



## Minutes of the Faculty Senate

**Presiding:** Thomas E. Banning (Engr Tech)

**Date:** 11-7-17

**Secretary:** R. Jeffrey Thieme

**Senators Present:** Mohd Hasan Ali (Elec & Comp Engr), Thomas E. Banning (Engr Tech), Reza Banai (Sch Urb Aff & Pub Pol), Brennan K. Berg (KWS), Mary K. Boudreaux (Leadership), Eugene H. Buder (Comm. Sci. Disorders), Charles W. Crawford (History), Gerald Chaudron (Univ Libraries), Michael K. Chisamore (Architecture), Coriana L. Close (Art), Lorinda B. Cohoon (English), Jill A. Dapremont (Nursing), Leigh Falls Holman (Couns, Ed, Psy & Res), David M. Gray (Philosophy), Robert A. Hetherington (Theatre & Dance), Tiffany G. Johnson (Univ College), Donna R. Jones (Law), Kristen P. Jones (Management), David M. Kemme (Economics), Henry A. Kurtz (Chemistry), Jeffrey G. Marchetta (Mech Engr), Gray Matthews (Communication), James C. McCutcheon (Crim & Criminal Justice), Meghan E. McDevitt-Murphy (Psychology), Peter L. McMickle (Accountancy), Sanjay Mishra (Physics), Esra Ozdenerol (Earth Sci), George E. Relyea (Public Health), Sandra Richardson (Bus Info Tech), Michael Sances (Political Science), Steven D. Schwartzbach (Biology), Sajjan G. Shiva (Computer Science), Mark Sunderman (Fin, Ins, & Real Estate), Laura C. Taylor (Social Work), R. Jeffery Thieme (Mrktng & Suply Chain Mang), Laura C. Taylor (Social Work), William P. Travis (Health Studies), Joseph C. Ventimiglia (Sociology), Francisco Vivar (Foreign Lang & Lit), Brian A. Waldron (Civil Engr), Jin Yang (Journalism)

**Senator Present by Proxy:** Michael R. Duke (Anthropology) Clare L. Boulanger, John T. Mueller (Music) Kenneth R. Kreitner, Máté Wierdl (MatheMátécal Sciences) Nataliya Doroshenko

**Senators Absent:** Erno Lindner (Biomed Engr), DeAnna N. Owens-Mosby (Instr & Curr Ldrship), Military Sciences (vacant)

**Faculty Senate Information Officer:** Jeffrey S. Berman (Psychology) appointed this meeting

**Guests:** Jeanine Smith (Business and Finance), Lawrence A. Pivnick (UMAR liaison), Martha Robinson (Lambuth liaison), Gloria Fulton Carr (Faculty Ombudsperson)

The four-hundred-and-forty eighth meeting of the University of Memphis Faculty Senate was held Tuesday, November 7, 2017, in Senate Chambers of the University Center, room 261.

### 11.7.17.01 Call to Order

The meeting was called to order at 2:40 p.m. with a quorum present.

#### **11.7.17.02 Approval of Agenda**

The agenda was approved a modification to change the date of the minutes to be approved to October 3, 2017.

#### **11.7.17.03 Approval of Minutes**

The minutes for October 3, 2017, were approved as written.

#### **11.7.17.04 President's Report**

President Banning reported that the Alumni Faculty House Planning Committee will meet on Wednesday of this week. Since the alumni are backing out of a joint faculty/alumni house, faculty are pursuing their own space. President Banning stated that a different venue from the original plan is being considered. Also, the space will be designed based on faculty input. So far, two different approaches are emerging: (1) dinner and drinks atmosphere and (2) coffee shop environment. President Banning will update the FS (Faculty Senate) as progress is made.

President Banning reported that the Paid Parental Leave Committee (Policy Development) has developed the draft Paid Parental Leave (PPL) policy. The draft PPL policy will be put before the UofM Policy Review Board (PRB) on Wednesday, Nov 8, 2017. If the PRB approves the policy it will go to University President M. David Rudd and no Board of Trustees (BOT) approval is needed. Senator Jones (Law) inquired about the effective date of the policy. President Banning stated that the policy will be effective December 1, 2017. President Banning stated he will make an announcement to the faculty regarding the policy via an all faculty email.

President Banning informed the Senate that Senator Schwartzbach, chair pro-tem of the Information Technology Services/Faculty Senate (ITS/FS) Committee, is scheduled to hold a meeting of the committee in late November.

President Banning reported that the Chief Financial Officer (CFO) Search Committee, of which he is a member, continues its work and is looking at a January/February time frame to complete the search. He referenced emails from the Office of the President concerning the search. NOTE: Consultant, Parker Executive Search was hired for the search.

President Banning reported that the UofM Help Desk is reducing its hours of staffing for the telephone help desk. The Office of Information Technology Services (ITS) performed a survey of its calls and determined that a reduction in operating hours could be done without impacting the service levels. Calls during reduced staffing hours maybe routed to ITS support staff via an automated email system.

President Banning reported on the Lambuth Listening Tour with faculty at the UofM Lambuth campus. Senator Kurtz attended the tour. Discussions centered on review of faculty contracts. President Banning and Senator Kurtz are working on moving from the current 2-3 year contracts to 5 year contracts. Another issue discussed was faculty at Lambuth losing access to ITS services

(i.e. email, class roster, etc.) over the summer months and regaining them in the fall due to contract termination. President Banning stated that this loss of service is disruptive to the faculty, therefore this concern will be reviewed with ITS.

#### **11.7.17.5 New Business**

President Banning informed the Senate that the Executive Committee (EC) is putting forth a motion regarding TN University Faculty Senates (TUFS) Constitutional Changes. At President Banning's request, Information Officer Berman provided background Information on the forMátéon of TUFS and its basic principle of speaking to issues as a group (which included the voting process). The reason for the EC's recommendation to reject the proposal is that in some cases the changes would allow TUFS to make decisions without allowing each member FS to have the opportunity to vote on the motion as a body.

Senator Kurtz spoke to the Faculty Senate Motion from the Executive Committee. Motion from the EC regarding TUFS Constitutional Changes: Move that the UofM Faculty Senate (FS) vote to reject the TUFS Constitutional Changes.

**Adopted by voice vote with 0 abstentions and 1 nay vote on November 7, 2017.**

Note: President Banning to communicate the outcome of the vote to TUFS president.

#### **11.7.17.6 Old Business**

President Banning informed the Senate that University President Dr. Rudd and Provost Karen Weddle-West were absent from the meeting due to other commitments. However, University President Rudd is aware of the Administrative Policies Committee (APC) report and has met with the committee chair and some members of the committee throughout the last academic year and in summer 2017 to discuss the preliminary report. President Banning yielded the floor to Senator McMickle, chair, APC. See presentation and report in the Appendix.

The Administrative Policies Committee Report was accepted.

**Adopted by voice vote with 1 abstention on November 7, 2017.**

Next month (December), the Senate will consider the recommendations/motions contained in the report. Senator McMickle asked the Senate to review the recommendations.

#### **11.7.17.07 Report of Committee on Committees,**

President Banning yielded the floor to Senator Dapremont, chair of Committee on Committees, regarding the nominees to serve on a University ad hoc committee and an interview panel. Senator Dapremont put before the body the following nominees to serve:

**Tuition and Fee Assessment Committee** Carolyn Ransford Kaldon (Center for Research in Educational Policy {CREP}Education).  
and

**Interview Panel Division Business and Finance** (Physical Plant) John I .Hochstein (Civil Engr).

Elected by voice vote with one abstention on November 7, 2017.

#### **11.7.17.8 Announcements**

President Banning announced the November 16, 2017 breakfast meeting with University President Rudd and that there was room for two more Senators to attend. President Banning announced the next meeting of the UofM Board of Trustees on December 7, 2017 and that the UofM Lambuth campus will host the meeting.

#### **11.7.17.9 Adjourn**

The meeting adjourned at 3:56 p.m.

## **Appendix**

Presentation: Executive Summary of the Findings of Accountability Issues at The University of Memphis By the Faculty Senate Administrative Policies Committee In Response to Committee Charge of November 8, 2016.

Document: Executive Summary of the Findings of Accountability Issues at The University of Memphis By the Faculty Senate Administrative Policies Committee In Response to Committee Charge of November 8, 2016.

**Executive Summary of the Findings of  
Accountability Issues at  
The University of Memphis  
By the  
Faculty Senate Administrative Policies Committee  
In Response to  
Committee Charge of November 8, 2016**

2016-2017 Administrative Policies Committee Members

Peter L. McMickle, Chair

Thomas E. Banning, Senate President

Coriana L. Close

David M. Kemme

Stephen A. Zanskas

Senator Máté Wierdl, under a Freedom of Information Act request, has received financial information from the University of Memphis, and has submitted a motion for the Faculty Senate to secure even more information for analysis.

To insure an in-depth review, the Administrative Policies Committee is being given this charge:

1. Provide an executive summary of the financials for the University of Memphis regarding wages and contractor payments.
2. Recommendation: Suggest meeting with Máté Wierdl to confirm his needs and his investigations.
3. Recommendation: Suggest the committee use representatives from the Faculty Senate Budget Committee to assist in this effort
4. Recommendation: Suggest the committee establish a dialog with the President and CFO of the University of Memphis to ascertain responses that will be required to answer the budget information questions as well as supply any additional information.
5. Provide the executive summary, to the Faculty Senate, no later than the Faculty Senate meeting on February 21, 2017. [The Executive Summary deadline has been extended twice in order to gather more information. The current deadline is November 7, 2017.]

## **1. What is the State Mandated, University President's Expenses Report?**

The Tennessee Higher Education Accountability Act of 2004 came about in response to issues involving certain expenditures authorized or encouraged by Tennessee University Presidents. Particularly notable was the 2003 resignation of the President of the University of Tennessee following expenditure controversies which in part involved a \$300,000 consulting contract that the university had established with a Washington, D.C. attorney, who was a long-time friend and business partner of UT's President, without going through a bidding process.

Section 4 of the Accountability Act required that all state colleges and universities regularly prepare a report:

. . . detailing expenditures made by, at the direction of, or for the benefit of the chancellor or president. [Emphasis added.]

The State Board of Regents named this report Summary Report of the President's Expenses. Herein, we will simply call it the "President's Expenses Report".

The Accountability Act further required that these reports:

shall include, but not be limited to, unrestricted gifts, **foundation funds**, athletic funds, sponsorship fees, licenses and royalty funds, and other such funds that would not be included in the operating budget for the chancellor's or the president's office. [Emphasis added.]

Since the 2016 passage of the FOCUS Act, future President's Expenses Reports will be submitted annually to the University's new independent Board of Trustees. By law, it will be the responsibility of the University's Board of Trustees to designate the title and format of the President's Expenses Report.

Unlike other University financial reports, the President's Expenses Reports are not currently available on the University website.

They can be read in the Preservation and Special Collections Department on the 4<sup>th</sup> floor of the Ned R. McWherter Library. [Additional details can be found in the Appendix to this Report.]

## **2. The University of Memphis' President's Expenses Reports Violate the Spirit and Letter of the Tennessee Higher Education Accountability Act of 2004**

The Presidents Expense Reports for 2013-14 and 2014-15, which were at that time submitted to the Tennessee Board of Regents, listed high expenditures under the category: President's Office – Other Expenses. In 2013-14, the **Other Expenses were \$1,187,319**, most of which, \$994,066, were paid for with University of Memphis Foundation funds. In 2014-15, the **Other Expenses were a higher \$1,988,017**, of which \$1,962,172 was paid for with Foundation funds.

**No Supplemental Schedules with Details of these expenditures were provided in these President's Expenses Reports for these high dollar amounts.**

The Presidents Expenses Report was created by the State Legislature to specifically provide details and clarity surrounding such things as Foundation Expenditures. Obfuscating the details of such expenditures under broad headings such as Other Expenses is **at odds with the spirit, if not the letter, of the Higher Education Accountability Act which requires the “detailing” of such expenditures.**

It was not until Senator Wierdl submitted a FOIA request in 2015 asking for details regarding the high dollar Other Expenses listed in the President's Expenses Report that some Information regarding these Expenditures for 2013-14 was learned by him and subsequently provided by him to the University's Faculty Senate President, Tom Banning. This in turn led to Senate President Banning's formal request that this Faculty Senate Committee conduct an investigation into these matters.

As this Committee learned, obtaining sufficient details of these expenditures was further impeded due to the fact that the majority of these expenses were University of Memphis Foundation Contracts, paid for with Foundation funds. The Foundation, an independent organization, **treats their contracts and specific expenditures as confidential.**

[For further Information see the Appendix to this Report.]

**3. There Were Audit Failures at Both the Tennessee Higher Education Commission and the Tennessee State Comptroller's Office**

While the Committee researched the 2013-14 President's Office – Other Expenses report, we noted that Tennessee Technical University at \$323,532 and the University of Memphis at \$1,187,319 were the only Tennessee Board of Regents' Universities reporting high dollar amounts under the category President's Office – Other Expenses. **We feel that this should have triggered additional scrutiny by the Board of Regent's Internal Auditors and that not doing so was an audit failure.**

University	Institutional Funds	Foundation Funds
Austin Peay State University	\$ 23,233	\$ 0
East Tennessee State University	\$ 39,311	\$ 57,362
Middle Tennessee State University	\$ 77,809	\$ 12,429
Tennessee State University	\$ 35,134	\$ 2,646
Tennessee Technical University	<b>\$ 323,532</b>	\$ 0
The University of Memphis	<b>\$ 193,252</b>	<b>\$ 994,066</b>



In the future, it will be the responsibility of the University's Board of Trustees to designate the title and format of the state mandated, President's Expenses Report. The Board of Trustees should require that future President's Expenses Reports include Schedules detailing all large expenditure categories, especially any categorized as other expenses.

The Comptroller of the Treasury, Division of State Audit, is responsible for auditing the financial statements of the University of Memphis. In their 2014 audit of the University of Memphis, Note 21: Component Unit, they provided a description of the Foundation and an interesting explanation regarding the inclusion of Foundation expenditures in the University of Memphis's financial statements.

The University of Memphis Foundation is a legally separate, tax-exempt organization supporting The University of Memphis. The Foundation acts primarily as a fundraising organization to supplement the resources that are available to the university in support of its programs. The 40-member board of the Foundation is self-perpetuating and consists of graduates and friends of the university. Although the university does not control the timing or amount of receipts from the Foundation, the majority of resources, or income thereon, that the Foundation holds and invests are restricted to the activities of the university by the donors. Because these restricted resources held by the Foundation can only be used by, or for the benefit of, the university, the Foundation is considered a component unit of the university and is **discretely** presented in the university's financial statements. [Emphasis added.]

In other words, the Foundation expenditures are included in the University's financial reports but the details are so buried in the large numbers of the published University financial statements that they cannot be identified. In addition, The Comptroller of the Treasury, Division of State Audit did not include the University of Memphis' President's Expenses Report as a part of their 2014 financial audit.

**It is surprising to this Committee, that the State Auditors do not consider the President's Expenses Report to be a part of the University's financial statements to be included within the scope of their audits. This is particularly surprising since the President's Expenses Report is a legislatively required financial report.**

**Like the Board of Regents' Internal Auditor's failure to investigate the high level of Presidential "Other Expenses", this too seems to be another audit**

**failure, this time made by The Comptroller of the Treasury, Division of State Audit.**

Both audit failures, like the lack of detail in the President's Expenses Report, again seem to be at odds with the spirit and letter of the Tennessee Higher Education Accountability Act.

