

**South Carolina Retirement System Investment Commission
Meeting Minutes**

October 11, 2013

**17th Floor Conference Room
1201 Main Street
Columbia, South Carolina 29201**

Commissioners Present:

Mr. Reynolds Williams, Chairman
Mr. Edward Giobbe, Vice Chairman
State Treasurer Curtis M. Loftis, Jr.
Dr. Rebecca Gunnlaugsson
Mr. Allen Gillespie (via telephone)
Dr. Travis Pritchett
Mr. David Avant

Others present for all or a portion of the meeting on Friday, October 11, 2013:

Josh Brade, Corleon Brown, Betsy Burn, Andrew Chernick, Louis Darmstadter, Dori Ditty, Robert Feinstein, Joshua Greene, Hershel Harper, Adam Jordan, James Manning, Darry Oliver, David Phillips, Kathy Rast, Nancy Shealy (via telephone), Lorrie Smith, Danny Varat, and Brian Wheeler from the South Carolina Retirement System Investment Commission; Clarissa Adams, Mark Boone, Daniel Brennan, Bill Condon, Bill Leidinger, and David Padgett from the State Treasurer's Office; Ronald Wilder, South Carolina Retirement System Investment Commissioner-Elect; Amy Byrd from Creel Court Reporting; Wayne Pruitt and Donald Tudor from the State Retirees Association of South Carolina; Jennifer Yacoubian from the South Carolina Senate Finance Committee; Kara Brurok from the South Carolina House Ways and Means Committee; Alex Stroman from the South Carolina GOP; Laura Jordan from Gallivan, White & Boyd; Thad Westbrook from Nelson Mullins Riley & Scarborough; Jeffrey Collins from the Associated Press; PJ Randhawa from WIS-TV; Tim Smith from the Greenville News; Adam Beam from The State Newspaper; and Garo Brown and Jason Roberts from the Columbia City Police Department.

I. CALL TO ORDER AND CONSENT AGENDA

Chairman Reynolds Williams called the special meeting of the South Carolina Retirement System Investment Commission ("Commission") to order at 11:30 a.m. Chairman Williams referred to the proposed meeting agenda and asked for a motion to approve. Mr. David Avant made a motion, which was seconded by Dr. Travis Pritchett, to approve the agenda as presented. Mr. Curtis Loftis asked for a motion to amend the agenda. Mr. Loftis voiced his concern about the Commission receiving a report on sensitive personnel matters and possibly receiving legal advice during open session. He advised the Commission that personnel matters and legal advice should be addressed in executive session to allow all parties to speak openly and honestly, and because the Commission and individual Commission members may be subject to significant liability. Mr. Loftis made a motion, which was seconded by Mr. Allen Gillespie, to delete from open session agenda item II, *Report on abusive bullying and improper communications with RSIC staff*, and to take up agenda item II in executive session. The motion failed with Messrs. Loftis and Gillespie voting for the motion, and Chairman Williams, Mr. Edward Giobbe, Dr. Rebecca Gunnlaugsson, and Dr. Pritchett voting against the motion. Mr. Gillespie made a motion, which was seconded by Mr. Loftis, to amend the agenda by moving

agenda item III, *Executive session to discuss personnel matters and receive legal advice*, to precede agenda item II on the draft agenda. The motion failed with Messrs. Loftis and Gillespie voting for the motion, and Chairman Williams, Mr. Giobbe, Dr. Gunnlaugsson, and Dr. Pritchett voting against the motion. The motion to approve the agenda as presented was called for a vote, and passed by a vote of 5-0. Mr. Gillespie abstained from voting.

II. REPORT ON ABUSIVE BULLYING AND IMPROPER COMMUNICATIONS WITH RSIC STAFF

Chairman Williams stated that, as all of the Commissioners knew, he called this special meeting to address bullying and improper communications with the Commission's staff ("RSIC Staff"). He said that most, if not all, Commissioners had directly observed bullying and such episodes. Chairman Williams reported that the particular triggering event for the special meeting was a telephone call on September 30, 2013 between Mr. Loftis and Mr. Darry Oliver, Chief Operating Officer ("COO"). Chairman Williams stated that Mr. Loftis had berated Mr. Oliver with profanity and abusive name calling. Mr. Loftis interrupted to strenuously object to the Chairman's characterization of this matter, and stated that he had not been given an opportunity to defend against the allegations, and when called to order, Mr. Loftis stated that he would leave. Mr. Loftis continued to express concern with the context of the report and analogized and defended his discussion with the question: "Have you beaten your wife today?", noting that there is no appropriate way to respond to the question. Chairman Williams again called Mr. Loftis to order, and stated that the commissioner did not have permission to address the Commission while someone else had the floor, and that the commissioner would be required to remain quiet when someone else had the floor and await his opportunity to speak, or leave the meeting.

