court of Appeals remanded the case to the Circuit Court with instructions to enter a judgment of dismissal.

The effect of the Court of Appeals' decision is to place us essentially back to 1978 as if the suit had never been filed or tried.
Plaintiffs have until December 17, 1986, to file a petition seeking review of the Court of Appeals decision by the Oregon Supreme Court. Plaintiffs' attorney has been quoted in the press as stating that a petition for review will be filed.

**Staff Recommendation to the Board**

It was the staff recommendation that the Board take no further action at this time pending the knowledge of whether a petition for review is filed and then whether a petition is granted or denied. If the petition is filed, a decision to accept or reject the appeal may come in a few weeks or as long as several months.

**Board Discussion and Action**

The Board accepted the report as presented. Mr. Perry commented that the original Board action in 1977 had not been unanimous.

**Staff Report to the Board**

The Department of Justice has again reviewed the issues related to the activities of Adult Student Housing, Inc., (ASH) at Oregon State University and Southern Oregon State College. Assistant Attorney General Jerry Casby has advised that a decision to join with Mt. Hood Community College would depend on knowing more about the theory they are pursuing as well as the potential cost of the litigation.

ASH was organized in September 1970 as an Oregon nonprofit corporation for the purpose of constructing and managing low-rent family housing facilities for use by college and university students.

In the early 1970's, ASH applied for loans from the U.S. Department of Housing and Urban Development to acquire property, plan, construct, and equip apartments for student family housing at Southern Oregon State College and at Oregon State University. Under HUD's requirements, the institution whose students were to benefit from construction of housing had either to co-sign the loan agreement or provide an official written statement of approval of the loan applicant. The State Board of Higher Education formally adopted resolutions stating support of ASH and of the proposed projects. ASH received loans in the amount of $1,978,166 for the project at Southern Oregon State College and $2,183,000 for the project at Oregon State University. In addition to these projects, ASH constructed student housing at Pacific University, Mt. Hood Community College, Lane Community College, and Clatsop Community College. ASH constructed other HUD financed projects in Arizona, California, Hawaii, Indiana, Tennessee, and Washington.

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The HUD regulatory agreements at Oregon State University and Southern Oregon State College required ASH to (among other things): rent units only to students and faculty; charge rents not in excess of HUD's approved rates; and maintain the properties in good repair. The State Board's resolutions in support of the ASH projects stated that the housing was to be for married students. Communications between ASH and the institutions reflect an intent on the part of ASH to transfer ownership of the properties to the institutions upon satisfaction of the HUD loan. However, there is no written agreement between ASH and the institutions or the State Board, and recent communications from ASH indicate an intention to transfer the properties to the institutions when the properties are debt free.

In the early 1980's, ASH refinanced the properties at Oregon State University and Southern Oregon State College and paid off the HUD loans. Ownership of the properties was not transferred to the institutions. With the satisfaction of the federal loans, ASH was no longer bound by the HUD regulatory agreements. Since that time, ASH has instituted several rent increases at both projects, has rented units to non-students, and has failed to maintain the properties in good repair.

In 1976, the principals of ASH, Philip McLennan and Fred Bender, were indicted on charges of defrauding the Federal Government, found guilty, and sentenced to serve time in prison.

In May of this year, Virginia Boushey, Bill Lemman's assistant, received phone calls from Howard Rankin and Katherine Georges, counsel for Mt. Hood Community College, asking for information regarding the System's experience with ASH and suggesting that the State Board of Higher Education join them in a civil action against ASH. They indicated that Pacific University, Lane Community College, and Clatsop Community College had also been deceived by ASH in a manner similar to the experience at Oregon State University and Southern Oregon State College.

After reviewing the history of ASH's activities with Board's staff and administrators at Oregon State University and Southern Oregon State College, it appeared that there was no clear recourse in a civil action against ASH. Conversations with the Department of Justice supported that conclusion. In addition, if the System should be awarded ownership of the properties, the cost of repair, maintenance, and management could present a significant financial problem.
In the last conversation between Ms. Boushey and Mr. Rankin, it was agreed that Mr. Rankin would do further research on the issues and determine what theory Mt. Hood Community College would pursue in a complaint. In addition, he would find out whether other institutions would be willing to join in a suit. Ms. Boushey agreed to discuss the issues again with Board's staff and the Department of Justice and arrange for a meeting if there appeared to be a basis for litigation. Until the letter of October 2 from Robert Davis of the Mt. Hood Community College Board, there was no further communication from Mr. Rankin or Ms. Georges regarding the issues.