**Motion 1 (Regarding Items 1, 2, 3):**

**The Administrative Policies Committee moves that the University of Memphis Faculty Senate express by formal declaration to the University of Memphis Board of Trustees, the Faculty Senate's desire for the Board of Trustees to move quickly to continue the issuance of the mandated President's Expenses Report and require that future President's Expenses Reports detail any expenditures to one contractor that collectively amount to over \$10,000, especially any categorized as Other Expenses.**

**Also, to convey to the Board of Trustees that the Faculty Senate desires that the Board of Trustees require that the President Expenses Report be included with the other financial statements of the University published on the University's website.**

**The Committee further moves that the Faculty Senate charge their Administrative Policies Committee, or the Committee's successor, to annually report to the Senate on the Board of Trustee's progress in implementing these recommended improvements, until such time that, in the opinion of the Faculty Senate as a majority, adequate progress has been achieved.**

**4. Lack of Detail in the 2013-14 President's Expenses Report and the Secrecy of the University of Memphis Foundation Clouded and Impeded the Disclosure of Certain Questionable Expenditures**

When Senator Wierdl examined the FOIA Response he received from the University he felt that it was inadequate in certain details and that several expenditures disserved additional scrutiny, especially those made to Outside Contractors. Upon review, the Academic Policies Committee found merit in seeking better Information regarding \$753,454 out of the \$1,187,319 of 2013-14 Presidential Other Expenses:

Charles G. Burkett	Professional Services	\$220,000
Phil Trenary	Professional Services	\$240,000
No Payee Provided	Executive Search Fees (President)	\$ 79,000
Greenwood/Asher & Assoc.	Other Professional Admin Services	\$ 27,945
Baker and Associates	Professional Services	\$104,086

Ruffalo Cody	Professional Services	\$ 11,160
Huron Consulting Services	Professional Services	<u>\$ 71,263</u>
TOTAL		\$753,454

In trying to learn more about these 2013-14 Contractor Expenditures, the Committee first approached the University Office of Procurement and Contract Services. We learned that although all University of Memphis contracts are available for public review, the Procurement Office had no copies or records of any of the contracts issued and paid for by the Foundation.

The Committee then approached the University of Memphis Foundation and asked to review these contracts. We were told by then Managing Director Larry Bunch that the Foundation is a separate organization from the University and that all Foundation Contracts, for any purpose, are confidential and not available for review by the public or our Committee.

**So because of Foundation secrecy this Committee has been unable to learn the details of any of the actual contracts made with the above individuals and companies, including what exact services were each expected to perform and who would decide if their services had been satisfactory. What we have been able to learn is only indirect Information from some interviews, but mostly from public sources.**

#### **5. The 2013-14 Foundation Contracts with Charles G. Burkett and Phil Trenary have the Appearance of a Potential Conflict of Interest**

Using the FOIA Response to Senator Wierdl's inquiry for details regard the 2013-14 Presidents' Other Expenses, we summarized the various payments to Charles Burkett and Phil Trenary made in 2013-14. We found that **Mr. Burkett was paid \$220,000 and Mr. Trenary was paid \$240,000 in Foundation funds for unspecified work for the University of Memphis.** These contracts and the amounts paid had hereto-fore been unknown.

**Several parties told the Committee that these gentlemen actively consulted and assisted with the University's SRI Budget Restructuring efforts.**

**So why should their hire be an issue?** A public institution has a particular responsibility to avoid any appearance of a potential conflict of interest. As does a Foundation, closely affiliated with a public institution.

The appearance of a potential conflict in this instance was that the Foundation and the Interim

University President Brad Martin all had close ties with the contractors and, despite this, still contracted for their personal services.

**Also, since these contracts were run through the Foundation, they were not bid.**

The Foundation made a public statement on conflicts of interest in their 2013-14 IRS Form 990 [by Federal Law this IRS Form is Available for Public Inspection]. Here we learn that the Foundation has a “Code of Ethics Section of the Foundations Policies and Procedure Manual”. **However, in Form 990 the Foundation states “the Organization does not make its Governing Documents or Conflict of Interest Policy available for Public Inspection”.**

**So no one, including this Committee, can determine if the Foundation has a conflict of interest policy against hiring and paying acquaintances and members of their Board of Directors; but if they don’t, they should have; and if they do, it appears here that they didn’t follow it.**

Both Charles Burkett and Phil Trenary were acquaintances and, in one case at least a business associate, of former Foundation Board President and Interim University of Memphis President, Brad Martin.

Both Charles Burkett and Phil Trenary were in 2013-14 at the same time as their consulting contracts members of The University of Memphis Foundation’s Board, the same Board which approved their consulting contracts and payment of fees.

Mr. Burkett had, in fact, been the Foundation’s Board President from 2009 through 2012, his term in office ending just the year before his 2013 Foundation consulting contract for \$220,000. Brad Martin had been the Foundation’s Board President from 2007 through 2008, his term ending just prior to Mr. Burkett’s term.

According to internet postings, Mr. Burkett is retired President of First Tennessee Bank National Association, which is wholly owned by First Horizon National Corporation where Interim President Brad Martin was and still is a Director.

In 2015-16, Mr. Burkett continued to serve on the Foundation’s Board while still being paid by the Foundation \$206,680 for his undisclosed continuing services to the University.

According to internet postings, Mr. Trenary served as President and Chief Executive Officer at Pinnacle Airlines Corp. from April 1997 to March 24, 2011. Since June 1, 2014, he has been Chief Executive Officer and President of The Greater Memphis Chamber of Commerce.

**The appearance of the Foundation having a potential conflict of interest was further aggravated by the Foundation’s policy of keeping their Contracts secret and the Foundation failing to report the dollar amount of their payments to Mr. Burkett and Mr. Trenary, as required by IRS rules, in the Foundations 2013-14 IRS Form 990 public filing.**

[For further Information see the Appendix to this Report.]

**6. Payments to Outside Contractors for the SRI Budget Initiative Appear Excessive**

We were told in our interviews that the 2013-14 Huron Expenditure of \$71,263.01 made by the Foundation was for the SRI [Strategic Resource Investment] Budget Initiative. However, the Foundations following year's IRS 990 reported a second, much larger payment to Huron, \$568,950.00.

**Together with the Burkett and Trenary expenditures for SRI work of \$460,000.00; it appears that the University of Memphis Foundation paid at least \$1.1 million dollars to outsiders to help in the SRI initiative to redesign the budgeting process. Given the inability to view the contracts and details regarding the required deliverables typical in such contracts, and with as much budget talent as the University already possessed, this seems excessive.**

[For further Information see the Appendix to this Report.]

**7. The Foundation Paid an Outside Fund Raiser More than the University Gained**

The Committee, in responding to our charge, found it necessary to review the University of Memphis Foundation's IRS Form 990 for each of the three years ending 2014, 2015, and 2016. It appears from the Information found in the University of Memphis Foundations 2015-16 IRS Form 990 that the Foundation contracted with fund raiser Royall and Company to assist in the 2015-16 University's Annual Giving Campaign. [A copy of the applicable portion of that Form 990 appears in the Appendix of this report.]

Many of our faculty senators have voluntarily worked on this campaign over the years; so we have a particular interest in it. The Form 990 clearly shows that in 2015-16 campaign, Royall earned more than the University gained, \$150,443 versus \$145,883.

**The terms of the Foundation's agreement with Royall and Company are unknown because Foundation agreements are secret and not available for public review. Obviously, it was not a good arrangement.**

[For further Information see the Appendix to this Report.]

**8. Fortunately, We Believe that Future Foundation-Funded University Contracts Will No Longer Be Secret**

The University Foundation is a separate organization from the University and, at present, all Foundation Contracts, for any purpose, are confidential and not available for review by the public.

The Committee together with Faculty Senate President Tom Banning conferred with current University President M. David Rudd. We expressed our concerns regarding this secret contract issue. We further suggested a proposed solution of 1) having the Foundation transfer the funds needed for such contractor contracts directly to the University and then 2) having the University's Office of Procurement and Contract Services issue the contracts so they would then follow university guidelines and be publically available for review.

We are pleased to note that we expect an announcement in the near future that the policy regarding

Foundation Contracts for the Benefit of the University will soon be changed. We have been told that President Rudd has been encouraging such a change and the new President of the Foundation would prefer that the Foundation no longer issue any such contracts, but that this will require a change in the Foundation's By-Laws.

[For further Information see the Appendix to this Report.]

## **Motion 2 (Regarding Items 4, 5, 6, 7, 8):**

**Because a change in Foundation issued contracts is expected soon, the Administrative Policies**

**Committee only moves that the University of Memphis Faculty Senate charge their Administrative**

**Policies Committee to report at the last meeting of the 2017-18 Faculty Senate on the progress of the University of Memphis and the University of Memphis Foundation in moving all service contracts under the auspices of the University's Division of Procurement and Contract Services and at that meeting determine if continued monitoring by the Administrative Policies Committee is warranted.**

## **9. Current University Issued Contracts Can No Longer Be Read On-line but All Are Available for Review by Tennessee Citizens at the University Office of Procurement and Contract Services**

When the Committee began this investigation in 2016, all of the University's current Procurement Contracts could be read on line at the University's website.

We recently learned that, unfortunately, this is no longer true. Citing an Amendment to TCA 10-7-504(i) signed into law on April 17, 2017 regarding keeping the identity of a vendor confidential who provides: “goods and services used to protect electronic Information systems”, the entire on-line University Procurement Contract site was shut down.

We hope that this shutdown of the Contract Site is temporary, while the current contracts are reviewed to see if any fall under the auspices of this new Act. **We doubt that few if any current University of Memphis contracts are impacted by the new law. The Committee believes that to use this law as a rationale to permanently close down the on-line disclosure of the unaffected majority of University contracts would be unwarranted. This is particularly unwarranted in light of the disclosure issues previously discussed.**

In any case, all contracts issued by the University, including older non-current contracts, are still available to any citizen of Tennessee upon request. Just present your Driver’s License to Adm. Building Room 115 and allow for a couple days for it to be retrieved.

[For further Information see the Appendix to this Report.]

**Motion 3 (Regarding Item 9):**

**The Administrative Policies Committee moves that the University of Memphis Faculty Senate express by formal declaration to the University of Memphis Board of Trustees and the University President, the Faculty Senate’s desire for the on-line posting of the full details of current University contracts be reinstated; except for the names of Contractors providing Computer Security Services.**

**The Committee further moves that the Faculty Senate charge their Administrative Policies Committee, or the Committee’s successor, to annually report to the Senate on the Board of Trustee’s progress in implementing this request, until such time that, in the opinion of the Faculty Senate as a majority, adequate progress has been achieved.**

**10. Under the University of Memphis Foundation’s New Charter, No University Officers Are Required Members of the Foundation’s Board of Directors and the Foundation’s Website Should Be Made Autonomous from the University Website.**

The Committee recognizes that this change was likely made to more clearly separate the Foundation, as an independent organization, from the University. However, the Committee feels this was a step too far. At a minimum, the

Committee believes the University President should be a required member of the Foundation's Board of Directors. This would insure that a University representative would always be there as a monitor of Foundation activities. [For further details see the Appendix to this Report.]

Also, with this clear concern for Foundation autonomy, we further note that the University of Memphis

Foundation Website is not autonomous but is an integral part of the University website

([www.memphis.edu/Foundation/](http://www.memphis.edu/Foundation/)). In comparison, while the University of Tennessee website does have a section for contributions that is forwarded to their University Foundation, the University of Tennessee Foundation website is separate and autonomous ([www.utfj.org](http://www.utfj.org)).

[For further Information see the Appendix to this Report.]

#### **Motion 4 (Regarding Item 10):**

**The Administrative Policies Committee moves that the University of Memphis Faculty Senate express by letter to President Rudd and the current University of Memphis Foundation's Board of Directors' President, the Senate's suggestion that the Foundation's Charter be Amended to require that the University President be a member of the Foundation's Board of Directors and the Foundation's website be made separate and autonomous from the University's website. [This would still allow for the University's website to reference and link to the Foundation Website.]**

#### **11. The University of Memphis Foundation Is Too Secret**

- All Meetings and Minutes of the Foundation's Board of Directors are Secret
- All Records of the Foundation are Secret
- The Foundation's By-Laws are Secret
- Details of Specific Foundation Expenditures are Secret
- The Foundation's System of Internal Control over its Financial Statements is Secret
- As stated by the Foundation in their 2013-14 IRS 990: "The organization does not make its governing documents or conflict of interest policy available for public inspection." [Emphasis added]

The Foundation's secrecy is real and intentional. We could find no reason or requirement in any version of the Foundation's Charter for such secrecy. We wonder whose decision was it that the Foundation's operations were to be kept



secret? Why, specifically, is the University of Memphis Foundation keeping details of its expenditures and even its rules for conducting business secret?

Such secrecy is counterproductive. It gives the impression that there is something to hide.

Consider the difference in openness between the University of Tennessee Foundation and the University of Memphis Foundation as displayed below on their respective websites.

## UNIVERSITY OF TENNESSEE FOUNDATION WEBSITE PAGE

### Financials & Transparency

The University of Tennessee Foundation strives for transparency. Article IV of the Foundation's Affiliation Agreement states that:

- Minutes of open Foundation Board meetings are [available here](#).
- The Foundation will create an annual report (electronic or written).
- The Foundation will annually present a report to the University Board of Trustees.
- The Foundation will file an [IRS 990 report](#) and meet all applicable requirements.

All full board meetings of the Foundation will be open to the public except for executive sessions that shall include but not be limited to the following matters: litigation; audits or investigations; human resource issues; gift acceptance deliberations; board training; governance; donor strategy sessions; and security measures.

[UT Investment Office »](#)

### Foundation Documents

- [UT Foundation Restated Charter](#)
- [UT Foundation Bylaws](#)
- [Enabling Legislation](#)
- [Affiliation & Services Agreement with the University of Tennessee](#)
- [Employee Services Agreement with the University of Tennessee](#)
- [Affiliation & Services Agreement with the UC Foundation](#)

## Public Information Policy

The UM Foundation is a not-for-profit corporation organized in 1964 in the State of Tennessee. The Foundation has qualified as a tax-exempt organization under Section 501(c) (3) of the Internal Revenue Code. Gifts to the Foundation are deemed to be made to a qualified organization and are deductible under Section 170 of the Internal Revenue Code. The relationship between the Foundation and the University is set out under a written agreement that expressly recognizes the UM Foundation as a separate and distinct legal entity and not an agent of the University.

The UM Foundation is committed to aiding the University in fulfilling the University's mission of excellence. To succeed in this commitment, the Foundation must earn and maintain the trust of past, present, and future contributors. A contributor's trust in the Foundation is enhanced when there is openness and communication. For this reason the Foundation voluntarily makes public the following information:

- Board of Directors
- Audited financial statements

This voluntary disclosure of information is in addition to all materials the Foundation is required to disclose by law. The UM Foundation respects the rights of our donors to keep their gifts and personal information private.

### **Motion 5 (Regarding Item 11):**

**The Administrative Policies Committee moves that the University of Memphis Faculty Senate express by letter to President Rudd and the current University of Memphis Foundation's Board of Directors' President, the Senate's suggestion that the Foundation make every effort to become more open about its activities.**

### **12. New Internal Controls at the Board of Trustees Level**

In further response to the FOCUS Act that created the new University Board of Trustees, additional legislation was passed effective March 29, 2017 which created the requirement for each University Board to:

- 1. Create a Board of Trustee's Audit Committee**
- 2. Hire a Chief Internal Auditor who would report directly to the Audit Committee and Board**
- 3. Conduct a yearly Internal Financial Audit of the President's Office**
- 4. Maintain Whistle-Blower Protection**

The provisions continuing Whistle-Blower Protection are particularly interesting:

**Tennessee Code Annotated 49-14-103(b), as amended March 29, 2017**

Section 8-50-116 shall apply to all higher education employees. In addition, no higher education employee shall suffer any of the actions specified in § 8-50-116 for reporting to or cooperating with auditors or for reporting any facts to the governing boards of public institutions of higher education or to the audit Committees of those boards. It is a Class A misdemeanor to knowingly and willingly retaliate or take adverse action of any kind against any person for reporting alleged wrongdoing pursuant to this chapter.

[The cited Section 8-50-116 -Reporting violations of state agency, employee, or contractor, that fully details Tennessee whistle-blower protections, can be read in the Appendix to this report.]

### **Motion 6 (Regarding Item 12):**

**The Administrative Policies Committee moves that the University of Memphis Faculty Senate charge their Administrative Policies Committee, or the Committee's successor, to report at the end of this Senate term on the Board of Trustees' progress on implementing the legislatively mandated Internal Controls.**

Appendix to the Committee's Findings

### **1. Additional Information Regarding: What is the State Mandated, University President's Expenses Report?**

Senator Máté Wierdl, like many faculty members, was concerned about the University of Memphis' ever tightening academic budget. Faculty members have been continually required to scale back classroom, professional, and research expenditures. At the same time, many faculty members have felt that administrative expenditures have not been curtailed to the same extent as that of the faculty.

Senator Wierdl thought that a review of the publically available University Financial Statements might provide him with more clarity on how the University funds were being used.