Mr. Loftis left the meeting.

Chairman Williams noted that, under the circumstances, the reported abusive communication from Mr. Loftis to Mr. Oliver needed to be presented. According to the information that had been provided, the Chairman noted that the communication in question included the following statements by Mr. Loftis to Mr. Oliver: "I'm not putting up with more of your bullshit" and "you're a son of a bitch". Chairman Williams stated that the earliest instance of abusive communication occurred within Mr. Oliver's first few weeks of employment, when Mr. Loftis castigated Mr. Oliver in the presence of others and questioned him "if he [Darry Oliver] was the right man for this job [COO] at your [his] exorbitant salary." Chairman Williams stated that the Commission expected to receive more information and elaboration regarding this matter during executive session, which might result in additional motions. Chairman Williams reported that documentation of this hectoring and prolonged harassment was to be attached to, and made a part of, the record of this meeting of the Commission.

Chairman Williams advised the Commission that an anti-bullying policy draft had been posted on the Commissioner's secure portal for all Commissioners to review and a copy of the same was provided to each Commissioner at the meeting. Dr. Gunnlaugsson made a motion, which was seconded by Dr. Pritchett, to adopt the proposed Anti-Bullying Policy. Further discussion ensued.

Mr. Gillespie asked if there was currently an employee policy manual that applied to RSIC Staff. Mr. Robert Feinstein, Chief Legal Officer, confirmed that there were personnel policies that apply to RSIC Staff and that the policies cover similar topics. Mr. Gillespie asked if the Commissioners had copies of the language that applied to RSIC Staff. Mr. Feinstein indicated that copies of the personnel policies had not been provided at this meeting and explained that the Anti-Harassment Policy currently in place applies to only RSIC Staff, and not Commissioners. Mr. Feinstein clarified for the Commission that the proposed Anti-Bullying

Policy would (i) augment and complement the Commission's current Anti-Harassment Policy and the Workplace Violence Prevention Policy relating to RSIC Staff, and (ii) apply to both Commissioners and RSIC Staff. Chairman Williams noted that Commissioners were not employees, so the current personnel policies did not apply to them. Consequently, the only way the Commission would have enforcement power over a Commissioner was if the Commissioners were subject to some sort of anti-bullying policy, and Mr. Feinstein concurred. For clarification, Mr. Gillespie asked whether the proposed policy replaced the language of the current personnel policy, and Chairman Williams and Mr. Feinstein confirmed that the proposed Anti-Bullying Policy would supplement or be in addition to the current personnel policies relating to this type of behavior. Dr. Gunnlaugsson asked whether the policy would cover RSIC Staff and Commissioners the same. Ms. Dori Ditty, Legal and Policy Counsel, explained that the personnel policies that apply to RSIC Staff include an anti-harassment policy, which covers some of these items, as well as a workplace violence prevention policy that would cover some of the items as well. The proposed Anti-Bullying Policy, however, would clearly cover Commissioners whereas the personnel policies by nature cover RSIC Staff. Dr. Gunnlaugsson asked whether the proposed Anti-Bullying Policy would apply to employees and Commissioners equally, and Mr. Feinstein and Ms. Ditty said that it would apply to all. Dr. Gunnlaugsson asked whether the proposed policy was standard across the industry or comparable to other standard anti-bullying policies, and Chairman Williams said that he believed the basis for the proposed policy was the American Bar Association's model anti-bullying policy.

Mr. David Avant noted that there was a non-exhaustive list of what might be considered harassment and asked who would make a determination of whether the policy had been violated. Chairman Williams said that per the policy, it would be in the sole and final discretion of the Commission in a proceeding in which the Commissioner in question would not vote. Mr. Gillespie asked whether that would be the proper venue or procedure to handle a work force labor-related issue. Ms. Ditty said that most state agency employees would be subject to the State Employee Grievance Procedure Act ("Grievance Act"). The RSIC Staff, however, was statutorily exempt from the Grievance Act, so having an administrative level type policy which would report to the Commission would not preclude additional remedies that someone may have under the law. She said that this was a layer to try to resolve an issue before it would reach that heightened level. Chairman Williams said that this would essentially constitute the final agency action prior to someone going to court.

