

Berkshire County Retirement Board Meeting
September 3, 2021

The meeting of the Berkshire County Retirement Board was called to order at 1:01 P.M. in the Berkshire County Retirement Office, located at 29 Dunham Mall, Pittsfield, MA. Present at the meeting were; Michael Ovitt, Chairman, Mark Bashara, Elected Member, Karen Williams, Elected Member, Beth Matson Appointed member and Paul A. Lisi, Jr., Advisory Board Member.

PUBLIC COMMENT:

Members of the public had an opportunity to address the Retirement Board as the remote link to the meeting was posted with the agenda. There were no members of the public attending the meeting or connected remotely.

NEW BUSINESS:

1.) The Board will discuss a hiring plan for Retirement Coordinator/ Accountant position currently open in the retirement office.

Sheila: Seeing that it's 1:01 this afternoon, and we have one item posted on our agenda today. And that is that the Board will discuss a hiring plan for the Retirement Coordinator Accountant position that is currently open in the Retirement Office. We had a brief discussion regarding the open position at our last Board meeting and so we posted this so that we can have a discussion. We have invited Tom Gibson to provide us some guidance on how we would like to proceed. So that is what we are here to do today.

Tom: Okay, so if I could just open up a little bit just to frame the issue before we get into any substance discussion. I have talked to Sheila about this issue and I have had conversation with Michael about it as well. I just want to, it's a threshold matter here. We need to determine what the business model is that the Board wants to pursue going forward. Do they want to keep the existing business model or are they really going to want to change the business model? Now, when I say business model, that is the current staff, where they have administrator and two other employees, and the work is divided proportionally among the three employees. If they want to change that, then we have to be sensitive to some restrictions and statues that would impact any discussion about the future of the Berkshire County Retirement systems operations. Those issues are, number one Chapter 268 A. the General Laws, which is the State Ethics Commission, and you are all aware of that, you take online training. Every two years and you sign every year that you are aware of the statute. And that has restrictions in the law, that would prevent the Board from acting on an application for an existing position from a Board member for thirty-days, following that Board member's termination of service on the Retirement Board. And that is pretty clear. There was an opinion rendered by the commission back in 2003 on that very exact issue. E.C. 0 I 3-3, it says that a Board member is eligible to apply for a position under the supervision for Board in which he services without first resigning of his Board position. The Board, however, may not take any action regarding the Board member's application, such as selecting him for interview until thirty days has elapsed after the Board member has terminated his services as a member. The Board, however, may act within the thirty-day period on any other applications for the position. So essentially, that is a statute and made of a decision of the Ethics Commission. It is clear that the Board member cannot fill a position as an employee until they have been off the Board for thirty days. Another statue however, that has some role in this whole operation is Chapter 34 B, Section 19. 34 B, Section 19, as we are aware, creates the Regional Retirement Board back in July 1, 2000. When Berkshire

Berkshire County Retirement Board Meeting
September 3, 2021

County was eliminated as the governmental unit and the Regional Retirement Board was created to continue the operations of the previous Berkshire County Retirement System, now the Regional Retirement Board, even though you obtain the name "County" in your name, in Chapter 34 B, Section 19, gives certain powers to the Retirement Board and certain compensation to the Retirement Board, including the first member. So, the first member who is the Chairman of the Board. That is an important position in the Scheme because that individual is also the Treasurer Custodian of the retirement system and while the compensation for the other four Board Members is restricted by the Statutory requirements in Chapter 32, the compensation for the first member is not so restricted. The Statute says that the compensation for the first member, shall be set by the Retirement Board. So, in different regional retirement systems, we have different needs and different requirements and different histories we have different setups. Now for example when I was appointed in 2004, the County Treasurer took over as the first member, so the transition was seamless initially. The County Treasurer now became Chairman of the Retirement Board and the Chairmen of the Retirement System and continued on the way. And his compensation mirrored when the Treasurer was receiving at the employee or the elected Treasurer of the County before it was abolished. But when the County terms expired, or when members left either voluntarily or otherwise, the matter went before the Retirement Board and appointed to the successor as to what they expected of the first member and how much they were going to compensate him. So, this is where different Regional Retirement Boards have different situations. In Middlesex, when I was appointed in 2004, I was not a Board Member. I had been an attorney for the Board for a number of years and when they appointed me, we had a very formal proceeding in which the Board reduced to writing what my duties were going to be and what my compensation was going to be. In it, it says, "The first member as Chairman shall have charge, subject to approval from the Board, general administration of the Middlesex Retirement Board and should represent the legal, legislative, financial interest of the Board as required. The Chairman shall serve as the Statutory Treasure Custodian of the Middlesex Retirement System pursuant of 34 B, 19 F and will promptly act as required by the Board to protect the interest of the Board and the Members and Beneficiaries of the Middlesex County Retirement System." They also added for me, that I am not prevented from other employment by reason of the position, and I agreed to devote all necessary time to the service of the Board and is expected to attend all meetings. The attendance at the Boards office at the time as the general administration of the Board may require. The Board requires to renew terms annually, etcetera, etcetera. So, when I took over as Chairman in 2004, I had a specific charge and specific guidelines as compensation that was mapped out for me. I immediately wrote to the Ethics Commission asking for their guidance as well. Because at the time, I was also a member of the Belmont Retirement Board and I also, in our law practice had been representing the interest of other Retirement Systems in Massachusetts, and I wanted to make sure that I wasn't overstepping any bounds. So, I wrote a detailed letter to them and I laid out everything that I could. From all the statutes and I think there were four or five opinions that the Ethics Commission had rendered pertaining to the operations of Retirement Boards and Retirement Board Members. I cited all of those and I asked what the restrictions would be on my participation. They responded and I was not precluded from being on the Belmont Board, being on the Middlesex Board or from representing other Retirement Boards, as long as I avoided conflicts of interest of course. I could not represent any of the Members from the units that were in the Middlesex County Retirement Board. I could not represent the town of Belmont in any preceding as their attorney. They were well

