

Vermont Education Health Initiative (VEHI)

Board of Director's Meeting Minutes

September 24, 2019

Present: Joel Cook, Tracy Wrend, John Pandolfo, Frances Brock, Martha Gagner, Laura Soares, Mark Hage, Chris Roberts and Bobby-Jo Salls.

Members of the Public: None

Guests: Rick Brigham, CPA, Sullivan & Powers (4:30 – 4:45 pm), Jim Condos, Secretary of State and Chris Winters, Deputy Secretary of State (4:45 – 6:05 pm)

The meeting was called to order at 4:30 p.m., by Chair Joel Cook.

Public Comment: None

Review and Adoption of Agenda: The agenda was adopted as presented.

Approval of Board Minutes of August 26, 2019

Tracy Wrend made a motion, seconded by Martha Gagner, to approve the meeting minutes of August 26, 2019 as presented. The motion passed.

Meet with Rick Brigham of Sullivan & Powers on FY 18 and FY 19 Financial Audits

After introductions, Rick Brigham reviewed the FY 19 audit report, which also included the figures from the FY 18 audit, and the Management letter. Both audits had unqualified opinions, and Rick complimented Chris Roberts and her team for this outstanding outcome. Rick indicated this result should not be taken for granted, as many firms they audit do not have clean audits year after year as VEHI does. Tracy Wrend asked what steps are taken to avoid overfamiliarity with VEHI, given the firm has been auditing VEHI since its inception. Rick outlined that Sullivan and Powers changes the focus of the audit each year, annually changes the staff on site conducting the audit, and the lead auditor position rotates between the firm's partners every several years or at the request of VEHI. The Board thanked Rick and commended Chris Roberts. Fran Brock made a motion, seconded by John Pandolfo, to accept the FY 18 and FY 19 audit reports. The motion passed.

Annual Review of Investment Policy and Performance – C. Roberts

Chris reviewed her memo, showing that since investing in equities, as now allowed by the Board's investment policy, the investment performance is outpacing the benchmark, CPI-U. The mix of equities and bonds provides a more balanced portfolio as planned. Martha made a motion, seconded by Fran, to accept the investment report. The motion passed.

Open Meeting Law Training – Secretary of State Jim Condos and Deputy Secretary of State Chris Winters

After introductions, Mr. Condos and Mr. Winters provided a PowerPoint presentation/training on Open Meeting Law. They cautioned that they are not providing legal advice, and there are many gray areas and sometimes room for interpretation. It is important to remember the underlying principle of the public's right to know and participate in meetings of the Board and its committees. Questions from several Board members had been submitted prior to the meeting, and some of them were answered in the course of the presentation and discussion. Other questions were raised during the meeting and responses were provided. Mr. Winters will provide written responses to any questions that were not addressed during the allotted time. The Board thanks both men for their time and the information provided.

Act on Management Recommendation FY 21 Dental Rate Filing

Mark Hage presented the recommendation from management on the use of reserves to hold the FY 21 dental rates level and modestly improve the benefits if these can both be accomplished within the parameters outlined in the memo. If authorized, the final determination of cost will be made in consultation with VEHI's independent actuary. Benefits will only be enhanced if there are enough funds to do so after level funding rates.

John moved, seconded by Fran, to authorize up to \$1,150,000 million from net position and interest earnings to fund FY 21 dental premium rates and modestly enhance dental benefits to remove preventive and diagnostic services from the determination of annual maximums. The motion passed.

Martha made a motion, seconded by Fran, to authorize Laura Soares to file the dental rates on behalf of VEHI. The motion passed.

Act on Management Recommendation of Interstate Pharmacy Collaborative Study

Bobby-Jo Salls presented the recommendation of management that the VEHI Board of Directors formally authorize VEHI's participation in an analytical study with the Wisconsin Education Association Trust and the Michigan Education Special Services Association to investigate the potential benefits, financial and otherwise, of forming a pharmacy purchasing collaborative for approximately 300,000 public school employees, active and retired, and their families. A motion was made by Fran, seconded by Martha, to authorize the study as recommended. The motion passed.

Update regarding VSBIT's letter of August 9 (possible executive session)

Joel Cook made a motion, seconded by Fran, to go into executive session to discuss a VSBIT contract issue. The motion failed.