Mr. Gillespie asked about the processes under the Grievance Act, and Mr. Avant replied that matters under the Grievance Act go through the State Office of Human Resources and then a grievance panel, but reiterated that RSIC Staff is not subject to the Grievance Act and those processes, although they are covered by other federal and state laws. Mr. Gillespie asked whether the Commission could adopt the Grievance Act, and Mr. Avant said that he did not believe that the Commission could "opt-in" to this specific process, but it could use it as a guide to follow in adopting its own process. Ms. Nancy Shealy, General Counsel, confirmed that RSIC Staff are "at will" employees and are statutorily exempt from the Grievance Act. She concurred with Mr. Avant that the Commission could adopt a similar policy, but it could not require the state's grievance panel to hear the Commission's employee grievances. Mr. Gillespie said that he felt it at least could serve as an established working model. Ms. Shealy and Mr. Feinstein noted that the proposal was similar in some respects in that the Commission would hear grievances instead of the panel under the Grievance Act. Mr. Gillespie noted that the proposed policy was silent on procedural elements. Chairman Williams said that the Commission would be free to adopt procedures, and the Commission would need to consider carefully any procedures that did not give notice and opportunity to be heard to an employee. Mr. Oliver asked whether, in the absence of the proposed policy, RSIC Staff currently had an avenue for redress, and Mr. Feinstein replied that they had redress directly to the courts. Mr. Giobbe asked

for further clarification, and Mr. Feinstein explained that there was currently a gap for RSIC Staff who believe that they have experienced something like bullying. Absent adoption of a policy such as the proposed Anti-Bullying Policy, the RSIC Staff's only recourse would be to go directly to the courts; there is currently no formal internal grievance process. Mr. Gillespie asked whether a state employee normally has to go through the grievance process prior to court action, and Mr. Feinstein said that going through the grievance process first was mandatory for state employees who are subject to the state Grievance Act. Mr. Gillespie asked whether it was like a mediation process, and Messrs. Feinstein and Avant advised that it was an administrative process that could eventually go before an Administrative Law Judge. Chairman Williams noted that it would be before a panel, then litigation, not mediation as in the private sector. He noted further that without the proposed policy, RSIC Staff has no other recourse than to go to court first, and it seemed prudent to develop a process.

For clarification, Mr. Gillespie asked again whether a state employee was required to go through the grievance process. Mr. Feinstein stated that state employees who work for a unit of state government covered by the Grievance Act have no choice but to follow its procedures. However, RSIC Staff is exempt from the Grievance Act. Mr. Gillespie asked whether the Commission could require the same of its staff. Mr. Gillespie said he did not want to provide this avenue and still be subject to exposure, noting that, in his opinion, the whole point of private procedures like that is to limit liability and exposure. Mr. Gillespie said that currently because the only recourse to RSIC Staff would be to go directly to court, that this policy develops some procedures. Mr. Feinstein again noted that, absent some sort of gap-filling policy like the one proposed, the Commission could not simply decree that it is opting into the state's Grievance Act. However, the Commission could decide to adopt that as a model or use it as the guidance for creation of its own sort of analogous process.

There being no further discussion, the Chairman called the question, and the motion to adopt the Anti-Bullying Policy passed unanimously.

(Information relating to this matter has been retained in the Commission's files and is identified as Exhibit A).

III. EXECUTIVE SESSION

Mr. Gillespie made a motion which was seconded by Mr. Giobbe and passed unanimously, to recede to executive session to discuss personnel matters and receive legal advice pursuant to S.C. Code Ann. Section 30-4-40.

Chairman Williams announced that the Commission would meet in executive session for the purpose of discussing personnel matters and receiving legal advice. The Chairman asked the Commission's legal staff and its Chief Operating Officer and Chief Investment Officer to remain in the meeting. Mr. Bill Leidinger, Chief of Staff of the State Treasurer's Office, asked the Chairman if he and the State Treasurer's General Counsel could attend the executive session. He said that he understood that an action the Commission may consider involved reference to the chief of staff, and requested an opportunity to address the matter. Chairman Williams said that the Commission only permitted non-RSIC Staff to participate in executive session upon invitation of the Commission and that their standing policy had not been to extend that invitation just because a Commissioner was not present. Mr. Leidinger replied that Mr. Loftis chose to leave the meeting. Chairman Williams said that if the Commission felt it appropriate for Mr. Leidinger to address them, then they could decide during the executive session and come out and invite him to join the meeting. Mr. Leidinger said he felt it important and asked that the Commission consider it. Chairman Williams said that the Commission had one item to address

first; if they thought it appropriate, and he said he had no reason to think the Commission wouldn't think it appropriate, they would ask him to come into the room. The Commission thereupon recessed into executive session at 11:50 a.m.

Mr. Leidinger was invited into a portion of the executive session. During a subsequent portion of the meeting, only Commissioners and its legal staff were present; the COO and CIO were asked to take leave of the meeting.

