

Minutes

RTA Committee of the Whole Meeting

9:07 a.m., Thursday, January 9, 2020

Present: Clough (Chair), Byrne, Moss, Pellet, Serrano, Welo

Not present: Bibb, Joyce, Lucas, McCall

Also Present: Anderson, Benford, Birdsong, Bitto, Burney, Cernois, Dangelo, Davis, Garofoli, Gautam, Gibson, Schipper, Scott, Woodford, Young

Mayor Clough called the meeting to order at 9:07 a.m. The secretary called the roll and reported that six (6) committee members were present.

GCRTA Bylaws and Code Book

Janet Burney and Dawn Tarka of the legal department presented the proposed changes. Today's main focus is on Chapter 220 Board of Trustees regarding compensation and Chapter 262 Internal Audit Charter. The Bylaws have been under review for the last year and a half. Recommendations have come forward. Mayor Welo mentioned that the committee requested to eliminate the section in Article II Section II which deals with either the President or the Vice President being a trustee appointed by the City of Cleveland. She believed it should not matter who holds these offices. The redline of the Bylaws reflects changes made at the meeting last October 1, 2019. A number of changes include gender-neutral language.

ARTICLE II OFFICERS

Article II Sec. 2. Terms of Office – P. 4

Staff looked at the enabling legislation that established RTA, which includes the Mass Transit Agreement, MOU between the City of Cleveland, Cuyahoga County and Cleveland Transit System, to research whether there was a requirement where the President or Vice President had to be an appointee of the City of Cleveland. There was nothing in the documents that mandated this requirement. They also found a legal opinion written in February 1992 by Eugene Kramer on this issue. He came to the same conclusion.

ARTICLE I GENERAL PROVISIONS

Article 1 Sec. 3. Compensation of Members – P.3

Staff submitted the current language on compensation and two proposed changes to this section. The first option is to keep the compensation. The second option is to phase it out. The last option is to eliminate at one time. Ms. Moss expressed the concern that an hourly worker may not want to join the Board if the compensation is removed and believed it should be the choice of the appointing authority whether their appointee receives compensation. Mayor Clough said that if compensation is removed, he suggested a phasing out approach so that Board members just taking the position can be aware that it will phase out in 2023. The remaining Board members will phase out at the end of their three year term. This way they will be aware of the change before their term is reconsidered. Mr. Serrano prefers to keep it the same or eliminate it without phasing it out. Mayor Welo has never been paid to serve on a board. She believes compensation causes too many problems. She prefers phasing it out. Mayor Clough mentioned that the Bylaws allows any member to refuse compensation.

Ms. Moss asked if compensation is required in any of the appointee authority documents and if the amount has changed. Mayor Clough mentioned that \$4,800 used to count as a year of service in PERS, but now it doesn't. Ms. Burney said the State legislature in ORC 306.36 set the maximum amount as \$6,000 for the President and \$4,800 for a Board member. The City and County legislation specifies that Board members will be compensated based on the Board's resolution, subject to the State limits. RTA's Code set the amount. RTA can amend this in the Bylaws. Mayor Byrne said he was appointed after the compensation issues occurred. He prefers the each Board member choosing if they received it or not. If it is eliminating, he likes the phase-out approach. Ms. Pellot believes eliminating it will exclude who serves on the Board. If eliminating, she prefers the phase-out approach.

Mr. Serrano made a motion to eliminate it now. It was not seconded. Mayor Clough said a study showed that RTA was the only transit Board that received compensation. Mr. Serrano made a motion to keep as is. It was seconded by Ms. Moss. The roll was called. There were five (5) ayes and one (1) opposed by Mayor Welo. It failed. Mayor Clough added that the motion should have included forwarding this to the full Board. The current version remains in place.

ARTICLE II OFFICERS (CONTINUED)

Article II Sec. 2. Terms of Office – P. 4

Mr. Serrano asked if staff was aware of any conversation that led to the City of Cleveland requiring the President or Vice President being a city appointee. Mayor Welo believes the Board should choose the leaders. The political control hinders the agency. The Board is fully represented. Mr. Serrano believes the majority of service, support and facilities is in Cleveland. He believes this was a power sharing arrangement to protect multi-jurisdictional interest. Ms. Moss said she is a County appointee and a City resident. The County is required to appoint a City of Cleveland resident. That makes five (5) city residents when combined with the four (4) city appointees that serve on the Board.

Ms. Burney added that the change will allow the Board to decide the best candidates irrespective of their appointing authority. Mayor Welo believes this section currently causes separation. Mayor Clough said since five (5) Board members are Cleveland residents and each Board member has one vote, the City votes are counted. Mayor Clough believes the Board should determine who serves. Ms. Moss made a motion to refer the change to the full Board. It was seconded by Mayor Welo. There were six (6) ayes and none opposed. It passed.

Language was added to clarify that the President and VP may not be elected to the same office for two years after they have served. But the Board member can switch offices after serving in one office.

ARTICLE III MEETINGS

Article III Sec. 4(b) Minutes and Resolutions – P. 8

A hard copy book with the minutes and resolutions is kept in the office, but this was eliminated to reflect that these documents are kept electronically and posted on the RTA website.

Article III Sec. 9 Rules of Notification of Meetings – P. 10

Antiquated language was removed related to how the Board package is delivered.

Article III Sec. 1 Quorum – P. 7

Ms. Moss asked if what defines the Board as a majority was clarified. Ms. Burney state that a majority of the Board is defined as *appointed members* and not *board seats*.