Berkshire County Retirement Board Meeting
September 3, 2021

aware of that. I provided the PERAC, by the way. Because PERAC had some questions about whether I was going to be charging for legal services as well as being paid for being the first member. So, I essentially because the Chief Executive Officer of the Middlesex County Retirement Board and in the statute if you read 34 B, you will see that employees of the regional county board are precluded from serving on the Retirement Board, unless that employee is the Chief Executive Officer, which is the Chairman of the Board as well. And that's the model that other systems follow. Worcester Regional, followed that. When Kevin Blanchette left PERAC and became the first member in Worcester Retirement Board, he became the Chairman and Chief Executive Officer of Worcester Regional. I believe that Pat Brock in Hampshire County, who was retired Firefighter. Also oversaw the operations and general of the retirement system and was compensated according to what he was doing. Which I know Pat was involved with PRIM and also involved a lot of the investment program and helping with the investing program in Hampshire County. Tim Bassett in Essex Regional, had been the County Treasurer and he took over the Essex Regional Retirement Board and he didn't have a smooth path, by any means. He was essentially booted out and removed because of the various conflicts of interest and now they have a different model up at the Essex Regional Retirement Board. So, I point these out because the needs of every Retirement System may differ. The size of each Retirement System, of course differs and so depending on that. That's how you determine what kind of business model you want to have. So, in Middlesex, we have fifteen employees who run the show and we are the fourth largest system in Massachusetts. Lisa Maloney is the Chief Administrative Officer, but she still answers to the Retirement Board. So, I'm just putting this out there and another thing that you need to be aware of before you enter any discussions is that PERAC issued a memo back in 2017. PERAC Memo 28 2017, the bulk of that memo addressed the appointment of the fifth member of the Board and what would be required to appoint the fifth member of the Board. But a second part of that memo dealt with the filling of vacancies in the Board positions of employment in the retirement system. PERAC calls, says that by due sharing principles require open competitive process for that. As we know, most positions that are opening in retirement systems right now are posted on PERACS website and mirrors section 23 B particular process where you post something, you ask for submissions, you conduct interviews, and then you make a decision. So, going forward, in what the Board does and some of the preliminary matters need to be determined. And if it's determined at some point in time, during the discussion that there is going to be an expansion of the role, of the Chairman and with compensation, I would suggest that Michael recuse himself from any of those discussions. Because as we know, he has a financial interest in any of the outcomes of that and we want to avoid the appearance of any conflict of interest. There have been some decisions in the past, some unfortunate cases of ethics involving a Palmer Chairman of the Berkshire County Retirement Board, Peter Arlos who got himself in trouble for voting for a pay raise for himself. A more on point issue has to do with the Palmer Executive Director of the Maynard Retirement Board who also happened to be the town Auditor in Maynard and voted and was instrumental in creating a position of Executive Director of Maynard Retirement System for a period of time he was being paid for both roles and he wound up being charged by the Ethics Commission for violations and entering into a disposition agreement where he admitted that he had violated the State Ethics Law. So, proceeding down the road you have a statutory obligation to make sure that the operations of the Retirement System are being conducted in the best interest of the Members and Beneficiaries of the Retirement System, as well as all the other stakeholders here. I'm talking about the units of

Berkshire County Retirement Board Meeting
September 3, 2021

the Retirement System as well and even the taxpayers in general. So we need to be very careful that we can pursue our statutory obligations and at the same time follow all of the state ethics law. Now the ethics commission has also recognized, in the past that the two statutes sometimes conflict. 268 A and Chapter 34B and 32, sort of one in the same. On the issue of granting a COLA for retirees, so many times on our Retirement Board, a retired member would be sitting, either elected or appointed, and that retired member would benefit from a vote to grant a Cost of Living increase, so the ethics commission ruled that when the issue is not unique to one individual, or family member, and when the Board Member is conducting himself under a statutory obligation, such as voting for a cost of living increase, when there's that kind of conflict, the Board is warranted, the Board can vote for a cost of living increase for all retirees, even though he himself will benefit. So, there is that recognition from the Ethics Commission that sometimes the statutes may but heads, and that's where we have 34 B and 268 A, talking about who is going to do what at the Retirement Board. SO those are just the factors that I feel the Board should keep in the back of their mind when they discuss how they are going to go forward with the position that is now vacant. Now Gerry, I don't know if you have anything else you would like to say to the Board.

Gerry: No, I think you've covered everything, Tom. I think quite comprehensive.

Tom: Thank you. So that's the background.

Paul: Tom, can I start? So, I did in fact contact Ann Nee at the State Ethics Commission, myself. As you know, they are working remotely so phone calls are a priority for them. She said that she would give me the official document in an email within the next couple days or so, but she said to just give legal counsel, if you participate, her name and you would be able to verify that I did talk to them. Ann did tell me, as you know, I don't know if Sheila did tell you before, I was approached as a potential interest in the position. I am going to talk about that in a second, but in talking with Ann, she reiterated almost everything that you said, but I asked about if it was required to step away from my position as a Board Member, to resign my position for thirty days, and she said in her response to me, no but at the Board Meetings, anything that have to do with these talks, I would have to recuse myself and walk out of the room. Which I totally understand and am totally fine with that. She then proceeded to ask and say that the same thing that you just said, 268A 34B 19 and 32 all intermingle, and it becomes a confusing mess sometimes. She also said that asked my question, if I was to get the job and accept the job, what would be my intent. And I explained to her that my intent would be to immediately resign my position of the Board, resign my position of the town of Richmond, with the proper notice, resign my position from the town of Egremont. She was comfortable with that answer and it clashes a little bit with what you said, and I understand that. And we will give you the opinion when she sends it to me. On here, I will say that it won't matter any longer because I feel my position as a Board Member is more important to this Board than for me working here, so I would like to publicly declare that I have no interest in the position whereas, I am now free to go ahead and collaborate with the Board. So, in regard to what you said, I have a few questions. Actually, several. And I don't know if you want me to read the questions to you and we answer them one at a time?

Tom: Sure, just take them one at a time. And see if we can come up with some answers.

Paul: Is it usual for the Retirement System to have a Board Chairman fill a subordinate position? So currently, the position that this individual would be filling is a subordinate position to the Executive Director. Would that be a normal thing to happen in a Retirement System right now as Chairman filling subordinate position?

Berkshire County Retirement Board Meeting
September 3, 2021

Tom: I would say no, it's not because it fraught with issues. Under 268A as well as who is supervising whom. And who is going to make decisions on the proper way to do things and if there is discipline involved. I mean, there's all sorts of issues that would be involved. And I'm not aware of any case where a Board Member – there may be some employees in Retirement Systems who are grandfathered in as elective members of the Board, right now. And I'm thinking of Marylou Ludin in Woburn and perhaps a few others. Where they were sort of locked in before the changes in the statute came. As you know, there is a provision that says nobody who is serving as a member of the board can receive compensation from any other party from being a Board Member, but that doesn't apply to members and employees who were members of the Boards before April 2 of 2012. That was one of the changes that came in the law in 2011. There may be some employees right now who are in the chain of command within an office who also serve as Board Members.