The university financial statements are available for examination on the 4<sup>th</sup> floor of the Ned R. McWherter Library, in the Preservation and Special Collections Department.

Many, but not all, financial details may also be found online in the University's website at: <http://www.memphis.edu/accounting/fr.php>

For 2014 and 2015, when the university was a member of the State Board of Regents College System of

Tennessee, additional financial Information can be found online in the documentation of the TBR Audit Committee:

<https://www.tbr.edu/audit/november-2014-audit-Committee-meeting>

The Accounting Report that Senator Wierdl relied upon for his investigation is not available on the University of Memphis website, but it is available in the Library and at the above TBR Audit Committee site. The report is entitled: **the University of Memphis, Summary of the President's Expenses – Unaudited, For the Period July 1, 2013 to June 30, 2014.**

This is in fact a special accountability report mandated by Section 4 of the Tennessee Higher Education Accountability Act of 2004. The preamble of the Act explains the legislative reasoning behind the law:

WHEREAS, public institutions of higher education have a responsibility to be prudent in their expenditure of public funds and to ensure that the highest possible portion of those funds goes toward fulfilling their primary missions of education of students and research for the benefit of the citizens of Tennessee; and

WHEREAS, issues have arisen to show that the state board of regents and the

University of Tennessee board of trustees higher education must have tighter controls and greater accountability on fiscal matters at their respective institutions; and,

WHEREAS, there is a need for each higher education governing board to have an audit committee which will employ an independent internal auditor that will report directly to the respective audit committee and governing board;

WHEREAS, action must be taken to assure appropriate oversight of public higher education institutions;

The 2016 Tennessee FOCUS Act created independent, local Boards of Trustees for the six Board of Regent's universities. The passage of the FOCUS Act further led **to new legislation strengthening the accountability review responsibilities of the new Boards**. Fortunately, under this new legislation the annual President's Expenses Report will continue to be required by law but it will now be submitted to the University of Memphis Board of Trustees.

**Applicable Law: Tennessee Code Annotated 49-14-104, as amended March 29, 2017**

The governing boards of all public institutions of higher education shall establish a policy requiring that annual reports detailing expenditures made by, at the direction of, or for the benefit of a system head or chief executive of an institution

are to be filed with their respective boards. It is the legislative intent that the policy require the report of discretionary expenditures, which shall include, but not be limited to, unrestricted gifts, Foundation funds, athletic funds, sponsorship fees, licenses and royalty funds, and other such funds that would not be included in the operating budget for the system head's or chief executive's office. System heads or chief executives shall not have the authority to grant themselves an exception to fiscal, spending, or travel policies established by their boards or by statute.

The 2013-14 University of Memphis Presidents Expenses Report that Senator Wierdl and this Committee relied upon for this investigation is shown below:

**The University of Memphis  
Summary of the President's Expenses - Unaudited  
For the Period July 1, 2013 to June 30, 2014**

President:	Supplemental Schedule	President's Budgetary Accounts		Other Accounts		External Sources	Total
		Institutional	Foundation	Institutional	Foundation		
Salary and Benefits		\$ 66,715	\$ -	\$ 1,540	\$ -	\$ -	\$ 68,255
Travel	A	4,451	-	213	-	223	4,887
Business Meals and Hospitality	B	5,872	64	1,112	19,728	16,112	42,888
Other Expenses	C	85	10,338	50,549	8,463	-	69,435
Discretionary Allowance		-	-	-	-	-	-
Housing Allowance		-	-	-	-	-	-
Other Allowances		625	-	-	-	-	625
		77,748	10,402	53,413	28,191	16,335	186,089
<b>President's Office:</b>							
Salary and Benefits (5 FTE)		675,086	-	220,926	2,011	-	898,024
Travel		1,389	-	1,558	109	-	3,056
Business Meals and Hospitality		9,829	3,912	-	7,762	-	21,503
Other Expenses		166,518	775,743	26,734	218,323	-	1,187,319
		852,822	779,656	249,218	228,206	-	2,109,902
<b>Total Expenses</b>		<b>\$ 930,570</b>	<b>\$ 790,057</b>	<b>\$ 302,631</b>	<b>\$ 256,397</b>	<b>\$ 16,335</b>	<b>\$ 2,295,991</b>

**Additional Disclosures:**

**Other Allowances** - The President is provided other spending allowances for \$625.01.

**Vehicle Allowance** - The President receives a monthly car allowance of \$750.00 per month in accordance with employment contract. Payments are included in salaries and benefits.

**Athletic Tickets** - The President is provided tickets to university athletic events. The face value of the tickets for this period was \$35,020, which is recorded in the expenses of Schedule C.

**Cell Phone Allowance** - The President is provided a cell phone allowance, included in salary and benefits, of \$135/month for a total of \$135.

**External Sources** - This report includes the cost of items provided, paid, or reimbursed by external sources for the benefit of the President. In instances when the values of these items are not available, other relevant details are provided on the applicable supplemental schedule.

**President Emeritus** - The President Emeritus is provided a monthly salary of \$5,660.16, plus benefits and a cell phone allowance of \$125.00. The total expenses through the end of the quarter are \$74,651.88. The Foundation provided \$2,011.08 for a life insurance policy.

*Report Objective: In accordance with TCA 49-14-104, this is a report of expenses made by, at the direction of, or for the benefit of the president for the period and includes expenses from the president's institutional operating budget, as well as any discretionary expenses from unrestricted gifts, foundation funds, athletic funds, sponsorship fees, licenses and royalty funds, and other such funds that would not be included in the operating budget for the president's office for the period indicated. The report includes two sections, one for the expenses made by, at the direction of, or for the benefit of the president and the other for the remaining expenses of the president's office.*

## **2. Additional Information Regarding: The University of Memphis' President's Expenses Reports Violate the Spirit and Letter of the Tennessee Higher Education Accountability Act of 2004**



In addition to the information previously provided, the University of Memphis 2013-14 President's

Expenses Report showed \$68,255 labeled President: Salary and Benefits which was paid for with Institutional Funds. It was common knowledge that Interim President Brad Martin had forgone a salary for his position as Interim President. So who received the \$68,255 in Institutional Benefits? Were they for Interim President Martin or were they for someone else? We inquired and were told that Interim President Martin received no Benefits. The Committee never learned the disposition of these funds.

**3. No Additional Information**

**4. No Additional Information**

**Additional Information Regarding: The 2013-14 Foundation Contracts with Charles G. Burkett and Phil Trenary have the Appearance of a Potential Conflict of Interest**

The Academic Policies Committee felt that the 2013-14 Foundation Expenditures for consulting services for Charles G. Burkett and Phil Trenary warranted additional scrutiny and would have liked to have been able to obtain the contract Information regarding the nature and rationale for their services. As mentioned earlier, the Foundation would not provide the Committee with their contracts.

Below is a listing of all of the individual payments, these dollar amounts were only revealed through Senator Wierdl's Freedom of Information Act request.

	The University of Memphis			
	Presidential Expenses Paid to Charles G. Burkett			
	Fiscal Years 2013-2014			
Date	Description	Amount	Other	Payee
11/19/13	Professional Services	\$20,000.00	No Explanation of the Nature of the Services Performed	Charles G. Burkett
11/19/13	Professional Services	\$20,000.00	No Explanation of the Nature of the Services Performed	Charles G. Burkett
11/19/13	Professional Services	\$20,000.00	No Explanation of the Nature of the Services Performed	Charles G. Burkett
2/6/14	Professional Services	\$60,000.00	No Explanation of the Nature of the Services Performed	Charles G. Burkett
3/27/14	Professional Services	\$20,000.00	No Explanation of the Nature of the Services Performed	Charles G. Burkett

3/27/14	Professional Services	\$20,000.00	No Explanation of the Nature of the Services Performed	Charles G. Burkett
5/13/14	Professional Services	\$20,000.00	No Explanation of the Nature of the Services Performed	Charles G. Burkett
6/30/14	Professional Services	\$20,000.00	No Explanation of the Nature of the Services Performed	Charles G. Burkett
6/30/14	Professional Services	\$20,000.00	No Explanation of the Nature of the Services Performed	Charles G. Burkett
	Total	\$220,000.00		
	<b>The University of Memphis</b>			
	<b>Presidential Expenses Paid to Phil Trenary</b>			
	<b>Fiscal Years 2013-2014</b>			
<b>Date</b>	<b>Description</b>	<b>Amount</b>	<b>Other</b>	<b>Payee</b>
10/22/13	Professional Services	\$20,000.00	No Explanation of the Nature of the Services Performed	Phil Trenary
10/22/13	Professional Services	\$20,000.00	No Explanation of the Nature of the Services Performed	Phil Trenary
11/19/13	Professional Services	\$20,000.00	No Explanation of the Nature of the Services Performed	Phil Trenary
12/16/13	Professional Services	\$20,000.00	No Explanation of the Nature of the Services Performed	Phil Trenary
12/16/13	Professional Services	\$20,000.00	No Explanation of the Nature of the Services Performed	Phil Trenary
12/16/13	Professional Services	\$20,000.00	No Explanation of the Nature of the Services Performed	Phil Trenary
1/14/14	Professional Services	\$20,000.00	No Explanation of the Nature of the Services Performed	Phil Trenary
2/6/14	Professional Services	\$20,000.00	No Explanation of the Nature of the Services Performed	Phil Trenary
3/13/14	Professional Services	\$20,000.00	No Explanation of the Nature of the Services Performed	Phil Trenary
4/9/14	Professional Services	\$20,000.00	No Explanation of the Nature of the Services Performed	Phil Trenary
5/13/14	Professional Services	\$20,000.00	No Explanation of the Nature of the Services Performed	Phil Trenary
6/16/14	Professional Services	\$20,000.00	No Explanation of the Nature of the Services Performed	Phil Trenary
	Total	\$240,000.00		

These amounts paid to Mr. Burkett and Mr. Trenary, through no apparent fault of Mr. Burkett or Mr. Trenary, were not listed by the Foundation in their filed 2013-14 IRS 900. In Schedule L, Business Transactions Involving Interested Parties, the amounts of these transactions were left blank.

**Part IV Business Transactions Involving Interested Persons.**

Complete if the organization answered "Yes" on Form 990, Part IV, line 28a, 28b, or 28c.

(a) Name of interested person	(b) Relationship between interested person and the organization	(c) Amount of transaction	(d) Description of transaction	(e) Sharing of organization's revenues?	
				Yes	No
(4) CHARLES BURKETT	MR BURKETT IS ON THE BOARD OF TRUSTEES		THE FOUNDATION PAID MR BURKETT FOR CONSULTING SERVICES PROVIDED TO THE UNIVERSITY OF MEMPHIS		No
(5) PHIL TRENNY	MR TRENNY WAS ON THE BOARD OF TRUSTEES DURING FY2014		THE FOUNDATION PAID MR TRENNY FOR CONSULTING SERVICES PROVIDED TO THE UNIVERSITY OF MEMPHIS		No

In Section B Independent Contractors in the same 2013-14 Form 990, they were not listed despite the fact they were apparently, at \$240,000 and \$220,000, the Foundation's fourth and fifth largest Contracts. If true, this would appear to be a violation of IRS Rules which required that they be listed here in this Section in the Foundation's filing. **Listing here would have also revealed how much these consultants were being paid which Information, until Senator Wierdl's FOIA, had been kept confidential.**

**Section B. Independent Contractors**

**1** Complete this table for your five highest compensated independent contractors that received more than \$100,000 of compensation from the organization. Report compensation for the calendar year ending with or within the organization's tax year.

(A) Name and business address	(B) Description of services	(C) Compensation
BEYNON SPORTS SURFACES INC 16 ALT ROAD HUNT VALLEY MD 21030	CONSTRUCTION AND RENOVATION	1,399,654
MONTGOMERY MARTIN CONTRACTORS LLC 8245 TOURNAMENT DR STE 300 MEMPHIS TN 38125	CONSTRUCTION AND RENOVATION	905,251
SPORTS TURF SOLUTIONS LLC 606 ST BLAISE ROAD GALLATIN TN 37066	CONSTRUCTION AND RENOVATION	430,361
NATIONS WRIGHT LLC 7201 E CAMELBACK ROAD STE 360 SCOTTSDALE AZ 85251	CONSTRUCTION AND RENOVATION	212,826
ROYALL AND COMPANY 1920 E PARHAM RD RICHMOND VA 23228	PROFESSIONAL CONSULTING SERVICES	189,710
<b>2</b> Total number of independent contractors (including but not limited to those listed above) who received more than \$100,000 of compensation from the organization <b>15</b>		

Form 990 (2013)

Compare the previous 2013-14 Form 990 prepared when Brad Martin was Interim UM President, to the Foundation's 2015-16 IRS Form 990 shown below, prepared while David Rudd was UM President.

(3) CHARLES BURKETT	MR BURKETT IS ON THE BOARD OF DIRECTORS	206,680	THE FOUNDATION PAID MR BURKETT FOR CONSULTING SERVICES PROVIDED TO THE UNIVERSITY OF MEMPHIS		No
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<b>Section B. Independent Contractors</b>		
<b>1</b> Complete this table for your five highest compensated independent contractors that received more than \$100,000 of compensation from the organization. Report compensation for the calendar year ending with or within the organization's tax year.		
(A) Name and business address	(B) Description of services	(C) Compensation
NATIONS GROUP LLC 7201 E CAMELBACK ROAD SUITE 360 SCOTTSDALE, AZ 85251	CONSTRUCTION AND RENOVATION	621,145
ARCHER MALMO INC 65 UNION AVE SUITE 500 MEMPHIS, TN 38103	ADVERTISING/MARKETING/PUBLIC RELATIONS	371,723
LOONEY RICKS KISS 175 TOYOTA PLAZA SUITE 500 MEMPHIS, TN 38103	PROFESSIONAL SERVICES	274,982
CHARLES BURKETT 238 CLOISTER GREEN LANE MEMPHIS, TN 38120	CONSULTING SERVICES	206,680
ADVENT RESULTS LLC 2320 CRUZEN STREET NASHVILLE, TN 37211	PROFESSIONAL SERVICES	157,500
<b>2</b> Total number of independent contractors (including but not limited to those listed above) who received more than \$100,000 of compensation from the organization ▶ 9		

Form 990 (2015)

#### 990 Schedule O, Supplemental Information

Return Reference	Explanation
FORM 990, PART VI, SECTION A, LINE 2	CHARLES BURKETT AND DAVID ZETTERGRAN WORKED FOR DAVID RUDD AT THE UNIVERSITY OF MEMPHIS BENJAMIN BRYANT WAS A CONTRACTOR WHO ALSO WORKED FOR DAVID RUDD AT THE UNIVERSITY OF MEMPHIS

In 2015-16, Mr. Burkett is fully disclosed by the Foundation as he and Mr. Trenary should have been in the 2013-14 IRS filing.

Interpreting the 2015-16, IRS Form 990, it appears that Mr. Burkett, former President of First Tennessee

Bank National Association, was paid \$206,680 by the Foundation for his services; Mr. Bryant, former

President of Cook Systems International, was paid \$24,000 by the Foundation for his services; and Mr. Zettergran, University Vice President for Business and Finance, was paid directly by the University.

Several parties told the Committee that Mr. Burkett and Mr. Trenary actively consulted and assisted with the University's SRI Budget Restructuring efforts.

**So why should their hire be an issue?** A public institution has a particular responsibility to avoid any appearance of a potential conflict of interest. As does a Foundation, closely affiliated with a public institution.

The Foundation made a public statement on conflicts of interest in their 2013-14 IRS Form 990.