ARTICLE VI COMMITTEES – P. 17

Mayor Clough asked about the composition of the Board Governance Committee. It's currently comprised of the chairs of all the committees and the two officers, which is six in total. He asked if it's effective for this committee to be comprised of the majority of the Board. The committee replaced the Executive Committee, which was comprised of the President, VP and a County appointee. They were called to authorize emergency situations so that the full Board would not need to be called upon. The Governance committee was created after the Board's retreat in 2017. The duties of the Governance committee is listed in Chapter 220 of the Code. Duties were expanded to include more than just emergency duties.

Ms. Benford asked if an Executive Committee is needed if it only met to decide on emergencies. Maybe the GM could contact the President or the Vice President to authorize emergencies. Ms. Burney said the GM has authority in the Procurement manual to make decisions on emergencies in consultation with the President or VP in his or her absence. The decision is then presented to the Board and possibly ratified. Mayor Clough asked if the Board is ok with performing the performance review of the Internal Audit Director.

ARTICLE VIII SECTION 5 AND 6 INTERNAL AUDIT SECTIONS – P. 21

Mayor Clough asked Ms. Birdsong to look at this section, which was approved in February 2019, to see if additional changes were needed. There were questions about whether the right language was used; if the Board has to approve the hiring of all the auditors or just the Executive Director; who will evaluate the ED and under what conditions. How does the ED work with staff in relation to their independent status? The Board can direct the ED to perform audits. There needs to be a process. For example, if the ED evaluates a co-worker, he may need to come to the Board regarding hiring an independent attorney. In 1996, the ED was recommended by the GM and approved by the Board. Mr. Garofoli said that he was interviewed by the GM and V.P. of the Board and approved by the Board. Mayor Clough asked that if the Board is hiring the ED, that the process be defined.

Mr. Garofoli said the Red Book has the IA standards. When he started, the Bylaws described the IA department and functions. The IA charter describes the activities of the department and is in the Code. The Bylaws should reference how the auditor is hired. The IA department has its own professional standards. He read a passage about the IA activity "being free from interference in determining the scope of auditing work performance and results." The ED must disclose any interference with the Board. The proposed changes represent a cardinal change to what was approved last February. In 1996, the charter was designed for things happening in transit. RTA was under federal sanctioning for procurement. The charter was outdated. The current chart was developed from a IA charter model to be in compliance with the Red Book. There are reporting requirements for him to work with the GM, Board and EMT. He has to be unbiased, objective and receive feedback from everyone. He is required to get feedback and get direction about audits from the GM. He has to be free to identify risk to the organization.

Mayor Clough said the changes won't affect the internal auditor from defining the scope of the audit plan. It will ensure the auditor is guided by the Legal department on certain issues. In the case where the internal auditor encounters bias, they should go to the Board to request outside

counsel. He suggested Mr. Garofoli and Legal work together on the language. He wants to ensure the GM can request an audit.

Ms. Birdsong reviewed the IA section. She questioned the definition of reporting administratively to the GM and functionally to the Board. Does the word administratively not include oversight for management? The proposed changes includes more than just a timecard approval. She would expect more responsibility be placed on the GM to lighten the responsibilities of the Board. Ms. Moss said the changes were made because of the investigation last year and questions about the GM involvement. She questioned whether the changes make the internal auditor a part of the executive team or truly independent. The changes were made prior to hiring the new GM so that it was clear the internal auditor would report to the Board and not the GM.

Ms. Birdsong wants to ensure there is coordination between herself and the internal auditor and that the Board is comfortable with doing the IA's evaluation; with managing the day-to-day functions and being responsible with what happens with the audit department. Mr. Garofoli provided the Board a guide on how to evaluate him. Ms. Burney added that the proposed language on P. 21 recognizes the need for the IA director to be independent and if believed to be compromised could bring the issue to the Board. The hiring salary would be recommendation by the GM and approved by the Board.

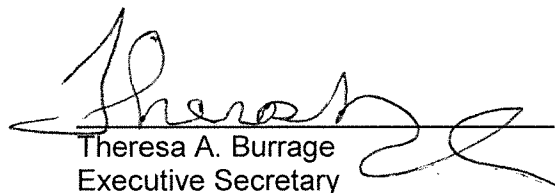
Mayor Welo asked if the documents could be kept the same and just revise the charter to reflect what Mr. Garofoli and Ms. Birdsong wants. Ms. Burney said it can be kept the same, but there is ambiguity in the Bylaws that needs to be addressed. Mayor Clough recommended the language be kept the same. If Mr. Garofoli and Ms. Birdsong can agree on the revised language, it should be presented at the earliest. Ms. Burney asked if the language in Article VIII Section 5 of the Bylaws should be changed to have the IA report to the full Board and not just the President. The committee agreed.

Ms. Birdsong suggested the word *advisement* be used instead of *guidance* to describe the relationship. Mayor Clough explained that the changes were made last year because of the investigation, but maybe the full ramifications were not considered. Ms. Moss asked if everyone was ok with the changes to Article VIII Sec. 4 on the General Counsel. The committee agreed. Mayor Clough asked if the changes could be moved to the full Board, but there was not a quorum. Several committee members expressed wanting to move forward with the changes since the process has been long. Ms. Burney added that since changes to term limits are in the proposed Bylaws, it make sense to adopt the changes before the Annual Meeting in March.

Mayor Clough adjourned the meeting at 11:30 a.m.



Flou' say R. Caver, Ph.D.
Interim Secretary/Treasurer



Theresa A. Burrage
Executive Secretary