Paul: Okay, so that, which we will talk about later. That relates to what you proposed in your opening statement. What is the business model that the Board wants to keep going forward? So, keep that in mind. My second question, which I believe you kind of just answered. If the Board Chairman was to be hired for the position, what would the reporting structure look like? I believe you just answered that question. Which would have to pertain to the business model that the Board wants going forward. Again, my third question was who is responsible for employee performance if the Board Chair was hired. You addressed that and we would have to work on this. My fourth questions, I just have to see this as filled with some ethical issues. What evident ethical issues does this present and I actually, in parenthesis put to the Gannon case because I actually went out there and researched the Gannon case because you just replace the names and it's almost the exact copy of that case and it's, to me, I just see one issue that screams if you are Treasurer in the town, I don't sign off on my own payroll, so that's kind of an ethical issue that I see presented already. How would, so this isn't a question that you could so to say, answer, but you have actually addressed it already in your statement originally. How would the creation of this position for the Board Chairman be perceived by the active retired members as well as the taxpayers. So, you know this is something that you perceive as well, what did that person just slip into the job? But I mean, I don't want to make the front page of the Boston Globe or the local newspaper. I am a firm believer, and my sixth thing, just because something can legally be done does not mean that in doing it is the best route for the organization to go. Number seven is with the Board Chairman would not be limited in what he could do in Board Meetings, if he was to take a job, and again, in parenthesis, I have the Peter Arlos because again, I researched that to view that kind of stuff. I just feel that the system is hiring for one particular job and in talking with the Ethics Commission, Ann brought up some good points that you brought up as well, in regard to the hiring process. Hire the individual the same way that you would hire any individual for this system and that will keep you out of trouble. Follow the same procedures you would follow for anyone. She also was concerned, she couldn't talk to this, but she was concerned, that in what she was hearing that there was some real good possible conflict of interest violations and she said that legal counsel for the Retirement System and the proper organization through the state would be able to address this. I didn't have time to address that, I will be honest with you. But that is where I stand so far. So, anybody else can go.

Mark: Well, I think one of the points, if I remember, which this even came up. When you originally had an interest, Paul and when Mike had an interest was, the fact that Sheila made clear, and I think we all agree that we're already shorthanded. We have somebody in here and basically the only experienced staff member that we have left is obviously Sheila, which

Berkshire County Retirement Board Meeting
September 3, 2021

would be a burden to her. So, having two people currently who could, more or less, just go into the job who could go into it and hit the ground running, would be you two. And was one of the reasons why we just came up and were discussing about it. And you gotta do what you gotta do and what's right is right, and I understand that, but I want to make it clear that one of the things that Sheila was looking for, and as I said understandable, was someone that could hit the ground running. And we have an obligation to keep everything going. And we are basically with two staff members down, because the new hire obviously has to learn the position and as you said, I'm one person. So that, aside from the ethical part and I'm not going to get into a judgement on this, I'm just going to say, that was what brought it to the forefront and what I guess you could say made it seem like a priority because either one of them could have went into the job, as far as experience goes and could have done it. So, it wasn't just a pulling it cross.

Beth: Want me to go next? Just some of my thoughts, the Chairman expanding his duties isn't really filling the position, it's an expansion. So, you're not, I don't know. It's kind of cutting hairs whether you are hiring somebody or not. My thought was more along the lines, of what you said earlier with the structure of Middlesex of the Chairman becoming a CEO. And that would pretty much eliminate and would lay out the chain of command issues. That's just my thoughts at the moment.

Karen: I don't really have anything to contribute.

Paul: I have a question in regard to that. So, I have to think and phrase this question delicate. If I was the Executive Director of this current Retirement System and there was no knowledge that I'm aware of that the system is not being run efficiently or anything like that, and it's actually run quite well because we have, and Tom, correct me if I'm wrong, but you deal with John Parsons enough at PERAC to know, I believe we have a very well-respected system here with John Parsons and PERAC. What, I don't understand what justifies, expanding the duties of the Board Chairman. I don't understand what justifies that and so if you are so to say, not "filling a position", what are we doing with the duties of the position that we are hiring for? Are we moving them on to the two other employees that are here? The Executive Director and the person we just hired?

Beth: No, we are expanding on the Chairman's duties.

Paul: Okay, so payroll for instance. Is the duty of the individual who was here?

Beth: Staff Payroll.

Paul Staff Payroll. So, if you are filling the payroll obligations, to somebody then that is not expanding the duties. The duty is you are giving him the job of what the third person is. You are giving the job duties of what the third person was. So, you are taking. There would have to be a simple solution to this problem. You would have a list of duties from A to L. Somebody has to do A to L duties. That is why we are hiring somebody. So, you are saying, we are just expanding the duties of the Chairman, and the duties of the Chairman is filling A through L, they are an employee of the System. No matter how you look at it. You are just trying to find a way to skirt around whether they are an employee. If you are giving them the duties of A through L to do. They are an employee that the previous employee used to, if I were the Executive Director, I would report to me. There was never an issue. We have nothing in her personal file that says there was an issue. We are just trying to figure out how to change the language to not say "employee" and instead, saying, "expanding the duties". No. Their job functions of the job. That was what the job description says, that's what we showed. So, the job description is the job description. We can't just say we are expanding the

Berkshire County Retirement Board Meeting
September 3, 2021

duties of the Chairman. How come we didn't do that thirteen years ago when the Chairman was here?

Beth: Because there is a void now.

Paul: A void of what? An employee? Is there a void of an employee?

Beth: Yes. There has been I worked through the legal bill this week. The one that we signed on Monday. And there have been fifteen personal matters, that had to be sent to legal counsel that I have not seen the question nor the response to excellent employees in the last eight to nine months. So, there are issues in the office and that's why I think a fresh start, or an oversight would be appropriate.

Paul: I want to respond and say one thing so that it is known at this table here. There is, Tom, there are employees in the building. Should the door be closed for this?

Tom: It is a public meeting.

Paul: I am just going to say this here. There have been issues at several Board Meetings prior, I can't remember if Mark was here for some of them, but I'm pretty sure, where the Executive Director has said, publicly, that there were issues in managing the staff. It is the responsibility of this Board to address those concerns. Now to say that we are going to change the oversight by bringing in a CEO of the exact same person who was aware that there are responsibilities that they have to fill of managing staff, that is a bunch of bull crap to me.

Mark: Alright, well now I'm going to – oh go ahead, I didn't mean to.

Karen: No.

Mark: First of all, I hate talking with masks, but I will keep it on. I look at things in a simplified version. First, can it legally be done? Which you were addressing, Tom. Alright, that's the main thing. Because if it can't, it can't. It's as simple as that. I don't look at it. Everyone has opinions, you know what they say about opinions, I'll leave it at that. It's not about skirting or anything. I have been on this Board long enough to know now that there has been a lot of different issues. I don't need to get into pointing fingers or anything. Issues are issues. We have dealt with them as we could, the best we could. There can be no denying facts, that two employees in a short period of time left. Okay, that's a fact. Why they left to be argued indefinitely. Point fingers can be done indefinitely. But the bottom line, is that nobody can deny is that we lost two veteran employees. One retired after twenty years, the other is moving on after twenty-five. Alright, that's a fact. Can't change that. To have a Chairman come in, we are not creating a new potion in a sense. We had three employees. We had Sheila, we had Bill and we had Denise. If the Chairman moved in there, we would have three people. Now, I understand the position is a little different. He's the Chairman, he's overseeing. But at the end of the day, we are not creating new positions. I cannot say, I am objectionable to change when you mentioned the business model, Tom. Obviously, something needs to change because when you lose two veteran employees, they were both sixty-five years old, or seventy and just retired out and were happy that's fine. So, we need to do something. I have my own personal views, but this is a five-member board, so I'm only one fifth of what my opinion is. But I am open to change. And my biggest concern, and of course you know my previous occupation, Tom. Is it legal? Can we do it? Are there repercussions? If you do the right – when I became Chief, what was told to me very simply by a veteran office chief, it was a long time ago now, but do the right thing for the right reasons and you never have to worry and I have followed that to the T. So, in this decision, in the end no matter what happens. Whether the Chairman gets hired, obviously, Paul is out now. We get someone in, as long as I feel, my one fifth vote covers, we do the right thing for