<b>12a</b>	Did the organization have a written conflict of interest policy? <i>If "No," go to line 13</i> . . . . .	<b>12a</b>	Yes	
<b>b</b>	Were officers, directors, or trustees, and key employees required to disclose annually interests that could give rise to conflicts? . . . . .	<b>12b</b>	Yes	
<b>c</b>	Did the organization regularly and consistently monitor and enforce compliance with the policy? <i>If "Yes," describe in Schedule O how this was done</i> . . . . .	<b>12c</b>	Yes	
<b>13</b>	Did the organization have a written whistleblower policy? . . . . .	<b>13</b>	Yes	
<b>14</b>	Did the organization have a written document retention and destruction policy? . . . . .	<b>14</b>	Yes	

FORM 990, PART VI, SECTION B, LINE 12C	THIS POLICY IS MONITORED AND ENFORCED BY THE UNIVERSITY OF MEMPHIS FOUNDATIONS OFFICERS AND EMPLOYEES IN A MANNER ADDRESSED IN THE CODE OF ETHICS SECTION OF THE FOUNDATIONS POLICIES AND PROCEDURES MANUAL
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**19** Describe in Schedule O whether (and if so, how) the organization made its governing documents, conflict of interest policy, and financial statements available to the public during the tax year

FORM 990, PART VI, SECTION C, LINE 19	THE ORGANIZATION DOES NOT MAKE ITS GOVERNING DOCUMENTS OR CONFLICT OF INTEREST POLICY AVAILABLE FOR PUBLIC INSPECTION. THE FINANCIAL STATEMENTS ARE MADE AVAILABLE ON THE WEBSITE FOR THE ORGANIZATION
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From Form 990, we learn that the Foundation has a “Code of Ethics Section of the Foundations Policies and Procedure Manual”. **However, “the Organization does not make its Governing Documents or Conflict of Interest Policy available for Public Inspection”.**

**So we can’t tell if they have a conflict of interest policy against hiring and paying acquaintances and members of their Board of Directors; but if they don’t, they should have; and if they do, it appears here that they didn’t follow it.**

## **6. Additional Information Regarding: Payments to Outside Contractors**

### **Unclear Records of Institutional Expenditures for Executive Search Services**

			The University of Memphis		
			Selected Payments from President's Institutional Funds		
			Fiscal Years 2013-2014		

Date	Description	Amount	Other	Payee	Committee Notes
12/18/13	Other Professional Admin Services	\$26,334.00	Exectutive Search Fees (President)	NOT PROVIDED	At the Jan 10th, 2014 meeting with Chair
2/21/14	Other Professional Admin Services	\$26,334.00	Exectutive Search Fees (President)	NOT PROVIDED	Peter McMickle, President Rudd said these
5/19/14	Other Professional Admin Services	\$26,333.00	Exectutive Search Fees (President)	NOT PROVIDED	payments were likely made to
	Total	\$79,001.00			Greenwood/Asher & Associates
4/1/14	Other Professional Admin Services	\$412.90		Greenwood/Asher & Associates	Greenwood/Asher & Associates is an
4/1/14	Other Professional Admin Services	\$1,374.30		Greenwood/Asher & Associates	executive search service whose focus is the
4/1/14	Other Professional Admin Services	\$454.00		Greenwood/Asher & Associates	education market.
4/9/14	Other Professional Admin Services	\$694.88		Greenwood/Asher & Associates	
4/9/14	Other Professional Admin Services	\$172.02		Greenwood/Asher & Associates	
4/9/14	Other Professional Admin Services	\$1,167.22		Greenwood/Asher & Associates	
4/21/14	Other Professional Admin Services	\$557.13		Greenwood/Asher & Associates	
4/21/14	Other Professional Admin Services	\$259.92		Greenwood/Asher & Associates	
4/21/14	Other Professional Admin Services	\$3,087.94		Greenwood/Asher & Associates	
4/21/14	Other Professional Admin Services	\$43.36		Greenwood/Asher & Associates	
4/21/14	Other Professional Admin Services	\$3,084.33		Greenwood/Asher & Associates	
4/29/14	Other Professional Admin Services	\$602.54		Greenwood/Asher & Associates	
5/1/14	Other Professional Admin Services	\$5,083.75		Greenwood/Asher & Associates	
6/4/14	Other Professional Admin Services	\$9,313.33		Greenwood/Asher & Associates	
6/4/14	Other Professional Admin Services	\$1,637.50		Greenwood/Asher & Associates	

	Total	\$27,945.12			
	Total Spent on President Search	\$106,946.12			

In the University's FOIA response, it was problematic that the University's accounting system's reporting of the above executive search fees paid with \$79,000 of Institutional funds did not identify to whom the funds were paid; nor for the above Institutional payment of \$27,945.12 to Greenwood/Asher & Associates, provide any explanation of why or specifically for what position search they were paid.

In our interview with the University's Procurement and Contract Services Department, we were informed by them that the Greenwood/Asher & Associates executive search contract was with the University of Memphis Foundation. This Information should be rechecked, but if true it would appear to indicate that **Institutional funds were used, in this particular instance, to pay Foundation expenses** which would indicate possible issues with the University's accounting system and system of internal control. It is possible that the University was re-compensated by the Foundation for these expenses, but this could not be determined from the data provided. This needs further follow-up by President Rudd.

#### Unclear University Records of Foundation Expenditures for Contracted Services

	The University of Memphis			
	Presidential Expenses Paid to Baker and Associates			
	Fiscal Years 2013-2014			

Date	Description	Amount	Other	Payee
10/22/13	Professional Services	\$20,000.00	No Explanation of the Nature of the Services Performed	Baker and Associates
1/22/14	Professional Services	\$23,095.00	No Explanation of the Nature of the Services Performed	Baker and Associates
1/28/14	Professional Services	\$20,990.65	No Explanation of the Nature of the Services Performed	Baker and Associates
6/25/14	Professional Services	\$20,000.00	No Explanation of the Nature of the Services Performed	Baker and Associates
6/25/14	Professional Services	\$20,000.00	No Explanation of the Nature of the Services Performed	Baker and Associates
	Total	\$104,085.65		

Baker and Associates is an Academic Executive Search firm. President Rudd informed the Committee that their fees were for performing Deans searches. Well over \$200,000 was spent on executive search companies instead of just utilizing advertising and internal Committee efforts.

	The University of Memphis			
	Presidential Expenses Paid to Ruffalo Cody			
	Fiscal Years 2013-2014			
Date	Description	Amount	Other	Payee
7/16/13	Professional Services	\$11,160.00	No Explanation of the Nature of the Services Performed	Ruffalo Cody
	Total	\$11,160.00		

Ruffalo CODY is a consulting firm specializing in higher education enrollment and fund raising. President Rudd informed the Committee that they were used to assist the university in its enrollment and fund raising endeavors.

The above two consulting contracts were of concern to the Committee because no explanations of the nature of services provided were shown in the accounting data provided by the FOIA.

Collectively, these concerns appear to indicate the University's need for an improved, multi-stage object of expenditure, accounting system. The accounting system should be able to quickly and clearly identify such items as executive search service expenditures for specific job positions and other Consulting Services for specific purposes. It is unsatisfactory for this Information to be buried under non-specific headings of "professional services".

Payments to Outside Contractors for the SRI Budget Initiative Appear Excessive

	The University of Memphis			
	Presidential Expenses Paid to Huron Consulting Services			
	Fiscal Years 2013-2014			
<b>Date</b>	<b>Description</b>	<b>Amount</b>	<b>Other</b>	<b>Payee</b>
6/25/14	Professional Services	\$71,263.01	No Explanation of the Nature of the Services Performed	Huron Consulting Services
	Total	\$71,263.01		

Huron Consulting Services is a Higher Education Consulting firm. President Rudd informed the Committee that they were used to assist in the SRI Initiative. The University web site states that: “SRI was established to develop a better, more responsive, transparent and flexible way to provide Information useful in making resource allocation decisions for the University. One of the tools for accomplishing this goal is the budget model.”

The 2013-14 Huron Expenditure made by the Foundation for the SRI Budget initiative was \$71,263.01.

However, the Foundations following year’s IRS 990 reported a second, much larger payment to Huron,

**7. Additional Information Regarding: The Foundation Paid an Outside Fund Raiser More than the University Gained**

(i) Name and address of individual or entity (fundraiser)	(ii) Activity	(iii) Did fundraiser have custody or control of contributions?		(iv) Gross receipts from activity	(v) Amount paid to (or retained by) fundraiser listed in col (i)	(vi) Amount paid to (or retained by) organization
		Yes	No			
1 ROYALL AND COMPANY ADVANCEMENT SERVICES INC 1920 E PARHAM ROAD RICHMOND, VA 23228	ANNUAL GIVING CAMPAIGN		No	296,326	150,443	145,883

The Committee, in responding to our charge, found it necessary to review the University of Memphis Foundation’s IRS Form 990 for each of the three years ending 2014, 2015, and 2016. It appears from the Information found in the University of Memphis Foundations 2015-16 IRS Form 990 that the Foundation contracted with fund raiser Royall and Company to assist in the 2015-16

University's Annual Giving Campaign. A copy of the applicable portion of that Form 990 appears above.

**8. Additional Information Regarding: Fortunately, We Believe that Future Foundation-Funded University Contracts Will No Longer Be Secret**

It had at first appeared to the Committee that the University had already made this important change. The following email was issued on September 20, 2017:



**Procurement and Contract Services**  
***Important Notice: Foundation-Funded Contracts***

Effective immediately, University of Memphis Foundation-funded contracts will be issued by the University of Memphis and must be submitted to Procurement and Contract Services. The contracts must comply with University Procurement policies and procedures: <http://bf.memphis.edu/bfguide/pur.php>.

In order to process the request for purchase, the department shall request a transfer of funds from the Foundation to a University FOAP, enter a requisition into TigerBuy, and attach a contract routing form and contract to the requisition.

Please contact Procurement staff at [purchasing@memphis.edu](mailto:purchasing@memphis.edu) or 901-678-2265 if you have questions regarding the procurement process.

However, the Committee has learned that this new policy has been placed on hold because the new President of the Foundation would prefer that the Foundation no longer issue any such contracts, but that this will require a change in the Foundation's By-Laws.

**9. Additional Information Regarding: Current University Issued  
Contracts Can No Longer Be Read Online**

Below is the new Act, signed into law on April 7, 2017, that was cited to the Committee as the rationale for taking down the entire on-line University Procurement Contract site that previously provided on-line the copies of all current University of Memphis procurement contracts. In the opinion of this Committee, this law is not an adequate explanation for the removal of the site, and we hope



that the decision will be reversed.



## *State of Tennessee*

### **PUBLIC CHAPTER NO. 114**

**SENATE BILL NO. 1201**

**By Norris, Stevens**

Substituted for: House Bill No. 313

By Hawk, Casada, Rudd

AN ACT to amend Tennessee Code Annotated, Section 10-7-504, relative to the protection of confidential information.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 10-7-504(i), is amended by deleting subdivision (3)(B) in its entirety and by substituting instead the following language:

(B) The identity of a vendor that provides to the state goods and services used to protect electronic information processing systems, telecommunication and other communication systems, data storage systems, government employee information, or citizen information shall be confidential.

SECTION 2. Tennessee Code Annotated, Section 10-7-504(i), is amended by deleting subdivision (3)(C) in its entirety and by substituting instead the following language:

(C) The identity of a vendor that provides to a governmental entity other than the state goods and services used to protect electronic information processing systems, telecommunication and other communication systems, data storage systems, government employee information, or citizen information shall not be confidential; provided, that the identity of the vendor shall be confidential if the governing body of the governmental entity votes affirmatively to make such information confidential.

SECTION 3. Tennessee Code Annotated, Section 10-7-504(i)(3)(D), is amended by deleting the subdivision and substituting instead the following:

(D) Notwithstanding subdivisions (i)(3)(B) and (C), a governmental entity shall, upon request, provide the identity of a vendor to the comptroller of the treasury, the fiscal review committee of the general assembly, and any member of the general assembly. If the identity of the vendor is confidential under subdivision (i)(3)(B) or (i)(3)(C), the comptroller, fiscal review committee, or member shall exercise reasonable care in maintaining the confidentiality of the identity of the vendor obtained under this subdivision (i)(3)(D).

SECTION 4. This act shall take effect upon becoming a law, the public welfare requiring it.

### **10. Additional Information Regarding: Under the University of Memphis Foundation's New Charter, No University Officers Are Required Members of the Foundation's Board of Directors**

When the Foundation was created it clearly operated under the close control of the University. Over the years, this has changed and it is no longer true. The reasons for these major changes in control are not explained in the Charter revisions.

1964

The [Foundation] Board of Trustees will be composed of the President of the University; the Director of Development of the University; the President and Secretary of the Alumni Association of the University; the Chairman of the State Board of Education . . . ; three additional members of the administrative staff of the University . . . designated by the President of the University, two faculty members with tenure designated by the President of the University, and other such persons as the President of the University may see fit to designate . . . .

2016

. . . . the Foundation shall always be independent of the University. . . . In no event shall any of the assets held by, controlled by or contributed to the Foundation be considered as assets of the University . . . . The Corporate powers of this Foundation shall be exercised by a Board of Directors. . . . The size of the Board [of Directors] shall be determined by majority vote of the Board members. . . . Any vacancy in Board membership shall be filled by majority vote of the board members. . . . Directors may be elected to successive terms. . . . The Board of Directors may, from time to time, designate specific University officers to serve on the Board of Directors by virtue of his/her position.

The Board is self-perpetuating. Future board members are elected by current Board members. There is no mention in the new Charter of what qualifies a person to be a Board member.

The change in Board of Trustees/Directors membership and control of the Foundation from University officers to non-university Board members was likely for liability or regulatory reasons, but, as stated earlier, this can't be determined because the reasons for these major changes in control are not explained in any of the Charter revisions.

**11. No Additional Information**

**12. Additional Information Regarding: New Internal Controls at the Board of Trustees Level**

In further response to the FOCUS Act that created the new University Board of Trustees, additional legislation was passed effective March 29, 2017 which created the requirement for each University Board to:

1. Create a Board of Trustee's Audit Committee
2. Hire a Chief Internal Auditor who would report directly to the Audit Committee and Board
3. Conduct a yearly Internal Financial Audit of the President's Office
4. Maintain Whistle-Blower Protection

**Tennessee Code Annotated 49-14-102, as amended March 29, 2017**

(a) The board of regents and each state university board created under chapter 8, part 2 of this title and the University of Tennessee board of trustees created under chapter 9, part 2 of this title shall each create an audit Committee. Each board is authorized to select one (1) or more certified public accountants or other qualified citizens who are not members of such board to serve on the audit Committee.

(b) Each audit Committee shall employ a person qualified by training and experience to serve as the chief internal auditor. The chief internal auditor shall report directly to the audit Committee and respective board and shall be removable only for cause by a majority vote of the respective board. The internal auditor shall file a report on the audit work with the audit Committee at least annually. (c) An audit Committee created pursuant to this chapter shall also be subject to the State of Tennessee

Audit Committee Act of 2005, compiled in title 4, chapter 35. [Emphasis added.]

**Tennessee Code Annotated 49-7-3001, as amended March 29, 2017**

Each state university board shall require an annual internal financial audit of the office of the president of the institution. The audit shall be reviewed by the institution's governing board and the comptroller of the treasury.

**Tennessee Code Annotated 49-14-103(b), as amended March 29, 2017**

Section 8-50-116 shall apply to all higher education employees. In addition, no higher education employee shall suffer any of the actions specified in § 8-50-116 for reporting to or cooperating with auditors or for reporting any facts to the governing boards of public institutions of higher education or to the audit Committees of those boards. It is a Class A misdemeanor to knowingly and willingly retaliate or take adverse action of any kind against any person for reporting alleged wrongdoing pursuant to this chapter.

**Below is the cited Section 8-50-116 that outlines Tennessee Whistle Blower Protections:**

**2010 Tennessee Code**

**Title 8 - Public Officers And Employees**

**Chapter 50 - Miscellaneous Provisions**

**Part 1 - General Provisions**

**8-50-116 - Reporting violations of state agency, employee, or contractor.**

(a) (1) It is the intent of the general assembly that state employees shall be encouraged to report verbally or in writing to their supervisor, department head, or other appropriate authority or entity, evidence of activity by a state agency or state employee or state contractor constituting violations of state or federal law or regulations, fraud in the operations of government programs, misappropriation of state or federal resources, acts which endanger the health or safety of the public or employees, and mismanagement of programs, funds, or abuses of authority.

(2) The general assembly further finds and declares that public servants best serve the citizens when they can be candid and honest without reservation in conducting the public's business.

(3) It is the further intent of the general assembly that state employees be free of intimidation or harassment when reporting to public bodies about matters of public concern, including offering testimony to, or testifying before, appropriate legislative panels.