Joel gave an update on the work he and Tracy did since the last meeting. The work was only partially completed. Rob Halpert indicated non profit law only requires the duties of the office of

President be designated in the Bylaws, not specific duties. Rob Halpert has a conflict and is not able to represent VEHI further on this matter. He was asked to recommend other attorneys for VEHI to consider but has not yet done so. There was no agreement between Joel and Tracy on other attorneys to engage.

Tracy wanted the full Board to know she communicated with Joel regarding his August 11th email to Bob Giroux, Vice Chair of the VSBIT Board, in response to the August 9th letter from Mr. Giroux to the VEHI Board. She does not believe it was appropriate for Joel to communicate without authorization from the Board to do so. Tracy also indicated she and Joel did not have the same understanding of the charge of the Board made via motion at the last meeting. She passed out the three questions she thought the Board needed answered in the near term by legal counsel to address Laura Soares resigning from the office of President on November 1st.

Joel expressed disagreement with Tracy's characterization and indicated he felt the charge from the Board should be broad to allow a complete review of the issues.

Laura Soares provided history and context for the decision of the VSBIT Board to direct her to resign the office of VEHI President on November 1, 2019. She provided the Board a memo on September 18th listing the four duties she currently performs that she understands should be performed only by a director or officer, and those she believes she can continue to perform if duly authorized through a resolution. The VEHI Board last delegated by resolution in 2015, but the delegation of duties is to the VEHI President role not Laura specifically.

Since most of the delegation is related to financial operations, Chris Roberts prepared a draft resolution that, if approved, would allow various VSBIT employees, including Laura Soares, to continue to manage the daily operations of VEHI. Chris specifically outlined what is the same as the 2015 resolution, and where there are changes and the rationale for the changes. Fran Brock made a motion, seconded by Tracy Wrend, to approve the resolution as presented and to commit to reviewing the resolution again when next renewing or amending the VSBIT Service Agreement. The motion passed.

Tracy Wrend made a motion, seconded by John Pandolfo, to appoint the Chair as President for the purposes of:

1. Signing Member Agreements
2. Signing tax forms or communications with the IRS
3. Signing rate sheets filed with DFR
4. Signing major contracts.

The motion passed.

A motion was made by John Pandolfo, seconded by Martha, to authorize the Chair and Vice-Chair to solicit legal counsel to review the following documents for recommended or required changes to address the change in the VEHI President role, and to attend the November meeting of the Board.

- The resolution just approved
- The documents referenced in Laura Soares Memo of August 26, which included the Bylaws
- The August 9th letter from Bob Giroux
- The four versions of the Scope of Services Overview, including the one provided on August 9th by Mr. Giroux.

The motion passed.

Discussion on Criteria for Decisions Regarding Service Agreements

The item was postponed to the next meeting.

Discuss future agenda items

There was no further discussion, but the Board was reminded of the protocol for suggesting items for future agendas.

Set next meeting(s) of the Board, including a potential retreat

- a. The next meeting of the board is set for November 21st at 4:30 pm.
- b. Discussion of the Annual Member Meeting on November 8th, 8:30 am – Joel Cook and John Pandolfo will attend the Annual Meeting and represent the Board. It was agreed other members of the Board do not need to take the day off from work to attend.

Adjournment

There being no further business, the meeting adjourned at 8:08 p.m.

Respectfully submitted by: Laura Soares

Laura Soares

From: Winters, Chris <chris.winters@sec.state.vt.us>
Sent: Friday, September 27, 2019 9:47 AM
To: Laura Soares
Cc: mhage@vtnea.org; Tracy Wrend; Joel Cook; Condos, Jim
Subject: RE: VEHI - OML training September 24th

Hello Everyone,

Thanks again for the opportunity for Secretary Condos and I to come and speak to you about the open meeting law (OML). We enjoyed the conversation and were impressed by how seriously you are taking the public's right to know about, and have access to, your work.

Unfortunately, we ran out of time to answer all of your questions, so I'll do my best to address them here. As I said, there are a number of these for which there are no clear answers under the law, so they reside in a "gray" area.

The law cannot possibly cover every possible scenario and is very basic around some issues. While it would be great if we could all stay out of the gray areas, I want to emphasize that this is often not possible and you will necessarily venture into those areas from time to time. It is at those times that I encourage you to rely on your legal counsel for advice and to err on the side of openness, remembering that the law is based in the Constitution and the public's right to know, attend meetings, comment and participate in the actions of its government.