Clearly, ASH has not performed in the manner anticipated by the Board at the time the statements of approval were adopted. However, the property on which the housing projects were built is off-campus and was never owned by the institutions, and the System did not invest any funds in either project or acquire any responsibility or liability as a result of ASH's activities. It is not clear that the System has legal recourse against ASH.

The Department of Justice has advised that a decision to join Mt. Hood Community College cannot be made until their counsel informs the State System of the theory they intend to pursue. There is support for an argument that the students at Oregon State University and Southern Oregon State College have been disadvantaged by the actions of ASH. Those students would have standing to sue. It might be possible for the System to claim derivative standing to sue on behalf of those students. Such an action would assumingly be a class action and the cost would be in the multi-thousands of dollars. If such an action were to succeed, there is some question regarding the ability to collect on the judgment. The award could be ownership of the property. Given the condition of the properties, this award would carry with it a substantial financial responsibility.

Should additional information indicate that we join in a suit against ASH, we will consult with the Executive Committee and the Board as time may permit.

Board Discussion and Action

The Board accepted the report as presented.
Staff Report to the Board

A summary of activities within the Office of Administration's Facilities Division is presented below:

Contracts for Professional Consulting Services

Oregon Police Academy, WOSC Geotechnical Engineering Consulting Services

An Agreement was awarded to CH2M Hill Northwest, Corvallis, for Geotechnical Engineering Consulting Services.

Consulting Services, OSU Mechanical and Electrical Engineering Consulting Services

An Agreement was awarded to CH2M Hill Northwest, Corvallis, for Mechanical and Electrical Engineering Consulting Services.

Institute of Marine Biology, Coos Bay, for engineering services.

Parking/Office Structure, OHSU Geotechnical services at a cost not to exceed $9,000. Funding will be provided from funds available to the hospitals.

An Agreement was awarded to Geotechnical Resources, Inc., Portland, for geotechnical services at a cost not to exceed $9,000. Funding will be provided from funds available to the hospitals.

Student Housing Expansion Phase II Bike Shelter, PSU

An Agreement was awarded to David R. McMillen, Architect, Portland, for architectural services at a cost not to exceed $3,000. Funding will be provided through XI-F(1) bonds.

Classroom/Laboratory Building, OIT

An Agreement was awarded to Adkins Consulting Engineers, Inc., Klamath Falls, for engineering services at a cost not to exceed $20,000. Financing is provided from State Funds (Lottery).

Award of Construction Contract

Batcheller Hall Alterations, OSU

On September 29, 1986, Wayne Anderson Construction, Inc., was awarded a contract for the Electrical and Computer Engineering Building - Related Alterations, Project No. 3: Batcheller Hall Alterations, in the amount of $124,489. Financing is provided by State Funds (Lottery).

Dearborn Hall Alterations, OSU

On October 8, 1986, Terry Hackenbruck Construction was awarded a contract for the Electrical and Computer Engineering Building - Related Alterations, Project No. 4: Dearborn Hall Alterations, in the amount of $62,900. Financing is provided by State Funds (Lottery).