(b) (1) No head of any state department, agency or institution, state employee exercising supervisory authority, other state employee or state contractor shall recommend or act to discharge, demote, suspend, reassign, transfer, discipline, threaten or otherwise discriminate against a state employee regarding the state employee's evaluation, promotion, compensation, terms, conditions, location or privileges of employment, nor may any state employee or state contractor retaliate

against another state employee because the employee, or a person acting on behalf of the employee, reports or attempts to report, verbally or in writing:

(A) The willful efforts of such person or agency or contractor to violate a state or federal law, rule or regulation which had or would have had a material and adverse effect upon program operations or program integrity, or the willful efforts to conceal such a violation;

(B) Acts which constituted fraud against the state, the federal government, the public or any fellow employee;

(C) The willful misappropriation of state or federal resources;

(D) Acts which posed an unreasonable and specific danger to the health or safety of the public or employees; or

(E) Acts constituting gross mismanagement of a program, gross waste of state or federal funds, or gross abuse of authority;

(2) The head of the state department, agency or institution or other state employee exercising supervisory authority over the state employee may, however, take any appropriate action or appropriate disciplinary action in relation to the reporting or attempted reporting of any Information which is believed in good faith by such department head or other state employee exercising supervisory authority to be fraudulent, dishonest or with willful disregard for the truth or falsity of the Information.

(3) No head of any state department, agency, or institution, state employee exercising supervisory authority, other state employee or state contractor shall recommend or act to discharge, demote, suspend, reassign, transfer, discipline, threaten or otherwise retaliate or discriminate against a state employee regarding the state employee's evaluation, promotion, compensation, terms, conditions, location, or privileges of employment because the employee refused to carry out a directive if the directive constitutes a violation of state or federal law, rule or regulation, written policy or procedure which materially and adversely affects the operations or integrity of a program or if the directive poses an unreasonable and specific danger to the health or safety of the employee, the employees or the public.

(c) Any state employee injured by a violation of subsection (b) may maintain an action in circuit or chancery court within one (1) year after the occurrence of the alleged violation of this section for actual damages, injunctive relief, or other

remedies provided in this section against the person or agency or state contractor, or any of them, who committed the violation. An act or conduct constituting part of an alleged continuing pattern of violations of this section shall only be considered in calculating any damages if an action is brought within one (1) year of the occurrence of the act.

**(d) (1)** A court, in rendering a judgment in an action brought pursuant to this section, may order injunctive relief, actual damages, reinstatement of the employee, the payment of back wages, full reinstatement of fringe benefits and seniority rights, costs, reasonable attorney's fees or any combination thereof.

(2) If an application for a permanent injunction is granted, the employee shall be awarded costs and reasonable attorney's fees.

(3) If in an action for damages the court finds that the employee was injured by a willful and malicious violation of this section, by a criminal violation based upon this section or by a violation based upon an effort to obtain personal gain, the court may award as damages up to three (3) times the amount of actual damage plus costs and reasonable attorney's fees against the individual or individuals found to be in violation of this section.

**(e)** No head of any state department, agency or institution or other state employee exercising supervisory authority nor any agency of the state of Tennessee shall be found liable pursuant to this section if the head of any state department, agency or institution or other state employee exercising supervisory authority was acting within the scope of such employee's apparent lawful orders or authority and in good faith in such person's reasonable interpretation of any rule or regulation or was acting in good faith in such person's direction to the employee to implement any law, regulation, policy or procedure related to the operation of any program of such agency which is the subject of the report or attempted report pursuant to this section.

**(f)** Notwithstanding any law to the contrary, any head of any state department, agency or institution or other state employee exercising authority shall be subject to the protections of § 8-42-103 if it is determined such person was acting within the scope of such person's apparent lawful orders or authority and was not acting willfully, maliciously, criminally or for personal gain; and such person shall be further subject to the protection contained in the provisions for the board of claims under § 9-8-112 relative to the payment of any judgments, costs and attorney's fees where it is determined that such person was acting within the scope of such person's apparent lawful orders or authority and was not acting willfully, maliciously, criminally or for personal gain.

**(g)** Nothing in this section shall be deemed to diminish the rights, privileges or remedies of any employee under any other federal or state law or regulation.

[Acts 2000, ch. 709, § 1.]

**Executive Summary of the Findings of  
Accountability Issues at  
The University of Memphis  
By the  
Faculty Senate Administrative Policies Committee  
In Response to  
Committee Charge of November 8, 2016**

2016-2017 Administrative Policies Committee Members

Peter L. McMickle, Chair

Thomas E. Banning, Senate President

Coriana L. Close

David M. Kemme

Stephen A. Zanskas

Senator Máté Wierdl, under a Freedom of Information Act request, has received financial information from the University of Memphis, and has submitted a motion for the Faculty Senate to secure even more information for analysis.

To insure an in-depth review, the Administrative Policies Committee is being given this charge:

6. Provide an executive summary of the financials for the University of Memphis regarding wages and contractor payments.
7. Recommendation: Suggest meeting with Máté Wierdl to confirm his needs and his investigations.
8. Recommendation: Suggest the committee use representatives from the Faculty Senate Budget Committee to assist in this effort
9. Recommendation: Suggest the committee establish a dialog with the President and CFO of the University of Memphis to ascertain responses that will be required to answer the budget information questions as well as supply any additional information.
10. Provide the executive summary, to the Faculty Senate, no later than the Faculty Senate meeting on February 21, 2017. [The Executive Summary



deadline has been extended twice in order to gather more Information. The current deadline is November 7, 2017.]

### **1. What is the State Mandated, University President's Expenses Report?**

The Tennessee Higher Education Accountability Act of 2004 came about in response to issues involving certain expenditures authorized or encouraged by Tennessee University Presidents. Particularly notable was the 2003 resignation of the President of the University of Tennessee following expenditure controversies which in part involved a \$300,000 consulting contract that the university had established with a Washington, D.C. attorney, who was a long-time friend and business partner of UT's President, without going through a bidding process.

Section 4 of the Accountability Act required that all state colleges and universities regularly prepare a report:

. . . detailing expenditures made by, at the direction of, or for the benefit of the chancellor or president. [Emphasis added.]

The State Board of Regents named this report Summary Report of the President's Expenses. Herein, we will simply call it the "President's Expenses Report".

The Accountability Act further required that these reports:

shall include, but not be limited to, unrestricted gifts, **foundation funds**, athletic funds, sponsorship fees, licenses and royalty funds, and other such funds that would not be included in the operating budget for the chancellor's or the president's office. [Emphasis added.]

Since the 2016 passage of the FOCUS Act, future President's Expenses Reports will be submitted annually to the University's new independent Board of Trustees. By law, it will be the responsibility of the University's Board of Trustees to designate the title and format of the President's Expenses Report.

Unlike other University financial reports, the President's Expenses Reports are not currently available on the University website.

They can be read in the Preservation and Special Collections Department on the 4<sup>th</sup> floor of the Ned R.

McWherter Library. [Additional details can be found in the Appendix to this Report.]

## **2. The University of Memphis' President's Expenses Reports Violate the Spirit and Letter of the Tennessee Higher Education Accountability Act of 2004**

The Presidents Expense Reports for 2013-14 and 2014-15, which were at that time submitted to the Tennessee Board of Regents, listed high expenditures under the category: President's Office – Other Expenses. In 2013-14, the **Other Expenses were \$1,187,319**, most of which, \$994,066, were paid for with University of Memphis Foundation funds. In 2014-15, the **Other Expenses were a higher \$1,988,017**, of which \$1,962,172 was paid for with Foundation funds.

### **No Supplemental Schedules with Details of these expenditures were provided in these President's Expenses Reports for these high dollar amounts.**

The Presidents Expenses Report was created by the State Legislature to specifically provide details and clarity surrounding such things as Foundation Expenditures. Obfuscating the details of such expenditures under broad headings such as Other Expenses is **at odds with the spirit, if not the letter, of the Higher Education Accountability Act which requires the "detailing" of such expenditures.**

It was not until Senator Wierdl submitted a FOIA request in 2015 asking for details regarding the high dollar Other Expenses listed in the President's Expenses Report that some Information regarding these Expenditures for 2013-14 was learned by him and subsequently provided by him to the University's Faculty Senate President, Tom Banning. This in turn led to Senate President Banning's formal request that this Faculty Senate Committee conduct an investigation into these matters.

As this Committee learned, obtaining sufficient details of these expenditures was further impeded due to the fact that the majority of these expenses were University of Memphis Foundation Contracts, paid for with Foundation funds. The Foundation, an independent organization, **treats their contracts and specific expenditures as confidential.**

[For further Information see the Appendix to this Report.]

## **3. There Were Audit Failures at Both the Tennessee Higher Education Commission and the Tennessee State Comptroller's Office**

While the Committee researched the 2013-14 President's Office – Other Expenses report, we noted that

Tennessee Technical University at \$323,532 and the University of Memphis at \$1,187,319 were the only

Tennessee Board of Regents' Universities reporting high dollar amounts under the category President's Office – Other Expenses. **We feel that this should have triggered additional scrutiny by the Board of Regent's Internal Auditors and that not doing so was an audit failure.**

University	Institutional Funds	Foundation Funds
Austin Peay State University	\$ 23,233	\$ 0
East Tennessee State University	\$ 39,311	\$ 57,362
Middle Tennessee State University	\$ 77,809	\$ 12,429
Tennessee State University	\$ 35,134	\$ 2,646
Tennessee Technical University	<b>\$ 323,532</b>	\$ 0
The University of Memphis	<b>\$ 193,252</b>	<b>\$ 994,066</b>

In the future, it will be the responsibility of the University's Board of Trustees to designate the title and format of the state mandated, President's Expenses Report. The Board of Trustees should require that future President's Expenses Reports include Schedules detailing all large expenditure categories, especially any categorized as other expenses.

The Comptroller of the Treasury, Division of State Audit, is responsible for auditing the financial statements of the University of Memphis. In their 2014 audit of the University of Memphis, Note 21: Component Unit, they provided a description of the Foundation and an interesting explanation regarding the inclusion of Foundation expenditures in the University of Memphis's financial statements.

The University of Memphis Foundation is a legally separate, tax-exempt organization supporting The University of Memphis. The Foundation acts primarily as a fundraising organization to supplement the resources that are available to the university in support of its programs. The 40-member board of the Foundation is self-perpetuating and consists of graduates and friends of the university. Although the university does not control the timing or

amount of receipts from the Foundation, the majority of resources, or income thereon, that the Foundation holds and invests are restricted to the activities of the university by the donors. Because these restricted resources held by the Foundation can only be used by, or for the benefit of, the university, the Foundation is considered a component unit of the university and is **discretely** presented in the university's financial statements. [Emphasis added.]

In other words, the Foundation expenditures are included in the University's financial reports but the details are so buried in the large numbers of the published University financial statements that they cannot be identified. In addition, The Comptroller of the Treasury, Division of State Audit did not include the University of Memphis' President's Expenses Report as a part of their 2014 financial audit.

**It is surprising to this Committee, that the State Auditors do not consider the President's Expenses Report to be a part of the University's financial statements to be included within the scope of their audits. This is particularly surprising since the President's Expenses Report is a legislatively required financial report.**

**Like the Board of Regents' Internal Auditor's failure to investigate the high level of Presidential "Other Expenses", this too seems to be another audit failure, this time made by The Comptroller of the Treasury, Division of State Audit.**

Both audit failures, like the lack of detail in the President's Expenses Report, again seem to be at odds with the spirit and letter of the Tennessee Higher Education Accountability Act.

**Motion 1 (Regarding Items 1, 2, 3):**

**The Administrative Policies Committee moves that the University of Memphis Faculty Senate express by formal declaration to the University of Memphis Board of Trustees, the Faculty Senate's desire for the Board of Trustees to move quickly to continue the issuance of the mandated President's Expenses Report and require that future President's Expenses Reports detail any expenditures to one contractor that collectively amount to over \$10,000, especially any categorized as Other Expenses.**

**Also, to convey to the Board of Trustees that the Faculty Senate desires that the Board of Trustees require that the President Expenses Report be included with the other financial statements of the University published on the University's website.**

**The Committee further moves that the Faculty Senate charge their Administrative Policies Committee, or the Committee's successor, to annually report to the Senate on the Board of Trustees' progress in implementing these recommended improvements, until such time that, in the opinion of the Faculty Senate as a majority, adequate progress has been achieved.**

**4. Lack of Detail in the 2013-14 President's Expenses Report and the Secrecy of the University of Memphis Foundation Clouded and Impeded the Disclosure of Certain Questionable Expenditures**

When Senator Wierdl examined the FOIA Response he received from the University he felt that it was inadequate in certain details and that several expenditures disserved additional scrutiny, especially those made to Outside Contractors. Upon review, the Academic Policies Committee found merit in seeking better Information regarding \$753,454 out of the \$1,187,319 of 2013-14 Presidential Other Expenses:

Charles G. Burkett	Professional Services	\$220,000
Phil Trenary	Professional Services	\$240,000
No Payee Provided	Executive Search Fees (President)	\$ 79,000
Greenwood/Asher & Assoc.	Other Professional Admin Services	\$ 27,945
Baker and Associates	Professional Services	\$104,086
Ruffalo Cody	Professional Services	\$ 11,160
Huron Consulting Services	Professional Services	<u>\$ 71,263</u>
TOTAL		\$753,454

In trying to learn more about these 2013-14 Contractor Expenditures, the Committee first approached the University Office of Procurement and Contract Services. We learned that although all University of Memphis contracts are available for public review, the Procurement Office had no copies or records of any of the contracts issued and paid for by the Foundation.

The Committee then approached the University of Memphis Foundation and asked to review these contracts. We were told by then Managing Director Larry Bunch that the Foundation is a separate organization from the University and that all Foundation Contracts, for any purpose, are confidential and not available for review by the public or our Committee.

**So because of Foundation secrecy this Committee has been unable to learn the details of any of the actual contracts made with the above individuals and**

companies, including what exact services were each expected to perform and who would decide if their services had been satisfactory. What we have been able to learn is only indirect information from some interviews, but mostly from public sources.

#### **5. The 2013-14 Foundation Contracts with Charles G. Burkett and Phil Trenary have the Appearance of a Potential Conflict of Interest**

Using the FOIA Response to Senator Wierdl's inquiry for details regard the 2013-14 Presidents' Other Expenses, we summarized the various payments to Charles Burkett and Phil Trenary made in 2013-14. We found that **Mr. Burkett was paid \$220,000 and Mr. Trenary was paid \$240,000 in Foundation funds for unspecified work for the University of Memphis.** These contracts and the amounts paid had hereto-fore been unknown.

**Several parties told the Committee that these gentlemen actively consulted and assisted with the University's SRI Budget Restructuring efforts.**

**So why should their hire be an issue?** A public institution has a particular responsibility to avoid any appearance of a potential conflict of interest. As does a Foundation, closely affiliated with a public institution.

The appearance of a potential conflict in this instance was that the Foundation and the Interim

University President Brad Martin all had close ties with the contractors and, despite this, still contracted for their personal services.

**Also, since these contracts were run through the Foundation, they were not bid.**

The Foundation made a public statement on conflicts of interest in their 2013-14 IRS Form 990 [by

Federal Law this IRS Form is Available for Public Inspection]. Here we learn that the Foundation has a

"Code of Ethics Section of the Foundations Policies and Procedure Manual".

**However, in Form 990 the Foundation states "the Organization does not make its Governing Documents or Conflict of Interest Policy available for Public Inspection".**

**So no one, including this Committee, can determine if the Foundation has a conflict of interest policy against hiring and paying acquaintances and members of their Board of Directors; but if they don't, they should have; and if they do, it appears here that they didn't follow it.**

Both Charles Burkett and Phil Trenary were acquaintances and, in one case at least a business associate, of former Foundation Board President and Interim University of Memphis President, Brad Martin.

Both Charles Burkett and Phil Trenary were in 2013-14 at the same time as their consulting contracts members of The University of Memphis Foundation's Board, the same Board which approved their consulting contracts and payment of fees.

Mr. Burkett had, in fact, been the Foundation's Board President from 2009 through 2012, his term in office ending just the year before his 2013 Foundation consulting contract for \$220,000. Brad Martin had been the Foundation's Board President from 2007 through 2008, his term ending just prior to Mr. Burkett's term.

According to internet postings, Mr. Burkett is retired President of First Tennessee Bank National Association, which is wholly owned by First Horizon National Corporation where Interim President Brad Martin was and still is a Director.

In 2015-16, Mr. Burkett continued to serve on the Foundation's Board while still being paid by the Foundation \$206,680 for his undisclosed continuing services to the University.