A few common themes:

- the OML does not address procedure. The board chair has broad discretion. If you want rules of the road for your meetings, you could adopt rules of procedure. Adopting or amending rules of procedure is also another way to prepare for navigating these kinds of questions that aren't explicitly addressed in law.
- When in doubt, err on the side of transparency.
- Get input from your legal counsel when you are unsure. Your counsel would be the one to defend you should any of these actions be challenged.

From Vice Chair Tracy Wrend (documents she references below are attached):

1. We understand the open meeting law allows for the distribution of documents in advance of a meeting. Could you review the memos from Joel that include specific motions and lay out the rationale for those motions in advance of the meeting and give us your opinion as to whether those cross the line from distribution of information to

framing/initiating a discussion? (Attached A and B) A gray area, but likely not a violation of OML. We would say it is not a best practice because of the danger of “serial meetings” and appearances of impropriety. Prepping other board members in this incredibly thorough manner leaves a lot of room for members of the public to get completely lost as the meeting begins, and proactively making the prep documents available (perhaps as an accompaniment to the agenda or as a handout at the door) would indeed likely provoke additional controversy/undermine any efficiency benefits.

2. Is it a violation of the open meeting law for a board member to reply to an email and copy all board members with a set of questions on issues that have not been made available to the public or discussed by the board? See example letter to Bob Giroux (Attached C) Definitely not advisable as this is akin to having a discussion outside of a properly warned meeting. Listen to your legal counsel.
3. On the matter of the "premature public knowledge" finding that a board must make prior to entering into executive session to discuss certain topics, is it proper for the board to enter into executive session to discuss whether it can make that finding? No, not a reason for executive session. Listen to your legal counsel.
4. Re: minutes - when the minute-taker asks a motion-maker to clarify their language or intent, who is authorized to respond on behalf of the person making the motion? Is it appropriate for the chair to step in and dictate the intent/wording of the motion for the minutes, or is that the responsibility of the person making the motion? This seems fact specific and we are reluctant to comment. Seems like the person making the motion needs to do it but could concede it to the chair if the motion-maker agrees with the rephrasing? Listen to your legal counsel. Adopt rules of procedure.

From Director John Pandolfo:

- A. For an item identified on the agenda as requiring action, is it appropriate, or best practice, for a member of the board to attempt to make a persuasive argument for their position on the item prior to a motion being made? Discussion normally comes after the motion is made and seconded. Listen to your legal counsel. Adopt rules of procedure.
- B. Once a motion is made, should it be seconded and then discussion initiated before any “persuasive context” is added by the board member making the motion? Yes, best practice. But listen to your legal counsel and adopt rules of procedure.
- C. Is it appropriate, and or best practice, for a motion to be made by the chair, as opposed to other members of the board? Motions can come from any member. Adopt rules of procedure.

From Chair Joel Cook's Memo:

Information provided prior to meeting. See above re: the danger of serial meetings, pre-discussion of issues, and the appearance to the public of predetermining outcomes.

Rules of procedure. See above regarding the OML not addressing procedure and adopting your own rules of procedure as a possible solution.

Role of chair. See above. Sometimes the informality works best. The chair does have broad discretion, but if it is not working well for the whole board, you may consider setting some rules.

Committees. The OML has evolved to be clearer about subcommittees because of past abuse, hiding the work of the boards from public view by assigning it to subsets of the board. If it is created by the board, it is a public body and a majority of that subset is a quorum.

Why do our bylaws say what they say? My best guess is that these were adopted quite a while ago and the OML and public attitudes around transparency have changed quite a bit since then.

Executive session – when to warn. This is another tough one. Sometimes you just don't know, so just do your best to predict when one might be needed and be as open about why it's needed as you can without violating any confidentiality.

Minutes. These are the history of your board and are critically important, so the board should be diligent about getting them right. They do not need to be detailed under the law, but they need to accurately reflect what happened at the meeting.

I hope you find these answers at least moderately helpful. We would be happy to assist you in any way we can in the future around open meetings and public records. Thanks for all you do to serve Vermonters on this board and thanks again for taking the OML to heart and trying to do the right thing!

Sincerely,

Chris

Christopher D. Winters
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