Rogers Hall Alterations, OSU

On October 8, 1986, Terry Hackenbruck Construction was awarded a contract for the Electrical and Computer Engineering Building - Related Alterations, Project No. 6: Rogers Hall Alterations, in the amount of $17,800. Financing is provided by State Funds (Lottery).
<table>
<thead>
<tr>
<th>Project Description</th>
<th>Details</th>
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<tbody>
<tr>
<td>Physical Plant Alterations, OSU</td>
<td>On September 26, 1986, Dale Ramsay Construction Co. was awarded a contract for the Electrical and Computer Engineering Building - Related Alterations, Project No. 7: Physical Plant Shops Alterations, in the amount of $138,174. Financing is provided by State Funds (Lottery).</td>
</tr>
<tr>
<td>Memorial Union Building Dome Reroofing, OSU</td>
<td>On October 2, 1986, Acme Roofing Co. was awarded a contract for this project in the amount of $16,861. Financing will be from funds made available by the institution.</td>
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<tr>
<td>Parking Lot Repair Project, OSU</td>
<td>On October 13, 1986, R. J. Armstrong &amp; Associates Construction, Inc., was awarded a contract for this project in the amount of $34,351.25. Financing will be from funds made available by the institution.</td>
</tr>
<tr>
<td>Accessibility for Handicapped Library, UO</td>
<td>On October 9, 1986, Dannemiller Construction was awarded a contract for this project in the amount of $24,950. Financing will be from funds made available by the Associated Students of the University of Oregon.</td>
</tr>
<tr>
<td>Campus West Gate Project, UO</td>
<td>On October 10, 1986, Kip Construction Co. was awarded a contract for this project in the amount of $101,200. Financing will be from funds made available by the institution.</td>
</tr>
<tr>
<td>Library Exterior Restoration/Phase II, UO</td>
<td>On October 2, 1986, McKenzie Commercial Contractors was awarded a contract for this project in the amount of $235,367. Financing will come from Deferred Maintenance Allocation 1985-1987.</td>
</tr>
<tr>
<td>Primary Electrical Distribution System Improvements, UO</td>
<td>On October 23, 1986, L. H. Morris Electric, Inc., was awarded a contract for this project in the amount of $238,600. Financing will be provided from funds made available by the institution.</td>
</tr>
<tr>
<td>Science II Building No. 38, ECMs BPA/IBP, UO</td>
<td>On October 9, 1986, Clarke Electric, Inc., was awarded a contract for this project in the amount of $57,225. Financing will be provided from funds made available by the institution and reimbursement from Bonneville Power Administration.</td>
</tr>
<tr>
<td>Baird Hall Suite 3038 Surgery Office, OHSU</td>
<td>On October 6, 1986, Michael J. Watt, Inc., was awarded a contract for this project in the amount of $17,907. Financing will be made from funds made available by the institution.</td>
</tr>
<tr>
<td>Basic Science Building, Laboratory and Office Alterations, OHSU</td>
<td>On October 10, 1986, Ron Construction (Oregon), Inc., was awarded a contract for Suite 2365 Office Alterations for Cell Biology and Anatomy Department Laboratory and Office Alterations in the amount of $37,548. Financing will be provided through funds made available by the institution.</td>
</tr>
</tbody>
</table>
Acceptance of Projects

Amazon Family Housing Roof & Foundation Renovation, UO
This project is complete and was accepted on October 10, 1986. The estimated total project cost remains at $72,550. Financing was provided by the Housing Department.

Douglass Hall Conference Planning Office Remodel, UO
This project is complete and was accepted on August 25, 1986. The estimated total project cost remains at $26,547.97. Financing was provided by the Housing Department.

Westmoreland Family Housing Roofing Project Phase II, UO
This project is complete and was accepted on August 25, 1986. The estimated total project cost remains at $33,236. Financing was provided by the Housing Department.

Walton South Woodwork, UO
This project is complete and was accepted on September 30, 1986. The estimated total project cost remains at $97,577. Financing was provided from reserve balances available to the Housing Department.

Baird Hall & Mackenzie Hall, University Relations Alterations, OHSU
This project is complete and was accepted on June 17, 1986. The estimated total project cost remains at $33,747. Financing was provided from funds made available by the institution.

Outpatient Clinic, Room 1235 HVAC, OHSU
The Hospital and Clinics Rehabilitation and Alterations (Outpatient Clinic, Room 1235 HVAC) Project is complete and was accepted on July 11, 1986. The estimated total project cost remains at $17,121. Financing was provided from hospital funds.

UHS, 6A-45, Sterilizer Installations, OHSU
This project is complete and was accepted on October 10, 1986. The estimated total project cost remains at $21,114. Financing was provided from hospital funds.

Board Discussion and Action
The Board accepted the report as presented.
The Chancellor said the courses presented in Bend by Oregon State University during the winter quarter would be delivered both on the site and by microwave from the Corvallis campus and would consist of a more diverse offering than in any previous year.

President Byrne said the Board had authorized Oregon State University to work with Central Oregon Community College in developing programs in Bend which would make courses offered on the Oregon State campus available in Bend. Microwave linkups will be used for delivery of courses starting with the winter quarter. This represents a very exciting development in the delivery of educational services, particularly in tying the university system to the community colleges. There is every expectation the experience will be successful and will be developed to a greater extent in the future. He said Dr. Pete Fullerton, Associate Vice President for Academic Affairs, had worked directly with President Fred Boyle of Central Oregon Community College and would be able to answer any technical questions the Board might have.

In response to a question concerning the relationship of this program to the proposed EDNET, Dr. Fullerton said the microwave link for the Bend program was an independent project but would provide the tie-in for the EDNET proposal to the 1987 Legislature. The Bend program has been in existence for some time, but it has been struggling because of the difficulties of getting faculty from Oregon State University to Bend during the winter. The microwave system would solve that problem and permit offering a greater variety and diversity of courses than has been possible in the past. It will provide an opportunity to try the microwave delivery system. When EDNET is in operation, a determination will be made whether the direct link to Bend is still necessary. He said the classroom would be a typical receiving classroom equipped for two-way radio and one-way video.