Berkshire County Retirement Board Meeting
September 3, 2021

the right reasons and we make progress and make advancement in how this place is going, I'm all in. That's the bottom line. That's how I feel. So, if the Chairman can be in, make a difference. I understand about the conflicts. He's the boss. Right now, Sheila is the Director and she had two people under her. I understand that technically, Bill's old position was subordinate to Sheila's. So, I get it. But does that mean, if you said, changing to fit our needs as a business model, that the Chairman could be in there, and if we could address the issues that could be ethical things, in an ethical way and make it work. Then I would say, we'll do it. I would be in support of that. I can't say we'll do it because I'm one fifth, like I said. Or one fourth, I should say because he can't vote. Paul is back in as a vote because he's withdrawn his interest from the position, but I don't like terms like are we skirting this or that. We had a conversation a while back about – I'm trying to think of the word now. Like, you can make an inference. You can say something and make an inference, but it still has accusations tied to it. So, my question. But more or less you answered it. What I think we need to look at, is if the Chairman is interested in the position, what steps would we have to take, Tom, to make that happen legally and if they are and if we can do it. Then at that point, when we have, like you said A through L as job responsibilities. Let's just say A through L – if those steps can be taken properly. What do we need to do? Once we have those steps, then we as a Board, the four of us discuss them and say, did we address these? And if yes, we did it comes to a vote. And that's the deciding moment, does it happen or not? Because we have A through L, we know we've done it ethically, we've done the legal way, we've met the requirements, we're good to go. That's when the Board makes a decision because we have the facts in front of us. What kind of future leadership or how this place is going to be run? Until we have those, we really can't, in my view, we can't make an informed decision because we are kind of just picking here. And you did a fantastic job of explaining everything, and I grasped about ninety percent of it. In the end, I would like to see a list of if it can be done. If you say to us right now, I'm telling you as your representation, as your attorney that this really is fraught with a lot of problems and I would strongly recommend against it, then my hat is off to you and then as a Board, it's on us for not taking your advice. But in the meantime, I would like to see a list of what needs to be done and if those lists were met. Then we as a Board can decide to move forward or not.

Tom: Let me just say that I have reservations about carving out the job duties to existing employees and giving those exact job duties to the Chairman and maintaining that the Chairman is not an employee of the Retirement System. That is my threshold of concern. At the same time, there is nothing that prohibits the Board from expanding the duties of the first member and to compensate the first member for those duties. The question, Mark, is finding the proper balance to do that. I would also suggest, whatever we plan on doing, we seek not only the Ethics Commissions approval of that, but also PERACs approval. Now, PERAC will defer to the Ethics Commissions, I know. I've already had some conversations with John Parsons on this issue to ensure that the Board has a good reputation, and we want to ensure that reputation is maintained and that we are not going to take action and all of a sudden have fingers being pointed at us as doing something wrong. So, when I communicated with John Parsons, he says that he agrees that he can't be an employee. Given that he would be replacing a current employee and going from receiving a stipend to receiving a salary, this looks like the scenario that is outlined in Chapter 268 A, Section 8A. Which is the statute that prohibits board member getting a position as an employee without being separated for thirty days, from that position. I know, Paul, indicated that he and Ann had said something a little different. I would have to question what Ann Nee said because that is in direct conflict to the

Berkshire County Retirement Board Meeting
September 3, 2021

2003 decision that was rendered by the State Ethics Commission. That's something we can work on. At the very least, whatever scenario the Board envisions and agrees to in changing its business model, I think that has to be sanctioned by the Ethics Commission.

Paul: Tom, can I interrupt you there for one second. Just so I can get something clarified? So, if we followed Chapter 268A, Section 8A and the Chairman wants to become an employee of the Retirement System, he has to have a separation from the Board for thirty days.

Tom: That is our understanding. And I can read you –

Paul: When I asked you that question in regard to separation from the Board, does that mean, that separation, he is no longer a Board Member?

Tom: That's correct.

Paul: So, he does not have the ability, unless he runs for a vacant position, to come back to the Board, correct?

Tom: That would be a scenario. I just want to make sure that that probation exists in Section 268 8A, Section 8A for state employees, Section 21A for municipal employees, and Section 15A for County employees because there has been some question as to a Regional Retirement System is in-twixed in between, not a county, not a municipality, and for some purposes the Ethics Commission treats it as a municipality, but in this case, the statute is pretty clear, it says, "No member of a county board or a municipal board shall be eligible for appointment or election by the members of such commission of board to any office in position under the supervision of such commission of board." That is the first sentence. No formal board member shall be eligible until the expiration of thirty days of termination of his service as a member of such commission of board. So in our view, the statute is pretty clear. Now again, that is 268 A and that's talking about employment positions under the supervision of the Retirement Board. 34 B is a different animal. 34 B. first member and the compensation of the first member, is treated somewhat differently. The Board has some discretion on the compensation, and it appears that the board has some discretion on the duties that would be assigned to the first member of the Board. My concern is that carving out the job description of the existing employee and giving to the Chairman and saying, you are not going to be an employee, you are going to be a Chairman with these essential duties, that might be something that would be subject to being questioned. And that is something that I would say, should be approved by the Ethics Commission.

Paul: So, Tom, if the Board wanted to follow Chapter 34B, the way you are describing it and getting it approved by the Ethics Commission, would that be something, I'm not comfortable doing that because I don't know all the legalities. Would that be something that you would get a ruling from the Ethics Commission on?

Tom: I would be happy to ask for that on behalf of the Board.

Paul: So, I just want to be clear on the Board. We are taking the potential job description of an active employee in the system, until the end of the day today. And do you want to share that with everybody?

Michael: When you are done with this, I will.

Paul: Do you still have an interest in this position?

Michael: Yes.

Paul: Then you would recuse yourself, like the legal counsel said. So, to share that, with the member of the Board and not everybody. You should be recusing yourself from the System. Are you recusing yourself from this discussion? Are you recusing yourself from this discussion?

Berkshire County Retirement Board Meeting
September 3, 2021

Mark: Paul, lower your tone. Lower your tone. You are not the boss here. You are one fifth – one fourth. You can speak your piece, but you don't need to speak it in a condescending way.

Paul: I'm not. I'm asking a question, Mark.

Beth: You are yelling at him.

Mark: The way you are asking it, is uncalled for. That's all I'm saying. Alright? When you're all done, I have two questions. But you finish.