According to internet postings, Mr. Trenary served as President and Chief Executive Officer at Pinnacle Airlines Corp. from April 1997 to March 24, 2011. Since June 1, 2014, he has been Chief Executive Officer and President of The Greater Memphis Chamber of Commerce.

**The appearance of the Foundation having a potential conflict of interest was further aggravated by the Foundation's policy of keeping their Contracts secret and the Foundation failing to report the dollar amount of their payments to Mr. Burkett and Mr. Trenary, as required by IRS rules, in the Foundations 2013-14 IRS Form 990 public filing.**

[For further Information see the Appendix to this Report.]

#### **8. Payments to Outside Contractors for the SRI Budget Initiative Appear Excessive**

We were told in our interviews that the 2013-14 Huron Expenditure of \$71,263.01 made by the Foundation was for the SRI [Strategic Resource Investment] Budget Initiative. However, the Foundations following year's IRS 990 reported a second, much larger payment to Huron, \$568,950.00.

**Together with the Burkett and Trenary expenditures for SRI work of \$460,000.00; it appears that the University of Memphis Foundation paid at least \$1.1 million dollars to outsiders to help in the SRI initiative to redesign the budgeting process. Given the inability to view the contracts and details**

**regarding the required deliverables typical in such contracts, and with as much budget talent as the University already possessed, this seems excessive.**

[For further Information see the Appendix to this Report.]

#### **9. The Foundation Paid an Outside Fund Raiser More than the University Gained**

The Committee, in responding to our charge, found it necessary to review the University of Memphis Foundation's IRS Form 990 for each of the three years ending 2014, 2015, and 2016. It appears from the Information found in the University of Memphis Foundations 2015-16 IRS Form 990 that the Foundation contracted with fund raiser Royall and Company to assist in the 2015-16 University's Annual Giving Campaign. [A copy of the applicable portion of that Form 990 appears in the Appendix of this report.]

Many of our faculty senators have voluntarily worked on this campaign over the years; so we have a particular interest in it. The Form 990 clearly shows that in 2015-16 campaign, Royall earned more than the University gained, \$150,443 versus \$145,883.

**The terms of the Foundation's agreement with Royall and Company are unknown because Foundation agreements are secret and not available for public review. Obviously, it was not a good arrangement.**

[For further Information see the Appendix to this Report.]

#### **8. Fortunately, We Believe that Future Foundation-Funded University Contracts Will No Longer Be Secret**

The University Foundation is a separate organization from the University and, at present, all Foundation Contracts, for any purpose, are confidential and not available for review by the public.

The Committee together with Faculty Senate President Tom Banning conferred with current University President M. David Rudd. We expressed our concerns regarding this secret contract issue. We further suggested a proposed solution of 1) having the Foundation transfer the funds needed for such contractor contracts directly to the University and then 2) having the University's Office of Procurement and Contract Services issue the contracts so they would then follow university guidelines and be publically available for review.

We are pleased to note that we expect an announcement in the near future that the policy regarding



Foundation Contracts for the Benefit of the University will soon be changed. We have been told that President Rudd has been encouraging such a change and the new President of the Foundation would prefer that the Foundation no longer issue any such contracts, but that this will require a change in the Foundation's By-Laws.

[For further Information see the Appendix to this Report.]

**Motion 2 (Regarding Items 4, 5, 6, 7, 8):**

**Because a change in Foundation issued contracts is expected soon, the Administrative Policies**

**Committee only moves that the University of Memphis Faculty Senate charge their Administrative**

**Policies Committee to report at the last meeting of the 2017-18 Faculty Senate on the progress of the University of Memphis and the University of Memphis Foundation in moving all service contracts under the auspices of the University's Division of Procurement and Contract Services and at that meeting determine if continued monitoring by the Administrative Policies Committee is warranted.**

**9. Current University Issued Contracts Can No Longer Be Read On-line but All Are Available for Review by Tennessee Citizens at the University Office of Procurement and Contract Services**

When the Committee began this investigation in 2016, all of the University's current Procurement Contracts could be read on line at the University's website. We recently learned that, unfortunately, this is no longer true. Citing an Amendment to TCA 10-7-504(i) signed into law on April 17, 2017 regarding keeping the identity of a vendor confidential who provides: "goods and services used to protect electronic Information systems", the entire on-line University Procurement Contract site was shut down.

We hope that this shutdown of the Contract Site is temporary, while the current contracts are reviewed to see if any fall under the auspices of this new Act. **We doubt that few if any current University of Memphis contracts are impacted by the new law. The Committee believes that to use this law as a rationale to permanently close down the on-line disclosure of the unaffected majority of University contracts would be unwarranted. This is particularly unwarranted in light of the disclosure issues previously discussed.**

In any case, all contracts issued by the University, including older non-current contracts, are still available to any citizen of Tennessee upon request. Just present your Driver's License to Adm. Building Room 115 and allow for a couple days for it to be retrieved.

[For further Information see the Appendix to this Report.]

**Motion 3 (Regarding Item 9):**

**The Administrative Policies Committee moves that the University of Memphis Faculty Senate express by formal declaration to the University of Memphis Board of Trustees and the University President, the Faculty Senate's desire for the on-line posting of the full details of current University contracts be reinstated; except for the names of Contractors providing Computer Security Services.**

**The Committee further moves that the Faculty Senate charge their Administrative Policies Committee, or the Committee's successor, to annually report to the Senate on the Board of Trustees' progress in implementing this request, until such time that, in the opinion of the Faculty Senate as a majority, adequate progress has been achieved.**

**10. Under the University of Memphis Foundation's New Charter, No University Officers Are Required Members of the Foundation's Board of Directors and the Foundation's Website Should Be Made Autonomous from the University Website.**

The Committee recognizes that this change was likely made to more clearly separate the Foundation, as an independent organization, from the University. However, the Committee feels this was a step too far. At a minimum, the Committee believes the University President should be a required member of the Foundation's Board of Directors. This would insure that a University representative would always be there as a monitor of Foundation activities. [For further details see the Appendix to this Report.]

Also, with this clear concern for Foundation autonomy, we further note that the University of Memphis

Foundation Website is not autonomous but is an integral part of the University website

([www.memphis.edu/Foundation/](http://www.memphis.edu/Foundation/)). In comparison, while the University of Tennessee website does have a section for contributions that is forwarded to their University Foundation, the University of Tennessee Foundation website is separate and autonomous ([www.utfi.org](http://www.utfi.org)).

[For further Information see the Appendix to this Report.]

#### **Motion 4 (Regarding Item 10):**

**The Administrative Policies Committee moves that the University of Memphis Faculty Senate express by letter to President Rudd and the current University of Memphis Foundation's Board of Directors' President, the Senate's suggestion that the Foundation's Charter be Amended to require that the University President be a member of the Foundation's Board of Directors and the Foundation's website be made separate and autonomous from the University's website. [This would still allow for the University's website to reference and link to the Foundation Website.]**

#### **11. The University of Memphis Foundation Is Too Secret**

- All Meetings and Minutes of the Foundation's Board of Directors are Secret
- All Records of the Foundation are Secret
- The Foundation's By-Laws are Secret
- Details of Specific Foundation Expenditures are Secret
- The Foundation's System of Internal Control over its Financial Statements is Secret
- As stated by the Foundation in their 2013-14 IRS 990: "The organization does not make its governing documents or conflict of interest policy available for public inspection." [Emphasis added]

The Foundation's secrecy is real and intentional. We could find no reason or requirement in any version of the Foundation's Charter for such secrecy. We wonder whose decision was it that the Foundation's operations were to be kept secret? Why, specifically, is the University of Memphis Foundation keeping details of its expenditures and even its rules for conducting business secret?

Such secrecy is counterproductive. It gives the impression that there is something to hide.

Consider the difference in openness between the University of Tennessee Foundation and the University of Memphis Foundation as displayed below on their respective websites.

## UNIVERSITY OF TENNESSEE FOUNDATION WEBSITE PAGE

### Financials & Transparency

The University of Tennessee Foundation strives for transparency. Article IV of the Foundation's Affiliation Agreement states that:

- Minutes of open Foundation Board meetings are [available here](#).
- The Foundation will create an annual report (electronic or written).
- The Foundation will annually present a report to the University Board of Trustees.
- The Foundation will file an [IRS 990 report](#) and meet all applicable requirements.

All full board meetings of the Foundation will be open to the public except for executive sessions that shall include but not be limited to the following matters: litigation; audits or investigations; human resource issues; gift acceptance deliberations; board training; governance; donor strategy sessions; and security measures.

[UT Investment Office »](#)

### Foundation Documents

- [UT Foundation Restated Charter](#)
- [UT Foundation Bylaws](#)
- [Enabling Legislation](#)
- [Affiliation & Services Agreement with the University of Tennessee](#)
- [Employee Services Agreement with the University of Tennessee](#)
- [Affiliation & Services Agreement with the UC Foundation](#)

## UNIVERSITY OF MEMPHIS FOUNDATION WEBSITE PAGE

### Public Information Policy

The UM Foundation is a not-for-profit corporation organized in 1964 in the State of Tennessee. The Foundation has qualified as a tax-exempt organization under Section 501(c) (3) of the Internal Revenue Code. Gifts to the Foundation are deemed to be made to a qualified organization and are deductible under Section 170 of the Internal Revenue Code. The relationship between the Foundation and the University is set out under a written agreement that expressly recognizes the UM Foundation as a separate and distinct legal entity and not an agent of the University.

The UM Foundation is committed to aiding the University in fulfilling the University's mission of excellence. To succeed in this commitment, the Foundation must earn and maintain the trust of past, present, and future contributors. A contributor's trust in the Foundation is enhanced when there is openness and communication. For this reason the Foundation voluntarily makes public the following information:

- [Board of Directors](#)
- [Audited financial statements](#)

This voluntary disclosure of information is in addition to all materials the Foundation is required to disclose by law. The UM Foundation respects the rights of our donors to keep their gifts and personal information private.

**Motion 5 (Regarding Item 11):**

**The Administrative Policies Committee moves that the University of Memphis Faculty Senate express by letter to President Rudd and the current University of Memphis Foundation's Board of Directors' President, the Senate's suggestion that the Foundation make every effort to become more open about its activities.**

**12. New Internal Controls at the Board of Trustees Level**

In further response to the FOCUS Act that created the new University Board of Trustees, additional legislation was passed effective March 29, 2017 which created the requirement for each University Board to:

- 5. Create a Board of Trustee's Audit Committee**
- 6. Hire a Chief Internal Auditor who would report directly to the Audit Committee and Board**
- 7. Conduct a yearly Internal Financial Audit of the President's Office**
- 8. Maintain Whistle-Blower Protection**

The provisions continuing Whistle-Blower Protection are particularly interesting:

**Tennessee Code Annotated 49-14-103(b), as amended March 29, 2017**

Section 8-50-116 shall apply to all higher education employees. In addition, no higher education employee shall suffer any of the actions specified in § 8-50-116 for reporting to or cooperating with auditors or for reporting any facts to the governing boards of public institutions of higher education or to the audit Committees of those boards. It is a Class A misdemeanor to knowingly and willingly retaliate or take adverse action of any kind against any person for reporting alleged wrongdoing pursuant to this chapter.

[The cited Section 8-50-116 -Reporting violations of state agency, employee, or contractor, that fully details Tennessee whistle-blower protections, can be read in the Appendix to this report.]

**Motion 6 (Regarding Item 12):**

**The Administrative Policies Committee moves that the University of Memphis Faculty Senate charge their Administrative Policies Committee, or the**

**Committee's successor, to report at the end of this Senate term on the Board of Trustees' progress on implementing the legislatively mandated Internal Controls.**

**1. Additional Information Regarding: What is the State Mandated, University President's Expenses Report?**

Senator Máté Wierdl, like many faculty members, was concerned about the University of Memphis' ever tightening academic budget. Faculty members have been continually required to scale back classroom, professional, and research expenditures. At the same time, many faculty members have felt that administrative expenditures have not been curtailed to the same extent as that of the faculty.

Senator Wierdl thought that a review of the publically available University Financial Statements might provide him with more clarity on how the University funds were being used.

The university financial statements are available for examination on the 4<sup>th</sup> floor of the Ned R. McWherter Library, in the Preservation and Special Collections Department.

Many, but not all, financial details may also be found online in the University's website at: <http://www.memphis.edu/accounting/fr.php>

For 2014 and 2015, when the university was a member of the State Board of Regents College System of Tennessee, additional financial information can be found online in the documentation of the TBR Audit Committee:

<https://www.tbr.edu/audit/november-2014-audit-Committee-meeting>

The Accounting Report that Senator Wierdl relied upon for his investigation is not available on the University of Memphis website, but it is available in the Library and at the above TBR Audit Committee site. The report is entitled: **the University of Memphis, Summary of the President's Expenses – Unaudited, For the Period July 1, 2013 to June 30, 2014.**

This is in fact a special accountability report mandated by Section 4 of the Tennessee Higher Education Accountability Act of 2004. The preamble of the Act explains the legislative reasoning behind the law:

WHEREAS, public institutions of higher education have a responsibility to be prudent in their expenditure of public funds and to ensure that the highest possible portion of those funds goes toward fulfilling their primary missions of education of students and research for the benefit of the citizens of Tennessee; and

WHEREAS, issues have arisen to show that the state board of regents and the

University of Tennessee board of trustees higher education must have tighter controls and greater accountability on fiscal matters at their respective institutions; and,

WHEREAS, there is a need for each higher education governing board to have an audit committee which will employ an independent internal auditor that will report directly to the respective audit committee and governing board;

WHEREAS, action must be taken to assure appropriate oversight of public higher education institutions;

The 2016 Tennessee FOCUS Act created independent, local Boards of Trustees for the six Board of Regent's universities. The passage of the FOCUS Act further led **to new legislation strengthening the accountability review responsibilities of the new Boards.** Fortunately, under this new legislation the annual President's Expenses Report will continue to be required by law but it will now be submitted to the University of Memphis Board of Trustees.

**Applicable Law: Tennessee Code Annotated 49-14-104, as amended March 29, 2017**

The governing boards of all public institutions of higher education shall establish a policy requiring that annual reports detailing expenditures made by, at the direction of, or for the benefit of a system head or chief executive of an institution are to be filed with their respective boards. It is the legislative intent that the policy require the report of discretionary expenditures, which shall include, but not be limited to, unrestricted gifts, Foundation funds, athletic funds, sponsorship fees, licenses and royalty funds, and other such funds that would not be included in the operating budget for the system head's or chief executive's office. System heads or chief executives shall not have the authority to grant themselves an exception to fiscal, spending, or travel policies established by their boards or by statute.

The 2013-14 University of Memphis Presidents Expenses Report that Senator Wierdl and this Committee relied upon for this investigation is shown below:



**The University of Memphis**  
**Summary of the President's Expenses - Unaudited**  
**For the Period July 1, 2013 to June 30, 2014**

	Supplemental Schedule	President's Budgetary Accounts		Other Accounts		External Sources	Total
		Institutional	Foundation	Institutional	Foundation		
<b>President:</b>							
Salary and Benefits		\$ 66,715	\$ -	\$ 1,540	\$ -	\$ -	\$ 68,255
Travel	A	4,451	-	213	-	223	4,887
Business Meals and Hospitality	B	5,872	64	1,112	19,728	16,112	42,888
Other Expenses	C	85	10,338	50,549	8,463	-	69,435
Discretionary Allowance		-	-	-	-	-	-
Housing Allowance		-	-	-	-	-	-
Other Allowances		625	-	-	-	-	625
		77,748	10,402	53,413	28,191	16,335	186,089
<b>President's Office:</b>							
Salary and Benefits (5 FTE)		675,086	-	220,926	2,011	-	898,024
Travel		1,389	-	1,558	109	-	3,056
Business Meals and Hospitality		9,829	3,912	-	7,762	-	21,503
Other Expenses		166,518	775,743	26,734	218,323	-	1,187,319
		852,822	779,656	249,218	228,206	-	2,109,902
<b>Total Expenses</b>		<b>\$ 930,570</b>	<b>\$ 790,057</b>	<b>\$ 302,631</b>	<b>\$ 256,397</b>	<b>\$ 16,335</b>	<b>\$ 2,295,991</b>

**Additional Disclosures:**

**Other Allowances** - The President is provided other spending allowances for \$625.01.

**Vehicle Allowance** - The President receives a monthly car allowance of \$750.00 per month in accordance with employment contract. Payments are included in salaries and benefits.