The Chancellor said the real value of the microwave link would be the experience it would give in terms of organizing and transmitting courses and using that type of delivery.

Dr. Fullerton added that faculty throughout the State System would have an opportunity to watch a class being delivered by this method and to try it. This delivery system represents a new way of teaching, and the pilot project should assist faculty in learning to work with this new technology.
Staff Report to the Board

At its March 21, 1986, meeting, the Board granted the petition of Dr. Martha Thompson, Associate Professor in the School of Dentistry Department of Physiology and Biophysics at the Oregon Health Sciences University, requesting a review of a non-disciplinary personnel decision pursuant to OAR 580-21-390.

Dr. Thompson requested consideration of four aspects of her employment. She sought an upward adjustment to her base salary. She sought back pay on the theory that she had suffered discrimination in the setting of her salary. She sought a neutral evaluation by someone other than her former department head, and she requested that she be allocated an additional half-time appointment to raise her employment to 1.0 FTE.

Assistant Attorney General Jerry Lidz recommended that the Board authorize the Chancellor to investigate the first two aspects of Dr. Thompson's request. Mr. Lidz advised that the question of a neutral evaluator was moot because her former department chair has assumed another position. As to increasing Dr. Thompson's FTE, Mr. Lidz further advised that another part-time position was open in the Dental School and that Dr. Thompson had been invited to apply for it. He believed that it would compromise the University's affirmative action procedures if the Board assigned the position to Dr. Thompson without consideration of whether she was the best qualified person for that position.

The Board accepted the staff recommendations and authorized the Chancellor to assign an investigator to review the grievance. Dr. Margaret Dobson, Executive Vice President at Portland State University, conducted the review and has submitted her report. Dr. Dobson found no evidence that Dr. Thompson had been discriminated against on the basis of sex. Nonetheless, Dr. Dobson recommended "in the interest of fostering institutional harmony and in an effort to enable Dr. Thompson to devote her full attention to professional duties," that Dr. Thompson receive the special salary increase that Dr. Laster had offered as full settlement of her grievance on July 1, 1985. (At that time, Dr. Thompson rejected Dr. Laster's offer.) Dr. Dobson further recommended that Dr. Thompson's current base salary be computed by adding this amount to her salary as it existed on July 1, 1985, and that salary increases since July 1, 1985, be recalculated on that adjusted base. Dr. Dobson did not recommend that the increase be retroactive.
As to Dr. Thompson's allegation that she should receive back pay to correct past sex discrimination, Dr. Dobson found no evidence that a back pay adjustment was warranted. Dr. Dobson also found that Oregon Health Sciences University does not award back pay other than as remedies for discrimination. Therefore, Dr. Dobson recommended that Dr. Thompson receive no back pay adjustment.

Dr. Dobson did consider Dr. Thompson's request for a full-time appointment. Dr. Thompson was hired for the part-time position open in March. Based on the salary money available for that position, Dr. Thompson was hired at .4 FTE, making her total FTE .9. Dr. Dobson recommended that in order to settle the grievance, Dr. Thompson be given a 1.0 FTE appointment in her current position.

Dr. Dobson confirmed that Dr. Thompson's fourth request that she be evaluated by a neutral party was moot because her former department chair has assumed another position.

The Health Sciences University and Dr. Thompson are reviewing Dr. Dobson's report. The staff hopes that prior to the November 21 Board meeting, the parties will be able to resolve Dr. Thompson's grievance. The staff will assist them in so doing. If the parties are unable to resolve the issues, the staff will make a recommendation for Board action at that time.

Board Discussion and Action

Mr. Lemman reviewed the staff report.

The Board accepted the report as presented.

Mr. Perry said that in looking forward to the new administration, not knowing what will come out of the transition team results, the optimism of the institutions to bring into the legislative process new programs or to reinstitute programs previously cancelled should be tempered with the Board's priority, which is faculty salaries. He said the Board members and staff should keep in mind that the Board's first priority is still faculty salaries.

Mr. Adams said he had attended two recent events in connection with new buildings on the University of Oregon campus. The first was the ground-breaking ceremony for the five-building science complex financed from federal funds and lottery proceeds. He said this was a very attractive complex which would be a major addition to the campus. The second event was the opening of the Earl Chiles Business Center financed entirely from private donations. It too is a very attractive and useful building.
ADJOURNMENT The Board meeting was adjourned at 10:45 a.m.

James C. Petersen, President
Wilma L. Foster, Secretary