

MINUTES of the GOVERNANCE COMMITTEE MEETING of the ERIE COUNTY WATER AUTHORITY held in the office, 295 Main Street, Room 350, Buffalo, New York, on the 23rd day of May, 2018 as amended August 16, 2018

PRESENT: Jerome D. Schad, Chairman
Mark S. Carney, Vice Chairman
Terrence D. McCracken, Secretary to the Authority and Ad Hoc Member
Margaret A. Murphy, Associate Attorney and Ad Hoc Member
Jacqueline Mattina, Deputy Associate Attorney

ATTENDEES: Sandra Tan

CALL TO ORDER

PLEDGE TO THE FLAG

I. - ROLL CALL

II. - READING OF MINUTES

Motion by Mr. Carney seconded by Mr. Schad and carried to waive the reading of the Minutes of the Governance Committee Meeting held on Thursday, May 17, 2018.

DISCUSSION

None

VOTE

Ayes: Two; Commrs. Schad and Carney

Noes: None

III. - APPROVAL OF MINUTES

Motion by Mr. Carney seconded by Mr. Schad and carried to approve the Minutes of the Governance Committee Meeting held on Thursday, May 17, 2018.

DISCUSSION

None

VOTE

Ayes: Two; Commrs. Schad and Carney

Noes: None

IV. – REPORTS

V. - COMMUNICATIONS AND BILLS

VI. - UNFINISHED BUSINESS

T-1 APPROVAL OF THE AMENDMENT TO THE PROPOSED POLICY NO. 94.0 (ITEM NO. 4 4/19/18)

T-2 ADOPTION OF POLICY NO. 96.0 (ITEM NO. 15 4/19/18)

VII. - NEW BUSINESS

A. Discussion of the ABO Report

Associate Attorney, Margaret Murphy passed out two additions to the ABO Best Practices book: Management's Responsibility for Internal Controls and the Practice of Internal Controls (see links below). Ms. Murphy also distributed the Executive Summary of the ABO Operational Review – Draft Report. Chairman Schad and Vice Chairman Carney stated that their intention of the meeting was to review and discuss topics and decide on what action should and will be taken. Chairman Schad stated, as he has said before, that he looks at this report as a blue print of where to go, and our response should explicitly acknowledge that.

<http://osc.state.ny.us/localgov/pubs/lgmng/managementsresponsibility.pdf#search=management%27s%20responsibility%20for%20internal%20controls>

<http://osc.state.ny.us/localgov/pubs/lgmng/practiceinternalcontrols.pdf#search=the%20practice%20of%20internal%20controls>

Introduction and Background

- No need to debate the role of the Secretary. The Commissioners have redefined the role of the Secretary therefore, action has already been taken. There have also been discussions to create the role of Compliance Officer.
- Number of employees is not relevant. Secretary will check with staff to see if this was a reporting error or currently this is our position.
- Clarification is needed regarding the types of customers and rate structure. This needs to be strictly factually.

Review Results:

- *Issue #1 Incomplete review of FOIL documents and records:* All agreed that debating this issue serves no purpose. Ms. Murphy indicated that the matter should have been brought to the Board, as the Board has the authority to waive the client-attorney privilege. The Commissioners agreed that from now on FOIL requests will be immediately reviewed, and if there is a confidentially issue the Board will rule on it. Everything should be disclosed.
- ***Motion by Mr. Schad seconded by Mr. Carney and carried that a recommendation be made to the Board for the authorization to Waive the Attorney-Client Privilege relative to the Invoices of Philips Lytle, LLP***
- *Issue #2 Independence and Fiduciary Duty of Board of Commissioners:* Get us to the point that we are the example of good. No debate on this one
- *Sub-issue #2-1 Board must have adequate information to make informed decisions receive in advance of meeting:* Going forward the Commissioners' packages will contain all the information necessary to render a decision along with the packages being posted on the website seven days in advance of next meeting. Commissioner Carney suggested that in the introduction of each item during the course of our general meeting have the Secretary advise and request that each of the Commissioners place on the record the fact that they have reviewed the underlining contract and that they understand it. This way there will be a record that each of the Commissioners has done due diligence on each and every issue.
- *Sub-issue #2-2 Board should have an employee performance review prior to the approval of employment contracts. All contracts must be reviewed and approved by the Board:* The Commissioners do review themselves annually, and there is a current policy for annual reviews of all employees. It was suggested that there be an immediate performance review of the top two staff members. In the future, if the Commissioners do enter into an employment contract a performance evaluation will conducted. Ms. Murphy suggested in addition to performance reviews maybe the Commissioners should consider peer reviews as well.
- *Sub-issue #2-3 All contracts must be reviewed and approved by the Board:* This issue has been addressed previously. Again, there have been instances where a contract was not appropriately reviewed and an appropriate record was never created in a board meeting. All the minutes of every meeting will be posted including attachments and discussions.
- *Sub-issue #2-4 Board should not approve of retainer agreement for emergency legal*

action without knowing the nature of the emergency: Commissioners agreed to indicate to the ABO the error is recognized, and will get the procurement guidelines clearer and follow them. Also, in order to declare an emergency a motion is necessary before declaring how to remedy the emergency. We need to have a record. Discussion should be included in the minutes. In addition, in reference to executive session we will specifically state what the executive session is going to be for and put it to a vote.