**Athletic Tickets** - The President is provided tickets to university athletic events. The face value of the tickets for this period was \$35,020, which is recorded in the expenses of Schedule C.

**Cell Phone Allowance** - The President is provided a cell phone allowance, included in salary and benefits, of \$135/month for a total of \$135.

**External Sources** - This report includes the cost of items provided, paid, or reimbursed by external sources for the benefit of the President. In instances when the values of these items are not available, other relevant details are provided on the applicable supplemental schedule.

**President Emeritus** - The President Emeritus is provided a monthly salary of \$5,660.16, plus benefits and a cell phone allowance of \$125.00. The total expenses through the end of the quarter are \$74,651.88. The Foundation provided \$2,011.08 for a life insurance policy.

*Report Objective: In accordance with TCA 49-14-104, this is a report of expenses made by, at the direction of, or for the benefit of the president for the period and includes expenses from the president's institutional operating budget, as well as any discretionary expenses from unrestricted gifts, foundation funds, athletic funds, sponsorship fees, licenses and royalty funds, and other such funds that would not be included in the operating budget for the president's office for the period indicated. The report includes two sections, one for the expenses made by, at the direction of, or for the benefit of the president and the other for the remaining expenses of the president's office.*

## **5. Additional Information Regarding: The University of Memphis' President's Expenses Reports**

### **Violate the Spirit and Letter of the Tennessee Higher Education Accountability Act of 2004**

In addition to the Information previously provided, the University of Memphis 2013-14 President's

Expenses Report showed \$68,255 labeled President: Salary and Benefits which was paid for with Institutional Funds. It was common knowledge that Interim President Brad Martin had forgone a salary for his position as Interim President. So who received the \$68,255 in Institutional Benefits? Were they for Interim President Martin or were they for someone else? We inquired and were told that



Interim President Martin received no Benefits. The Committee never learned the disposition of these funds.

#### **6. No Additional Information**

#### **7. No Additional Information**

#### **8. Additional Information Regarding: The 2013-14 Foundation Contracts with Charles G. Burkett and**

#### **Phil Trenary have the Appearance of a Potential Conflict of Interest**

The Academic Policies Committee felt that the 2013-14 Foundation Expenditures for consulting services for Charles G. Burkett and Phil Trenary warranted additional scrutiny and would have liked to have been able to obtain the contract Information regarding the nature and rationale for their services. As mentioned earlier, the Foundation would not provide the Committee with their contracts.

Below is a listing of all of the individual payments, these dollar amounts were only revealed through Senator Wierdl's Freedom of Information Act request.

	<b>The University of Memphis</b>			
	<b>Presidential Expenses Paid to Charles G. Burkett</b>			
	<b>Fiscal Years 2013-2014</b>			
<b>Date</b>	<b>Description</b>	<b>Amount</b>	<b>Other</b>	<b>Payee</b>
11/19/13	Professional Services	\$20,000.00	No Explanation of the Nature of the Services Performed	Charles G. Burkett
11/19/13	Professional Services	\$20,000.00	No Explanation of the Nature of the Services Performed	Charles G. Burkett
11/19/13	Professional Services	\$20,000.00	No Explanation of the Nature of the Services Performed	Charles G. Burkett
2/6/14	Professional Services	\$60,000.00	No Explanation of the Nature of the Services Performed	Charles G. Burkett
3/27/14	Professional Services	\$20,000.00	No Explanation of the Nature of the Services Performed	Charles G. Burkett
3/27/14	Professional Services	\$20,000.00	No Explanation of the Nature of the Services Performed	Charles G. Burkett
5/13/14	Professional Services	\$20,000.00	No Explanation of the Nature of the Services Performed	Charles G. Burkett
6/30/14	Professional Services	\$20,000.00	No Explanation of the Nature of the Services Performed	Charles G. Burkett

6/30/14	Professional Services	\$20,000.00	No Explanation of the Nature of the Services Performed	Charles G. Burkett
	Total	\$220,000.00		
	<b>The University of Memphis</b>			
	<b>Presidential Expenses Paid to Phil Trenary</b>			
	<b>Fiscal Years 2013-2014</b>			
<b>Date</b>	<b>Description</b>	<b>Amount</b>	<b>Other</b>	<b>Payee</b>
10/22/13	Professional Services	\$20,000.00	No Explanation of the Nature of the Services Performed	Phil Trenary
10/22/13	Professional Services	\$20,000.00	No Explanation of the Nature of the Services Performed	Phil Trenary
11/19/13	Professional Services	\$20,000.00	No Explanation of the Nature of the Services Performed	Phil Trenary
12/16/13	Professional Services	\$20,000.00	No Explanation of the Nature of the Services Performed	Phil Trenary
12/16/13	Professional Services	\$20,000.00	No Explanation of the Nature of the Services Performed	Phil Trenary
12/16/13	Professional Services	\$20,000.00	No Explanation of the Nature of the Services Performed	Phil Trenary
1/14/14	Professional Services	\$20,000.00	No Explanation of the Nature of the Services Performed	Phil Trenary
2/6/14	Professional Services	\$20,000.00	No Explanation of the Nature of the Services Performed	Phil Trenary
3/13/14	Professional Services	\$20,000.00	No Explanation of the Nature of the Services Performed	Phil Trenary
4/9/14	Professional Services	\$20,000.00	No Explanation of the Nature of the Services Performed	Phil Trenary
5/13/14	Professional Services	\$20,000.00	No Explanation of the Nature of the Services Performed	Phil Trenary
6/16/14	Professional Services	\$20,000.00	No Explanation of the Nature of the Services Performed	Phil Trenary
	Total	\$240,000.00		

These amounts paid to Mr. Burkett and Mr. Trenary, through no apparent fault of Mr. Burkett or Mr. Trenary, were not listed by the Foundation in their filed 2013-14 IRS 900. In Schedule L, Business Transactions Involving Interested Parties, the amounts of these transactions were left blank.

**Part IV Business Transactions Involving Interested Persons.**

Complete if the organization answered "Yes" on Form 990, Part IV, line 28a, 28b, or 28c.

(a) Name of interested person	(b) Relationship between interested person and the organization	(c) Amount of transaction	(d) Description of transaction	(e) Sharing of organization's revenues?	
				Yes	No
(4) CHARLES BURKETT	MR BURKETT IS ON THE BOARD OF TRUSTEES		THE FOUNDATION PAID MR BURKETT FOR CONSULTING SERVICES PROVIDED TO THE UNIVERSITY OF MEMPHIS		No
(5) PHIL TREARY	MR TREARY WAS ON THE BOARD OF TRUSTEES DURING FY2014		THE FOUNDATION PAID MR TREARY FOR CONSULTING SERVICES PROVIDED TO THE UNIVERSITY OF MEMPHIS		No

In Section B Independent Contractors in the same 2013-14 Form 990, they were not listed despite the fact they were apparently, at \$240,000 and \$220,000, the Foundation's fourth and fifth largest Contracts. If true, this would appear to be a violation of IRS Rules which required that they be listed here in this Section in the Foundation's filing. **Listing here would have also revealed how much these consultants were being paid which Information, until Senator Wierdl's FOIA, had been kept confidential.**

**Section B. Independent Contractors**

<b>1</b> Complete this table for your five highest compensated independent contractors that received more than \$100,000 of compensation from the organization. Report compensation for the calendar year ending with or within the organization's tax year.		
(A) Name and business address	(B) Description of services	(C) Compensation
BEYNON SPORTS SURFACES INC 16 ALT ROAD HUNT VALLEY MD 21030	CONSTRUCTION AND RENOVATION	1,399,654
MONTGOMERY MARTIN CONTRACTORS LLC 8245 TOURNAMENT DR STE 300 MEMPHIS TN 38125	CONSTRUCTION AND RENOVATION	905,251
SPORTS TURF SOLUTIONS LLC 606 ST BLAISE ROAD GALLATIN TN 37066	CONSTRUCTION AND RENOVATION	430,361
NATIONS WRIGHT LLC 7201 E CAMELBACK ROAD STE 360 SCOTTSDALE AZ 85251	CONSTRUCTION AND RENOVATION	212,826
ROYALL AND COMPANY 1920 E PARHAM RD RICHMOND VA 23228	PROFESSIONAL CONSULTING SERVICES	189,710
<b>2</b> Total number of independent contractors (including but not limited to those listed above) who received more than \$100,000 of compensation from the organization <b>▶15</b>		

Form **990** (2013)

Compare the previous 2013-14 Form 990 prepared when Brad Martin was Interim UM President, to the Foundation's 2015-16 IRS Form 990 shown below, prepared while David Rudd was UM President.

(3) CHARLES BURKETT	MR BURKETT IS ON THE BOARD OF DIRECTORS	206,680	THE FOUNDATION PAID MR BURKETT FOR CONSULTING SERVICES PROVIDED TO THE UNIVERSITY OF MEMPHIS		No
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**Section B. Independent Contractors**

**1** Complete this table for your five highest compensated independent contractors that received more than \$100,000 of compensation from the organization. Report compensation for the calendar year ending with or within the organization's tax year.

(A) Name and business address	(B) Description of services	(C) Compensation
NATIONS GROUP LLC 7201 E CAMELBACK ROAD SUITE 360 SCOTTSDALE, AZ 85251	CONSTRUCTION AND RENOVATION	621,145
ARCHER MALMO INC 65 UNION AVE SUITE 500 MEMPHIS, TN 38103	ADVERTISING/MARKETING/PUBLIC RELATIONS	371,723
LOONEY RICKS KISS 175 TOYOTA PLAZA SUITE 500 MEMPHIS, TN 38103	PROFESSIONAL SERVICES	274,982
CHARLES BURKETT 238 CLOISTER GREEN LANE MEMPHIS, TN 38120	CONSULTING SERVICES	206,680
ADVENT RESULTS LLC 2320 CRUZEN STREET NASHVILLE, TN 37211	PROFESSIONAL SERVICES	157,500
<b>2</b> Total number of independent contractors (including but not limited to those listed above) who received more than \$100,000 of compensation from the organization ▶ 9		

Form 990 (2015)

**990 Schedule O, Supplemental Information**

Return Reference	Explanation
FORM 990, PART VI, SECTION A, LINE 2	CHARLES BURKETT AND DAVID ZETTERGRAN WORKED FOR DAVID RUDD AT THE UNIVERSITY OF MEMPHIS BENJAMIN BRYANT WAS A CONTRACTOR WHO ALSO WORKED FOR DAVID RUDD AT THE UNIVERSITY OF MEMPHIS

In 2015-16, Mr. Burkett is fully disclosed by the Foundation as he and Mr. Trenary should have been in the 2013-14 IRS filing.

Interpreting the 2015-16, IRS Form 990, it appears that Mr. Burkett, former President of First Tennessee

Bank National Association, was paid \$206,680 by the Foundation for his services; Mr. Bryant, former

President of Cook Systems International, was paid \$24,000 by the Foundation for his services; and Mr. Zettergran, University Vice President for Business and Finance, was paid directly by the University.

Several parties told the Committee that Mr. Burkett and Mr. Trenary actively consulted and assisted with the University's SRI Budget Restructuring efforts.

**So why should their hire be an issue?** A public institution has a particular responsibility to avoid any appearance of a potential conflict of interest. As does a Foundation, closely affiliated with a public institution.

The Foundation made a public statement on conflicts of interest in their 2013-14 IRS Form 990.

<b>12a</b>	Did the organization have a written conflict of interest policy? <i>If "No," go to line 13</i> . . . . .	<b>12a</b>	Yes	
<b>b</b>	Were officers, directors, or trustees, and key employees required to disclose annually interests that could give rise to conflicts? . . . . .	<b>12b</b>	Yes	
<b>c</b>	Did the organization regularly and consistently monitor and enforce compliance with the policy? <i>If "Yes," describe in Schedule O how this was done</i> . . . . .	<b>12c</b>	Yes	
<b>13</b>	Did the organization have a written whistleblower policy? . . . . .	<b>13</b>	Yes	
<b>14</b>	Did the organization have a written document retention and destruction policy? . . . . .	<b>14</b>	Yes	

FORM 990, PART VI, SECTION B, LINE 12C	THIS POLICY IS MONITORED AND ENFORCED BY THE UNIVERSITY OF MEMPHIS FOUNDATIONS OFFICERS AND EMPLOYEES IN A MANNER ADDRESSED IN THE CODE OF ETHICS SECTION OF THE FOUNDATION'S POLICIES AND PROCEDURES MANUAL
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**19** Describe in Schedule O whether (and if so, how) the organization made its governing documents, conflict of interest policy, and financial statements available to the public during the tax year

FORM 990, PART VI, SECTION C, LINE 19	THE ORGANIZATION DOES NOT MAKE ITS GOVERNING DOCUMENTS OR CONFLICT OF INTEREST POLICY AVAILABLE FOR PUBLIC INSPECTION. THE FINANCIAL STATEMENTS ARE MADE AVAILABLE ON THE WEBSITE FOR THE ORGANIZATION
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From Form 990, we learn that the Foundation has a “Code of Ethics Section of the Foundations Policies and Procedure Manual”. **However, “the Organization does not make its Governing Documents or Conflict of Interest Policy available for Public Inspection”.**

**So we can’t tell if they have a conflict of interest policy against hiring and paying acquaintances and members of their Board of Directors; but if they don’t, they should have; and if they do, it appears here that they didn’t follow it.**

## **6. Additional Information Regarding: Payments to Outside Contractors**

### **Unclear Records of Institutional Expenditures for Executive Search Services**

		The University of Memphis		
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		Selected Payments from President's Institutional Funds			
			Fiscal Years 2013-2014		
Date	Description	Amount	Other	Payee	Committee Notes
12/18/13	Other Professional Admin Services	\$26,334.00	Exectutive Search Fees (President)	NOT PROVIDED	At the Jan 10th, 2014 meeting with Chair
2/21/14	Other Professional Admin Services	\$26,334.00	Exectutive Search Fees (President)	NOT PROVIDED	Peter McMickle, President Rudd said these
5/19/14	Other Professional Admin Services	\$26,333.00	Exectutive Search Fees (President)	NOT PROVIDED	payments were likely made to
	Total	\$79,001.00			Greenwood/Asher & Associates
4/1/14	Other Professional Admin Services	\$412.90		Greenwood/Asher & Associates	Greenwood/Asher & Associates is an
4/1/14	Other Professional Admin Services	\$1,374.30		Greenwood/Asher & Associates	executive search service whose focus is the
4/1/14	Other Professional Admin Services	\$454.00		Greenwood/Asher & Associates	education market.
4/9/14	Other Professional Admin Services	\$694.88		Greenwood/Asher & Associates	
4/9/14	Other Professional Admin Services	\$172.02		Greenwood/Asher & Associates	
4/9/14	Other Professional Admin Services	\$1,167.22		Greenwood/Asher & Associates	
4/21/14	Other Professional Admin Services	\$557.13		Greenwood/Asher & Associates	
4/21/14	Other Professional Admin Services	\$259.92		Greenwood/Asher & Associates	
4/21/14	Other Professional Admin Services	\$3,087.94		Greenwood/Asher & Associates	
4/21/14	Other Professional Admin Services	\$43.36		Greenwood/Asher & Associates	
4/21/14	Other Professional Admin Services	\$3,084.33		Greenwood/Asher & Associates	
4/29/14	Other Professional Admin Services	\$602.54		Greenwood/Asher & Associates	
5/1/14	Other Professional Admin Services	\$5,083.75		Greenwood/Asher & Associates	

6/4/14	Other Professional Admin Services	\$9,313.33		Greenwood/Asher & Associates	
6/4/14	Other Professional Admin Services	\$1,637.50		Greenwood/Asher & Associates	
	Total	\$27,945.12			
	Total Spent on President Search	\$106,946.12			

In the University's FOIA response, it was problematic that the University's accounting system's reporting of the above executive search fees paid with \$79,000 of Institutional funds did not identify to whom the funds were paid; nor for the above Institutional payment of \$27,945.12 to Greenwood/Asher & Associates, provide any explanation of why or specifically for what position search they were paid.