Michael: Tom, the question I was going to ask is regarding the exact duties verses a different set of duties. I'm not sure if that is inappropriate.

Tom: Well, let me – what I was going to raise is that I'm not sure if there could be some other option here when the Board is reviewing the business model and reviewing in what is in the best interest of the members and beneficiaries. I mean, there is nothing that would preclude the Board from filling the existing position as it exists right now. Posting that job, finding candidates, and filling that job and expanding the duties of the Chair that you feel is also something that should be done. So, the two of them are not mutually exclusive.

Michael: But I think there are two separate guidelines for that. One is the employee status, and one is the extension of the Chairman.

Tom: Right. And I just want to address Paul's issues, Michael. Because it is a potential that you would benefit, financially, from any ultimate decision of the Board, I understand you have points to order, to ask those questions, that are not maybe pertinent to this exact question. But I would suggest that you not participate in any of the discussions, for fear of being subject to accusations that you are participating in the discussion in violation of 268A.

Michael: Okay.

Mark: Are we good for the moment? From my understanding then, Tom, is that I see it as two basic things. The Chairman, I'm not saying he's going to do this, I'm just saying so that I understand. The Chairman can resign his position as the Chairman, step away for thirty days, and apply for the open position job like anybody would. Correct?

Tom: Correct.

Mark: So, he wouldn't be Chairman anymore, he would just resign his position, thirty days later, he could apply for the job, and it would be the same job, unless the Board added a couple duties to it or whatever. Correct? But he wouldn't be the Chairman anymore. Or –

Tom: Mark, I'm sorry to interrupt. If the Board is going to maintain that position and want to fill it and they are going to ask for applications. They can't take any, if the Chairman applies for that job, or Paul applies for that job, or anybody applies for that job, the Board cannot take any action on that application until thirty days has elapsed from that members separating himself from the Retirement Board.

Mark: Right, okay that's what I'm saying. I'm just mentioning the Chairman of the Board, but anybody on the Board. So, if I wanted to go for the job, I would have to step away. So, I understand that. So, the other one is, if the Chairman was to go for that position, it would be best to not have that individual step right into the exact duties of that former employee's position? If I understand correctly. Like as Paul said, if the other employee did A through L, and it's all specific, it wouldn't look good and could run into some issues, if the Chairman said, well he's expanding duties, but those duties are identical to A through L. So, I get that. So, another option, I'm not saying this is something we have to act on or do, but I understand it would be then if the responsibilities of the Chairman were separate of that and oversee and the Board was to change that A through L and delegate it to others, to the other two employees, then I understand that we are getting into different areas, but that would be less controversial? In other words, if A through L wasn't the Chairman's job, because he stepped

Berkshire County Retirement Board Meeting
September 3, 2021

in and it could be preserved as a conflict, but maybe two of those things. Or there's nothing in those positions, from what I understand, would rate overseeing, but those positions that are currently being done, they were given others and the Chairman were to oversee it, it would be less controversial I'm not saying I'm for or against any of this. I'm just trying to understand what would work, what avenues do we have. And to me, I understand, as long as the Chairman doesn't mirror the exact job position, it is a lot less of an ethical question. He could be put on salary, could be expanded, and it could be as overseeing the positions. As long as he's just not looking into a position that is already there doing the exact same job. Tom: The duties should drift toward executive oversight. Litigation, legislation, oversight of operations. Those things, as an executive would do. Not, rank and file performance duties with a spreadsheet and –

Mark: Which is kind of what I've saying. Like what Paul was saying, about A though L, if that was the job. That would not be good to have the Chairman to just move into that position. I just want to make sure that I have a good grasp from what I understand, and I do. From what you just said, I totally understand. Also, the other thing is. Depending on what the Board does, then you Sheila will have to be understanding, that if this position gets put out there and we advertise, unless somebody drops in from the sky, you're going to have a lot to deal with and of course as the Board, we will work with you and do as much as could to work and make sure everything gets done. But understand, I was also basing off your word that we need someone right away. Just be aware, that what I'm saying, I don't want any feedback, like I have to do all this stuff and I get that it's because it's one half a dozen in another. I could say as a Board member, I would be in support if we had to give you whatever we could as a Board to get things done, but understand, as I said earlier, and I make it no secret. Either Paul or Mike, the reason I was considering because they would basically walk into the job, hit the ground running and would basically keep things flowing. Pull that out of it and understand that we know that it's tough finding good, qualified people, I'm saying that I hope you understand that if it goes that route, you will have to be under the burden load of continuing doing what you were doing and then some more, with us helping as much as we can.

Sheila: So, because I haven't really been included in the discussion of how we're going to do this, I actually did have some thoughts on this. We have actually had applicants, we've actually done interviews, and we actually had one. She was the second person; she was Melanie M. who had some of the similar job experiences if you will that would have fit into something like that position. I don't know how quickly you can hire someone. I know you're talking about having to post the position again to hire. But there's somebody that we have interviewed twice, we've checked the references. I don't know. Beth gave her a glowing recommendation. I don't know exactly, what but she has some treasurers experience and she's worked in the treasurer's office in North Adams. I mean –

Karen: I remember it was with reservations a bit, I mean somebody mentioned, oh she would be a good fourth person in the office. So now we're thinking about not putting her in that major of a position. I don't follow that.

Mark: And that could be a discussion.

Sheila: I'm just saying though. You talk about what are the duties and responsibilities of the job. So, a lot of what we are talking about is things that are task oriented. Like Tom said, spreadsheets, tasks-oriented jobs. I mean, is there oversight? Some. But the reality is, that there are three positions that deal specifically with spreadsheets and day to day transactions of the Retirement System. So, we don't have twelve employees here, we have Tom as our

Berkshire County Retirement Board Meeting
September 3, 2021

attorney, for hire. He's not part of the, you know there's no Board Member here that provides those kinds of services to the Retirement System. But it is what it is. It is a significant amount that you would be asking me to do, with a limited amount of time and a limited amount of people. Can we stay afloat? Of course, we can. The reality of it is and the flipside to that, Mark, is that you have to be understanding that some things just may not get done as quickly as they used to get done. There are some things that, not wanting to get something on a Friday afternoon, because you don't have time, you have to understand that there's things in this office that take time too and I will do my best to get you what I can as quickly as possible, but the reality is, some things may be late. That's what you have to understand too.

Mark: Yeah, my point was that obviously no decision has been met, and we're not sure what direction to go at this point, but I just wanted you to be aware –

Sheila: That's true and I just want to take a moment to address a comment that Beth had made and I think that in fairness to me, which I don't feel like I've been treated fairly, for a long time. If there are issues, that you guys all seem to know about, that I don't, it's not fair to sit here in an open meeting and say - an individual retired. They were eighty percent. We've talked about that for years. When you reach your eighty percent, and you are sixty-five years old, people want to retire. That's a retirement age. That's what that individual did. The other individual had an opportunity to be an administrator at another job and I can't say that he didn't want to be an administrator or that he left under duress. He made a career choice to do that and to sit there and almost blame me for somebody retiring and somebody taking an administrator's position, really isn't fair. If I don't know what the issues are. And I'm asking individually, or collectively, has anyone ever asked me? And so, in fairness to me, I don't feel that in a public meeting, to bring that up and basically place the blame on me for something that never once has been said to me.