- *Sub-issue #2-5 Governance committee should be keeping Board apprised of governance practices, including transparency, independent accountability, fiduciary responsibilities and management oversight:* This issued has been cured. We need to advise the ABO that we are going to look at our internal controls. Suggestion was made to include the Commissioners' oath of office cards and fiduciary statements on their bios on the website.
- *Sub-issue #2-6 Board has the duty to review and, if necessary, correct the minutes of its meetings:* Minutes will be acknowledged that they have been reviewed prior to adoption. *Issue #3 Board must conduct business in an open and public manner:* Our meetings will be open, and if we do go into executive we will have a valid reason and give the reason as to why.
- *Sub-issue #3-1 Budget sessions should be conducted in an open meeting. Commissioners should receive information during Board meetings, not staff meetings:* Budgetary items will be discussed in the audit and the general meetings. It was agreed that a schedule needs to be set. Ms. Murphy recommended that the Governance Committee recommends to the full Board and to the audit committee that they solicit a budget calendar from staff. This calendar will then go to the audit committee where they can get input from staff and then the audit committee will recommend a calendar to the board and the board will pass the budget calendar.
- *Sub-issue #3-2 Customers should have access to information regarding planned rate increases, including any evaluations and recommendations made by any consultant:* Action has been taken. We have released the public relations firm, customers having access to our rates, redrafting our website, rate changes, proposed rate changes would all be up. It was agreed that we need to be more forthcoming in how we bill, why we bill.
- *Sub-issue #3-3 Board needs to strictly comply with the provisions of the Open Meetings Law regarding executive sessions:* Discussed previously
- *Sub-issue #3-4 Board minutes should reflect any discussion or debate regarding a particular item on the agenda and should reflect reports given orally by staff members. Written staff reports should be made and posted on ECWA website:* Discussed previously. *Sub-issue #3-4 ECWA must provide complete and accurate public documents in a timely manner in response to any FOIL request:* Discussed previously.
- *Sub-issue #3-5 Board must have adequate information to consider FOIL appeal and must set forth sufficient reasons for its decision:* Vice Chairman Carney noted that we have responded to this. We are currently working on finalizing our FOIL policy and Open meetings policy.
- *Sub-issue #3-6 Board should ensure the public has access to materials provided to the*

Board in advance of any Board action by posting these materials on its website:

Appendix A: Information that should be posted on website:

- Professional background, experience and qualifications for executive management team (making more than \$100,000) (some, but all are not posted) – This is under discussion.
- Authority Performance Measures (posted but does not meet the requirements) – This is under review.
- Authority Schedule of Debt (not easy to find on website). This issue will be given to the web designer when designated.
- Board and committee meeting agendas and minutes (not posted in advance) – The Authority is posting in advance.
- Property Acquisition and Disposition Policies– This will be done as soon as we have a web designer.
- Adopted Purchasing Guidelines and Procedures (not posted) This will be posted, and it is also under review.
- Annual Investment Report (documents posted are not sufficient) – This will be discussed at the closing conference. It will then be addressed once we get clarification.
- Current Year Official Statements (for those authorities issuing debt) – This is only posted in the year debt is issued. This will be posted at that time.

Secretary McCracken noted that the Web design RFP specifically states that the winner of the award must conform to all of the policies and requirements of the ABO as well as the Buffalo Niagara Coalition on Open Government.

- *Sub-issue #3-7 Public notice of board meeting must be conspicuously posted in one or more places and given to the media:* This has been complied with.
- *Issue #4 Board must ensure its policies and procedures are being followed:* This is under review. Vice Chairman Carney reiterated that some form of compliance officer is necessary, and Ms. Murphy suggested a legal audit every year.
Sub-issue #4-1 Board must follow its own policies regarding hiring of employees, including the appointment of executive staff members: Everything is under review.
- *Sub-issue 4-2 Board must follow its own policies regarding employee benefits and performance evaluation or state why it is deviating from such policies:* All of this is under review moving forward we will adhere to our own policies.

Commissioners agreed to the recommendations listed in the Executive Summary. It was also agreed that the letter to the ABO will be signed by both Commissioners.

VIII. - ADJOURNMENT

Motion by Mr. Carney seconded by Mr. Schad and carried that the meeting adjourn.

DISCUSSION

None

VOTE

Ayes: Two; Commrs. Schad and Carney

Noes: None

Respectfully submitted,

Terrence D. McCracken
Secretary to the Authority

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