The Commission reconvened in open session at 2:00 p.m., and Chairman Williams reported that no action was taken in executive session, but that the Commission had heard from two different parties about certain issues. He said that the subject of the executive session had been to discuss personnel issues and receive legal advice and that the Commission did not go beyond those matters. He said that the Commission appreciated all the people who participated in the executive session for their information.

Chairman Williams made a motion to approve the written motion before the Commissioners entitled "Mr. Oliver - Separation from employment". Mr. Giobbe seconded the motion. At the request of the Chairman, Mr. Feinstein read the following proposed motion regarding Mr. Oliver's separation from employment:

"WHEREAS, after careful consideration, the Commission believes that, for the good of both the Commission and Mr. Darry A. Oliver, the notice of resignation tendered by Mr. Oliver on September 30, 2013 should be accepted subject to the terms of this resolution.

NOW, THEREFORE, the Commission agrees as follows:

1. The Commission acknowledges Mr. Oliver's significant positive contributions to the Commission and overall excellent performance above expectations since he began employment.
2. Based on the existence of possible legal claims, the Commission hereby waives advance notice of Mr. Oliver's resignation and accepts Mr. Oliver's resignation, to become effective after consultation with counsel and completion of all required documentation.
3. Although Mr. Oliver has submitted a resignation, there is an involuntary component to the termination of his employment which is the moral equivalent to a constructive discharge.
4. Based on the above, the Chairman or his designee, in consultation with legal counsel for the South Carolina Retirement System Investment Commission ("RSIC"), is hereby authorized to negotiate a good faith settlement of possible legal claims between RSIC and Mr. Oliver.
5. The Commission authorizes RSIC staff to seek approval of the Attorney General to retain external associate counsel to review and provide advice relating to the settlement of any such possible claims between RSIC and Mr. Oliver.

6. Upon completion of settlement negotiations, the Commission authorizes the Chairman or his designee to execute any documents, take any other actions necessary to implement this directive and effectuate any Agreement and Release resulting therefrom.”

Following reading of the motion, Chairman Williams asked if there was further discussion. There being none, he called for a vote, and the motion passed unanimously.

(Information relating to this matter has been retained in the Commission’s files and is identified as Exhibit B).

Chairman Williams asked if there were any other motions, and Dr. Gunnlaugsson made a motion to hire a new Chief Operating Officer, which was seconded by Dr. Pritchett and in written form before the Commissioners. At the request of the Chairman, Mr. Feinstein read the following proposed motion regarding the appointment of an interim Chief Operating Officer (“COO”).

“**WHEREAS**, after considering the exigencies of the situation, the needs of the organization, and the length of time to conduct a COO search, including the benefits of having an ‘agency head’ in place prior to the start of the next legislative session and the commencement of an extensive, enterprise-wide Fiduciary Audit, the Commission believes it is now in the best interests of the Commission to implement a solution that will quickly provide stable administrative and operational leadership for the RSIC; and

WHEREAS, the Commission believes that the most optimal solution now is to appoint an acting COO; and

WHEREAS, the Commission believes that the Honorable W. Greg Ryberg is highly qualified to serve as acting COO; and

WHEREAS, the Commission wishes to offer, and Mr. Ryberg has expressed his desire to accept, the position of the COO.

NOW, THEREFORE, the Commission agrees as follows:

1. Any provisions of the Governance Policies to the contrary notwithstanding (including, but not limited to, Policy I(E)(2) and Policy III(I)(3)), the Commission agrees to waive application of its Governance Policies and hire the Honorable W. Greg Ryberg as the COO at a salary of \$ 161,000.00 per year.
2. The COO is an at-will employee of the Commission and will serve until the Commission determines that a new COO search is feasible.
3. In accordance with the terms of the Commission’s Compensation Policy, the COO will not be eligible to participate in the Performance Incentive Compensation Program.
4. The Chairman or his designee is hereby authorized to execute any documents and take any actions necessary to implement this directive.”

Following reading of the motion, Chairman Williams asked if there was further discussion. There being none, he called for a vote, and the motion passed unanimously.

(Information relating to this matter has been retained in the Commission's files and is identified as Exhibit C).

IV. ADJOURNMENT

There being no further business and upon motion from Dr. Pritchett, which was seconded by Mr. Giobbe and passed unanimously, the meeting adjourned at 2:23 p.m.

[Staff Note: In compliance with S.C. Code Ann. §30-4-80, public notice of and the agenda for this meeting were delivered to the press and to parties who requested notice and were posted at the entrance, in the lobbies, and near the 15th Floor Conference Room at 1201 Main Street, Columbia, SC, at 9:20 a.m. on October 10, 2013.]