Beth: All that I said, was that two people left and I was mostly referencing, the personnel issues with the attorney.

Sheila: But as far as I knew, there was only two. One in January and then the Executive Session.

Paul: I just want to talk about this, Tom, -

Sheila: No, let me –

Paul: - Let me just finish, this is personnel issues. We shouldn't be talking about this here. I one hundred percent agree that personnel issues should be dealt with in an Executive Session, and that if an employee is to be talked about, in regard to personnel issue, the employee should be able to have their legal counsel here, the representative and that should be done in an Executive Session and if they so choose to do so. I don't think it should have been talked about here, I agree with that. I am the first person to say, I said it in this meeting – if there were employee issues, you should have known. I said that here, and I agree with that here. One hundred percent. This is ridiculous.

Sheila: Because I too, have been here for twenty-five years. I too, have a professional career, and I too believe that I have done an excellent job. And there a lot of things that I can say today that we are in a good place because some of my initiatives and efforts that I have done, over the twenty-five years.

Beth: That was not my intent.

Sheila: Well, I'm sorry, but that is the way that I took it.

Beth: I apologize.

Berkshire County Retirement Board Meeting
September 3, 2021

Sheila: In fairness, and again. The issue with fairness is, if there are issues out there, to sit there and cast that dispersion in a public meeting, without me being aware of that, I just think it's very unfortunate.

Beth: Can I just go back to your last statement, about hiring somebody for the previous.

Sheila: yes

Beth: You are now going to be the sole person with the Retirement time and knowledge in this office. Training one person is a large undertaking for one person. Training two, I don't know how you would do it. I don't know how that would be done. Because we both know that there was at least a two-year learning curve for this job.

Sheila: Yes.

Beth: Which is why my original recommendation was for to have somebody with knowledge. I just had done two searches for applicants, and there isn't anyone else there.

Sheila: I understand. And I understand that entirely too. But when we talk about when you post for the job, we already know, and we already had two postings for and I'm going to tell you that Jill has done a wonderful job. She's only been here for a week and it has been a great week. And I really have to say that I think she is going to make a great difference for us in this office. That doesn't mean that the next person, whether it be one of the candidates, who actually I really liked, and I do think she had some skills that were relevant that she could also maybe with a little bit more, she could get there. And the other thing is, I also have confidence in myself. I have confidence in myself and in my abilities too. When I am given a team that I can train and that I can mold, in a way that is in the best interest of this system and members, and everybody going forward. I have confidence in that too. So, all I'm saying is, give me the right personnel, and I'm not saying that I had the wrong personnel, they all had plenty of experience and they knew what to do and they got the job done, and they did a great job. And they are just as much as a success in the system as I am.

Paul: So, Tom, I have a question for you. We have already vetted and checked references in a particular candidate that applied for the job that was recently just filled. This job now coming up. Are we obligated by law, to post this job, and if not, are we able to hire a candidate that we have already vetted and checked references on that we have already determined would be able to work?

Tom: My gut instinct, Paul, tells me that is a different position that is being posted.

Therefore, you would have to go through the process again. And who knows, who is going to respond. If the Board is going to post a job, and that's the model they want, and I want to bring everybody back in. This is the discussion that we are having. What is the business model we're having going forward? If the Board is going to decide it's going to fill this position, I would recommend posting it and if that applicant wants to apply, let them apply. You might get other applicants as well. We find, generally speaking, sometimes pay roll clerks and other folks who are employed in our member units have skills that are readily transferrable dealing with those issues of payroll, contributions, things of that nature. Now, I don't know how many units Berkshire County has. Maybe thirty-six? Thirty-seven? You can certainly, there may be someone in either payroll or HR or whatever, that would be attracted to that position. And I'm not saying that their qualifications would be good, but I'm saying that the pool is not deep, and I discuss this with Mr. Parsons when I had my general discussion with him about the position. PERAC is also a resource, by the way, for the Board, if they need some temporary folks to come in or an auditor, or whatever, to just sit in and provide some help with the cash books and things of that nature. You can criticize PERAC all you want, there's plenty to criticize, I do it all the time. But I also want to give them

Berkshire County Retirement Board Meeting
September 3, 2021

credit, where credit is due and in a situation like this, where the Board is up against it, I would find that PERAC has been very helpful in the past.

Paul: So, in regards of posting the new job, and I do agree with you that it is a new job, could we post it for, let's say a week and say applications are due within a week? Just to move the process along or is it so to say two weeks? The reason I'm asking this question, as you know, the timeliness of filling a position, as you know, is a concern.

Tom: It's reasonable issue. If you post it, this afternoon for example. You've got Labor Day Weekend and then Monday is a holiday, and you want an application in by next Friday, that's too quick. I would say ten days, to two weeks. Gerry, what would you agree would be an appropriate time, in your experience? You've had some experience in this.

Gerry: At least two weeks, I think. For a position like this.

Paul: Okay.

Karen: I haven't said much, but my concern would be changing out business model permanently. I feel like this is going to require a lot of thought by a lot of us and it's a permanent change, a different direction. If we decide to give the Chairman additional responsibilities. It's a very difficult situation, I feel like. I think we need to be careful with how we proceed.

Paul: I would second Karen's thought on that. Because if we are to change, like you said, Tom. The business model, going forward, I don't believe we would be able to timely do that and fill a position that is needed for the system to run efficiently and effectively.

Karen: I want to say, I am not against it. I just feel like we have to be aware of exactly what we are doing and what the implications are for the future.

Mark: Well, we learned the dos and don'ts pretty much. Of with any decisions we make, what needs to be done. To me, that's a plus.

Beth: - Oh sorry –

Mark: No, I'm all set.

Beth: Because of what I have recently been though. If we were to expand the Chairman role, in the Board. As a Board Member with the missing person in place, would it not be the Board Member's responsibility to step in and do some of those duties until a replacement could be found?

Tom: I have to think about that for a second. So, you are talking about on a temporary basis. A Board Member is going to step in and undertake some duties, with the understanding that this job eventually is going to be filled by someone other than the Board Member. Unless the Board Member wants to apply, and step away for thirty days for it, for a transitional thing, I think that – I'm just doing a quick check in my head about any 268A issues and I think under these type of emergency events, and circumstances, that it would be all hands-on deck. Come in and do the work until the boat is stabilized. We get all the water out of the boat and get back afloat, I think under that set of circumstances, I would still want to get some regulatory approval at least. Let them be aware of this, and what we are doing so that we have some comfort, as Paul had indicated, that we are not going to end up on the front page of the Boston Globe down the road.