In our interview with the University's Procurement and Contract Services Department, we were informed by them that the Greenwood/Asher & Associates executive search contract was with the University of Memphis Foundation. This Information should be rechecked, but if true it would appear to indicate that **Institutional funds were used, in this particular instance, to pay Foundation expenses** which would indicate possible issues with the University's accounting system and system of internal control. It is possible that the University was re-compensated by the Foundation for these expenses, but this could not be determined from the data provided. This needs further follow-up by President Rudd.

#### Unclear University Records of Foundation Expenditures for Contracted Services

	The University of Memphis	
	Presidential Expenses Paid to Baker and Associates	

	<b>Fiscal Years 2013-2014</b>			
<b>Date</b>	<b>Description</b>	<b>Amount</b>	<b>Other</b>	<b>Payee</b>
10/22/13	Professional Services	\$20,000.00	No Explanation of the Nature of the Services Performed	Baker and Associates
1/22/14	Professional Services	\$23,095.00	No Explanation of the Nature of the Services Performed	Baker and Associates
1/28/14	Professional Services	\$20,990.65	No Explanation of the Nature of the Services Performed	Baker and Associates
6/25/14	Professional Services	\$20,000.00	No Explanation of the Nature of the Services Performed	Baker and Associates
6/25/14	Professional Services	\$20,000.00	No Explanation of the Nature of the Services Performed	Baker and Associates
	Total	\$104,085.65		

Baker and Associates is an Academic Executive Search firm. President Rudd informed the Committee that their fees were for performing Deans searches. Well over \$200,000 was spent on executive search companies instead of just utilizing advertising and internal Committee efforts.

	<b>The University of Memphis</b>			
	<b>Presidential Expenses Paid to Ruffalo Cody</b>			
	<b>Fiscal Years 2013-2014</b>			
<b>Date</b>	<b>Description</b>	<b>Amount</b>	<b>Other</b>	<b>Payee</b>
7/16/13	Professional Services	\$11,160.00	No Explanation of the Nature of the Services Performed	Ruffalo Cody
	Total	\$11,160.00		

Ruffalo CODY is a consulting firm specializing in higher education enrollment and fund raising. President Rudd informed the Committee that they were used to assist the university in its enrollment and fund raising endeavors.

The above two consulting contracts were of concern to the Committee because no explanations of the nature of services provided were shown in the accounting data provided by the FOIA.

Collectively, these concerns appear to indicate the University's need for an improved, multi-stage object of expenditure, accounting system. The accounting system should be able to quickly and clearly identify such items as executive



search service expenditures for specific job positions and other Consulting Services for specific purposes. It is unsatisfactory for this Information to be buried under non-specific headings of “professional services”.

**Payments to Outside Contractors for the SRI Budget Initiative Appear Excessive**

	<b>The University of Memphis</b>			
	<b>Presidential Expenses Paid to Huron Consulting Services</b>			
	<b>Fiscal Years 2013-2014</b>			
<b>Date</b>	<b>Description</b>	<b>Amount</b>	<b>Other</b>	<b>Payee</b>
6/25/14	Professional Services	\$71,263.01	No Explanation of the Nature of the Services Performed	Huron Consulting Services
	Total	\$71,263.01		

Huron Consulting Services is a Higher Education Consulting firm. President Rudd informed the Committee that they were used to assist in the SRI Initiative. The University web site states that: “SRI was established to develop a better, more responsive, transparent and flexible way to provide Information useful in making resource allocation decisions for the University. One of the tools for accomplishing this goal is the budget model.”

The 2013-14 Huron Expenditure made by the Foundation for the SRI Budget initiative was \$71,263.01.

However, the Foundations following year’s IRS 990 reported a second, much larger payment to Huron,

**11. Additional Information Regarding: The Foundation Paid an Outside Fund Raiser More than the University Gained**

(i) Name and address of individual or entity (fundraiser)	(ii) Activity	(iii) Did fundraiser have custody or control of contributions?		(iv) Gross receipts from activity	(v) Amount paid to (or retained by) fundraiser listed in col (i)	(vi) Amount paid to (or retained by) organization
		Yes	No			
1 ROYALL AND COMPANY ADVANCEMENT SERVICES INC 1920 E PARHAM ROAD RICHMOND, VA 23228	ANNUAL GIVING CAMPAIGN		No	296,326	150,443	145,883

The Committee, in responding to our charge, found it necessary to review the University of Memphis Foundation's IRS Form 990 for each of the three years ending 2014, 2015, and 2016. It appears from the Information found in the University of Memphis Foundations 2015-16 IRS Form 990 that the Foundation contracted with fund raiser Royall and Company to assist in the 2015-16 University's Annual Giving Campaign. A copy of the applicable portion of that Form 990 appears above.

**Additional Information Regarding: Fortunately, We Believe that Future Foundation-Funded University Contracts Will No Longer Be Secret**

It had at first appeared to the Committee that the University had already made this important change. The following email was issued on September 20, 2017:



**Procurement and Contract Services**  
***Important Notice: Foundation-Funded Contracts***

Effective immediately, University of Memphis Foundation-funded contracts will be issued by the University of Memphis and must be submitted to Procurement and Contract Services. The contracts must comply with University Procurement policies and procedures: <http://bf.memphis.edu/bfguide/pur.php>.

In order to process the request for purchase, the department shall request a transfer of funds from the Foundation to a University FOAP, enter a requisition into TigerBuy, and attach a contract routing form and contract to the requisition.

Please contact Procurement staff at [purchasing@memphis.edu](mailto:purchasing@memphis.edu) or 901-678-2265 if you have questions regarding the procurement process.

However, the Committee has learned that this new policy has been placed on hold because the new President of the Foundation would prefer that the Foundation no longer issue any such contracts, but that this will require a change in the Foundation's By-Laws.

**Additional Information Regarding: Current University Issued Contracts Can No Longer Be Read Online**

Below is the new Act, signed into law on April 7, 2017, that was cited to the Committee as the rationale for taking down the entire on-line University

Procurement Contract site that previously provided on-line the copies of all current University of Memphis procurement contracts. In the opinion of this Committee, this law is not an adequate explanation for the removal of the site, and we hope that the decision will be reversed.



## *State of Tennessee*

### **PUBLIC CHAPTER NO. 114**

**SENATE BILL NO. 1201**

**By Norris, Stevens**

Substituted for: House Bill No. 313

By Hawk, Casada, Rudd

AN ACT to amend Tennessee Code Annotated, Section 10-7-504, relative to the protection of confidential information.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 10-7-504(i), is amended by deleting subdivision (3)(B) in its entirety and by substituting instead the following language:

(B) The identity of a vendor that provides to the state goods and services used to protect electronic information processing systems, telecommunication and other communication systems, data storage systems, government employee information, or citizen information shall be confidential.

SECTION 2. Tennessee Code Annotated, Section 10-7-504(i), is amended by deleting subdivision (3)(C) in its entirety and by substituting instead the following language:

(C) The identity of a vendor that provides to a governmental entity other than the state goods and services used to protect electronic information processing systems, telecommunication and other communication systems, data storage systems, government employee information, or citizen information shall not be confidential; provided, that the identity of the vendor shall be confidential if the governing body of the governmental entity votes affirmatively to make such information confidential.

SECTION 3. Tennessee Code Annotated, Section 10-7-504(i)(3)(D), is amended by deleting the subdivision and substituting instead the following:

(D) Notwithstanding subdivisions (i)(3)(B) and (C), a governmental entity shall, upon request, provide the identity of a vendor to the comptroller of the treasury, the fiscal review committee of the general assembly, and any member of the general assembly. If the identity of the vendor is confidential under subdivision (i)(3)(B) or (i)(3)(C), the comptroller, fiscal review committee, or member shall exercise reasonable care in maintaining the confidentiality of the identity of the vendor obtained under this subdivision (i)(3)(D).

SECTION 4. This act shall take effect upon becoming a law, the public welfare requiring it.

**12. Additional Information Regarding: Under the University of Memphis  
Foundation's New Charter,**

**No University Officers Are Required Members of the Foundation's Board of  
Directors**

When the Foundation was created it clearly operated under the close control of the University. Over the years, this has changed and it is no longer true. The reasons for these major changes in control are not explained in the Charter revisions.

1964

The [Foundation] Board of Trustees will be composed of the President of the University; the Director of Development of the University; the President and Secretary of the Alumni Association of the University; the Chairman of the State Board of Education . . . ; three additional members of the administrative staff of the University . . . designated by the President of the University, two faculty members with tenure designated by the President of the University, and other such persons as the President of the University may see fit to designate . . . .

2016

. . . . the Foundation shall always be independent of the University. . . . In no event shall any of the assets held by, controlled by or contributed to the Foundation be considered as assets of the University . . . . The Corporate powers of this Foundation shall be exercised by a Board of Directors. . . . The size of the Board [of Directors] shall be determined by majority vote of the Board members. . . . Any vacancy in Board membership shall be filled by majority vote of the board members. . . . Directors may be elected to successive terms. . . . The Board of Directors may, from time to time, designate specific University officers to serve on the Board of Directors by virtue of his/her position.

The Board is self-perpetuating. Future board members are elected by current Board members. There is no mention in the new Charter of what qualifies a person to be a Board member.

The change in Board of Trustees/Directors membership and control of the Foundation from University officers to non-university Board members was likely for liability or regulatory reasons, but, as stated earlier, this can't be determined because the reasons for these major changes in control are not explained in any of the Charter revisions.

### **13. No Additional Information**

### **14. Additional Information Regarding: New Internal Controls at the Board of Trustees Level**

In further response to the FOCUS Act that created the new University Board of Trustees, additional legislation was passed effective March 29, 2017 which created the requirement for each University Board to:

1. Create a Board of Trustee's Audit Committee
2. Hire a Chief Internal Auditor who would report directly to the Audit Committee and Board
3. Conduct a yearly Internal Financial Audit of the President's Office
4. Maintain Whistle-Blower Protection

### **Tennessee Code Annotated 49-14-102, as amended March 29, 2017**

(c) The board of regents and each state university board created under chapter 8, part 2 of this title and the University of Tennessee board of trustees created under chapter 9, part 2 of this title shall each create an audit Committee. Each board is authorized to select one (1) or more certified public accountants or other qualified citizens who are not members of such board to serve on the audit Committee.

(d) Each audit Committee shall employ a person qualified by training and experience to serve as the chief internal auditor. The chief internal auditor shall report directly to the audit Committee and respective board and shall be removable only for cause by a majority vote of the respective board. The internal auditor shall file a report on the audit work with the audit Committee at least annually. (c) An audit Committee created pursuant to this chapter shall also be subject to the State of Tennessee

Audit Committee Act of 2005, compiled in title 4, chapter 35. [Emphasis added.]

### **Tennessee Code Annotated 49-7-3001, as amended March 29, 2017**

Each state university board shall require an annual internal financial audit of the office of the president of the institution. The audit shall be reviewed by the institution's governing board and the comptroller of the treasury.

**Tennessee Code Annotated 49-14-103(b), as amended March 29, 2017**

Section 8-50-116 shall apply to all higher education employees. In addition, no higher education employee shall suffer any of the actions specified in § 8-50-116 for reporting to or cooperating with auditors or for reporting any facts to the governing boards of public institutions of higher education or to the audit Committees of those boards. It is a Class A misdemeanor to knowingly and willingly retaliate or take adverse action of any kind against any person for reporting alleged wrongdoing pursuant to this chapter.

**Below is the cited Section 8-50-116 that outlines Tennessee Whistle Blower Protections:**

**2010 Tennessee Code**

**Title 8 - Public Officers And Employees**

**Chapter 50 - Miscellaneous Provisions**

**Part 1 - General Provisions**

**8-50-116 - Reporting violations of state agency, employee, or contractor.**

**(h) (1)** It is the intent of the general assembly that state employees shall be encouraged to report verbally or in writing to their supervisor, department head, or other appropriate authority or entity, evidence of activity by a state agency or state employee or state contractor constituting violations of state or federal law or regulations, fraud in the operations of government programs, misappropriation of state or federal resources, acts which endanger the health or safety of the public or employees, and mismanagement of programs, funds, or abuses of authority.

(2) The general assembly further finds and declares that public servants best serve the citizens when they can be candid and honest without reservation in conducting the public's business.

(3) It is the further intent of the general assembly that state employees be free of intimidation or harassment when reporting to public bodies about matters of public concern, including offering testimony to, or testifying before, appropriate legislative panels.

(i) **(1)** No head of any state department, agency or institution, state employee exercising supervisory authority, other state employee or state contractor shall recommend or act to discharge, demote, suspend, reassign, transfer, discipline, threaten or otherwise discriminate against a state employee regarding the state employee's evaluation, promotion, compensation, terms, conditions, location or privileges of employment, nor may any state employee or state contractor retaliate against another state employee because the employee, or a person acting on behalf of the employee, reports or attempts to report, verbally or in writing:

(F) The willful efforts of such person or agency or contractor to violate a state or federal law, rule or regulation which had or would have had a material and adverse effect upon program operations or program integrity, or the willful efforts to conceal such a violation;

(G) Acts which constituted fraud against the state, the federal government, the public or any fellow employee;

(H) The willful misappropriation of state or federal resources;

(I) Acts which posed an unreasonable and specific danger to the health or safety of the public or employees; or

(J) Acts constituting gross mismanagement of a program, gross waste of state or federal funds, or gross abuse of authority;

(2) The head of the state department, agency or institution or other state employee exercising supervisory authority over the state employee may, however, take any appropriate action or appropriate disciplinary action in relation to the reporting or attempted reporting of any Information which is believed in good faith by such department head or other state employee exercising supervisory authority to be fraudulent, dishonest or with willful disregard for the truth or falsity of the Information.

(3) No head of any state department, agency, or institution, state employee exercising supervisory authority, other state employee or state contractor shall recommend or act to discharge, demote, suspend, reassign, transfer, discipline, threaten or otherwise retaliate or discriminate against a state employee regarding the state employee's evaluation, promotion, compensation, terms, conditions, location, or privileges of employment because the employee refused to carry out a directive if the directive constitutes a violation of state or federal law, rule or regulation, written policy or procedure which materially and adversely affects the operations

or integrity of a program or if the directive poses an unreasonable and specific danger to the health or safety of the employee, the employees or the public.

**(j)** Any state employee injured by a violation of subsection (b) may maintain an action in circuit or chancery court within one (1) year after the occurrence of the alleged violation of this section for actual damages, injunctive relief, or other remedies provided in this section against the person or agency or state contractor, or any of them, who committed the violation. An act or conduct constituting part of an alleged continuing pattern of violations of this section shall only be considered in calculating any damages if an action is brought within one (1) year of the occurrence of the act.

**(k) (1)** A court, in rendering a judgment in an action brought pursuant to this section, may order injunctive relief, actual damages, reinstatement of the employee, the payment of back wages, full reinstatement of fringe benefits and seniority rights, costs, reasonable attorney's fees or any combination thereof.

(2) If an application for a permanent injunction is granted, the employee shall be awarded costs and reasonable attorney's fees.

(3) If in an action for damages the court finds that the employee was injured by a willful and malicious violation of this section, by a criminal violation based upon this section or by a violation based upon an effort to obtain personal gain, the court may award as damages up to three (3) times the amount of actual damage plus costs and reasonable attorney's fees against the individual or individuals found to be in violation of this section.

**(l)** No head of any state department, agency or institution or other state employee exercising supervisory authority nor any agency of the state of Tennessee shall be found liable pursuant to this section if the head of any state department, agency or institution or other state employee exercising supervisory authority was acting within the scope of such employee's apparent lawful orders or authority and in good faith in such person's reasonable interpretation of any rule or regulation or was acting in good faith in such person's direction to the employee to implement any law, regulation, policy or procedure related to the operation of any program of such agency which is the subject of the report or attempted report pursuant to this section.

**(m)** Notwithstanding any law to the contrary, any head of any state department, agency or institution or other state employee exercising authority shall be subject to the protections of § 8-42-103 if it is determined such person was acting within



the scope of such person's apparent lawful orders or authority and was not acting willfully, maliciously, criminally or for personal gain; and such person shall be further subject to the protection contained in the provisions for the board of claims under § 9-8-112 relative to the payment of any judgments, costs and attorney's fees where it is determined that such person was acting within the scope of such person's apparent lawful orders or authority and was not acting willfully, maliciously, criminally or for personal gain.

**(n)** Nothing in this section shall be deemed to diminish the rights, privileges or remedies of any employee under any other federal or state law or regulation.

[Acts 2000, ch. 709, § 1.]