Paul: So, Tom, in regard to the questions. I just have a couple more issues in regard to the business model part of this. And I just see it happening and personnel issues all over this and making some form of the Berkshire Eagle and Boston Globe. I just picture this happening. The system, so to say, changes the business model so that the CEO now is in charge of all activities having to do with the system. All subordinate employees report to the CEO, well,

Berkshire County Retirement Board Meeting
September 3, 2021

what happens to the Executive Director? I can just picture Mr. Kinney showing up on our door and we have a nice lawsuit on our hands. I can just picture this happening.

Tom: If you change the structure, you know the Board is the statutory employer, of all the employees in the Retirement System. They are the ones with the ultimate responsibility of the Board, to set the operations of the system and if they decide that they are going to have a Chief Executive Officer come in, then they have to make the determination of what the chain of command is going to be. And you can have an Executive Director who is going to report to the Chief Executive Officer, and I don't see that as being a significant issue. I mean, people can sue for whatever they want. Whether or not they are going to be successful is a different situation. If this is a program or a model that is voted by the Board in good faith, as being in the best interest of the members and beneficiaries of the Retirement System, then that would be their argument as to the reason they are doing it.

Paul: Okay, so let me just go over this again because I understand where you are coming from now. If I were to ask you. What is your recommendation of this would be? You're going to tell me a couple things. The first is you are going to want to get an Ethics Ruling as to Chapter 268 A whether it falls into section 8A, 21A, or 15A, about whether the Chairman needs to give up his position on the Board for thirty days and if the Board goes Chapter 34B, Section 19 I understand where you are coming from, but I want to reiterate this, just to make sure I understand one hundred percent. Your suggestion on that is that if you are to add additional duties to the Chairman, those would be duties to say that of what a normal Executive position would be, such as litigation, talking to legislators, talking to state senators, all that sort of thing. Nothing, so to say on the daily or excel spreadsheet kind of world. If we did that and with the Chapter 34B, way in all realness we still have a position to fill. We still have a position that is vacant where the duties are not getting done. If I'm understanding this correctly, that position has not been filled. We've created some extra stuff for the Chairman to do and give him a little bit of side money to do it, but we still have to pay somebody to fill a position. So, the System spent more money than we currently spend right now. If I'm understanding this correctly.

Tom: Well, I don't know what you are understanding, Paul. What I said was that there is nothing that prohibits the Board from filling the position and from giving the additional duties, on an executive level, to the first member.

Paul: But this individual leaving, wouldn't be that of executive duties because they are of standard operational procedures of the retirement system, so we would still need to fill a position. We are still going to have three positions, and a Chairman who will now become a CEO with some added, if we do it correctly, executive level functions, with a little more salary, but we still haven't addressed the point of filling the position. We haven't filled the position.

Mark: You kind of touched on what I was thinking as another option. Should the Board choose to post it and do what Tom just said, there's nothing stopping the Board from expanding the duties of the Chairman to oversee the whole place and so you've got Bill Smith, I'm just making up a name, doing A through L. Great, we've got someone in there. There's nothing stopping the Board from a change or a different kind of overseeing. Nothing stopping the Board from changing and expanding the Chairman's position to either be here more or work here more doing executive, or things that the Board sees fit. I don't see any conflict there. Correct?

Tom: He's the Treasurer of the System, of the funds. There are plenty of duties that can be associated with that position, as Treasure and Custodian and those types of executive levels

Berkshire County Retirement Board Meeting
September 3, 2021

of functions. What I'm trying to get away from is that carving out of A through L, and slapping it onto Chairman and saying, 'this is what you are going to be doing as party of your duties', is not –

Mark: That's what I'm saying. I like looking at options. The more options we have, I think the better, as a Board we can make decisions and I think it looks better that we examine more options. If, we have once again, I mean not that we are going to decide now, but at least if we have our options laid out, we can go back and think. One of the options, if that if somebody else is hired for the job, filled that job, and did it, there's nothing saying that we can still change the business model and saying that the Board now sees that the Chairman has expanded duties, not a carbon copy of what the other individual is doing as a job, but within his scope of responsibility to see. If the Board felt the need.

Tom: If the Board makes that determination and that's the Board's determination.

Mark: And there's not any Ethical concerns, as there could be if we carved it out? The distinct differences, I just want to make sure.

Tom: There's a difference between 34 B duties and 268 employment. There's a big difference.

Paul: So, my suggestion and again, I go back to Karen and I would recommend that we allow Sheila to post the job, to get applications in here, in the time period of two weeks, post the job that the system currently needs now, in the meantime, the Board at future meetings takes up the issues whether we want to address the business model and changing that and possibly expanding the Chairman's roles, duties, compensation, whatever. But that is something totally different than filling this job. In the fact that, I believe, I want as a Board member, I would want the public to know about creating another job, or expanding the duties, which also makes the salary increase. I think public input and that kind of stuff is important to this. I would ask the Board if they would agree in letting Sheila post the job of Bill to get it posted, to start getting applications in and potentially get it filled.

Mark: the only issue that I see, and the only thing I want to concern is that nobody has written off, the option of expanding – I know we need to get that posted because we need to get it rolling, but at the same time, I don't want to corner ourselves by doing that. That's basically saying that we are not going to consider the Chairman for that position, and we are strictly going out and hiring out.

Paul: Well, in my personal opinion, if the Chairman wants to apply for that job, he would follow the rules of Chapter 268, section 8A, 21A, or 15A, he resigns his position of the Board, waits thirty days, and applies for the job.

Beth: Can I ask a question? That just brought up another question. If the Board is going to go out and post this job to the general public, that takes the Chairman out of the picture for that particular position, so may he rejoin on the issue?

Tom: I'm sorry, can you repeat that for me?

Beth: If we are going to post for the accounting position, publicly. That's where it seems we are going down that route. Because it was determined that the Chairman can't do duties A through L, or whatever it was. Then can he rejoin the meetings if he's not getting that position. We are going to discuss expanding his role of the Chairman in the future meeting.

Tom: So, you want him to join the discussion right now?

Beth: Yes, because it has been determined and you told us that he cannot apply for the position for that accountant, right? And do that exact position.

Tom: Well, he can –

Beth: I'm sorry, I meant that we can't expand his duties to do that.

Berkshire County Retirement Board Meeting
September 3, 2021

Tom: Okay, well that's what I recommend the Board not do. To carve out duties and give it to him.

Beth: I agree.

Karen: I have a question then too. Because Tom, I think you said that you totally agree with the thirty day that the Board member had to remove himself from the Board and wait thirty days.

Tom: Well, Paul said something a little different that he had heard from Anne Nee who works at the Ethics Commission, she's one of the attorneys up there. But I'm going on this opinion here that, EC-CO1-03-3, which is just a summary that a Board member is eligible to apply for a position under the supervision of the Board that he serves without first resigning of the Board. The Board, however, may not take any action regarding the Board member's application, such as even selecting him for an interview, until thirty days has elapsed after the Board member has terminated his services as a member. The Board, however, may act before the thirty days, on any other application. So, in this situation, if a Board member were to apply to the posted job position, the Board could not take any action on that application, until thirty days has elapsed from when that Board member had separated from his position. If he never separates from his position, the Board could never take any action on that application. Based on the 2003 opinion states. The Statute says something different. The statute is even tighter. The statute that we read earlier, makes it very clear whether is a municipal board, county board, or state board. It says that no member of a board shall be eligible for appointment or election by the members of such board to any office of position under the supervision of such commission of board. No former of such commission of board should so be eligible until the expiration of thirty days of termination of his services as a member of such commissions of board. So, the statute seems to indicate that you have to terminate first. The opinion of the Ethics Commission, said that's not necessarily true. Just that the Board can't take any action on any application until thirty days after the Board member does in fact terminate his position. So, it's a little bit –

Gerry: If I can just weigh in here for a second. I have been burned several times by telephone calls from lawyers from the Ethics Commission, and I think you really need to have something in writing from the Ethics Commission if they are going to elaborate or change their position and go beyond what the law says. And it's not your fault, Paul. I've been burned a couple of times with the informal advice that I get from them over the telephone.

Paul: Ann Nee said that she would give me something within a couple of days, but it was actually irrelevant. But I'm going to give it to Sheila to give to you, but I have withdrawn any desire to apply for the job. So, that's why she allowed me to continue with the discussion. But I will give the item that I get to both Tom, and yourself as well.

Mark: Okay, so a question going to what Beth was saying. At this point, it appears to me that what we discussed the best way to go, should we ask Mike if he has changed his interest in the position. Because if he withdraws as Paul did, then he should be able to speak immediately, because you withdrew and were able to speak immediately. So, does that make sense?

Paul: Yeah, but again, as long as we understand and as long as he doesn't join in conversation about the business model and how we are going to go forward and if we are going to expand Chairman's roles and responsibilities because that comes with compensation.

Mark: Right, so then I guess –

Michael: Tom, do you agree with that?

Berkshire County Retirement Board Meeting
September 3, 2021

Tom: You went a little too fast for me, Paul.

Paul: So, I don't have a problem if we ask the Chairman if he has no desire in removing his consideration for this position. I have no problem to him talking about that afterwards. But if the Board is going to continue to talk about the business model, and changing the Chairman's responsibilities and monies received, he should recuse himself.

Mark: We don't have enough time for that today.

Tom: Yeah, I agree that if there is going to be discussion now about the duties and monies for those duties, then certainly Michael cannot participate. He would get himself the same jackpot that Peter Arlos and Harry Gannon get himself in. So, we want to protect Michael and not have him participate, but there could be a discussion for another time.

Mark: Well, that's what I was going to say, that's not something we should discuss anyway. As far as the business model and all that. I'm just saying, if he did withdraw his thing, then he could participate if he had any questions in the hiring of someone else, or any ideas that he may have to be fair to him.

Tom: Yes.

Michael: I would just like to ask, what is the permanence of being considered and a day later withdrawing your consideration and then two days later saying you are interested again. Is it irrevocable or is it ...?

Tom: Well, I guess we just sort of take people at their word, Michael. But we have seen sometimes in the past, things and circumstances have changed and if a member make a pledge that he is not interested in something and it turns out that he is in fact interested in something, then that is a breach of the 268A and that would clearly be something that would be found to be inappropriate. If that helps.

Michael: The other day, Paul definitely showed an interest, said that he was interested and then today, found out that he is not interested. So –

Paul: Yeah, I am no longer interested in the position. The opinion that we received from Ann Nee will reflect. She asked one of those questions and if I still had an interest in the position and I would not talk about this and I would recuse myself. I no longer have an interest in the position. I clearly don't work for places where I am not valued, so I have no interest in the position.

Tom: So that declaration is worthy of respect from the Board and certainly, I think if there's anything that happened in the future that is contrary to the declaration that led us to believe he would be in some difficulties, not only with the Board, but with the Ethics Commission.

Paul: No, I don't want to pay any fines.

Michael: The only other thing, this only came about on last Monday. Sheila had presented the Board with her opinion of how the position should be filled and the pool of candidates. So, Sheila, if you are able to just share that with Tom with the pool of candidates, and the process of advertising.

Paul: So, before Sheila starts, I want to address though that the Chairman who still has not declared whether he has a potential issue in this job, is still speaking. This is in regard to the job, you have not – you are still talking about the job. So, we are still talking about the job, he has made no mention that he has no interest in the job, and I do not think that it is appropriate that he speaks.

Tom: Yeah, Michael, I would say that until such time that you can either make that declaration or not, to protect yourself, you should not participate in discussions about the position.

Michael: Would that be relevant to the position?

Berkshire County Retirement Board Meeting
September 3, 2021

Tom: I'm sorry?

Michael: Would my last question be relevant to the position?

Karen: It was about our Board meeting on Monday.

Mark: Originally, I'm going to say it because I have no patience. Originally, when it was presented to us, you had said that you had spoken with Bill about who could possibly fill the position. You said there were possibly maybe a few, but you felt Paul.

Sheila: We looked at who we had as, Tom said, what are the communities that we had interacted with. Is there anybody out there, that we felt would have the skill level to hit the ground running. And to make it perfectly clear, Bill was the one who recommended Paul.

Mark: So, did you ask Bill? Or did he come up and volunteer and say, I think these people would be good? I'm just curious. When the conversation took place?

Sheila: When the conversation took place, he said, "I have been thinking about this and this is what I think. There aren't really a lot of people out there. Do you have anybody in mind?" and when I said, no I don't, that's when he said he was thinking about it over the weekend and that there would be one person that could hit the ground running and that was well in verse with Chapter 32 and has an interest in would do well. And he mentioned Paul.

Mark: And then so Paul was the only one mentioned?

Sheila: No, we talked about there were other candidates.

Mark: Who were the other candidates if I may ask?

Beth: I asked that, and it was Erica.

Mark: Erica and who else? So those were the only three?

Sheila: Those were the only three. And I think we mentioned in that meeting, Mark. There were fourteen new treasurers, and the turnover has been excessive. As Tom stated, there is no depth, there is no number two. It was kind of like we are going to just post it and hope.

Mark: And Mike's name was never mentioned?

Sheila: Mike had never –

Mark: Not him applying, I'm saying, that no body brought up Mike's name as a possibility for the job? I'm just trying to understand.

Sheila: No, nobody had. I had no idea -

Mark: Did anybody bring up his name to you?

Sheila: No, only Mike.

Mark: I'm just trying to find out. I'm just asking questions. Not trying to be accusatory or anything. I'm just trying to learn.

Sheila: Mike said something to me after the meeting, and we sat down and talked and he kind of said, I had no idea. He asked me about what the job entailed. But he never said, oh jeez I would really like to do that.

Mark: I'm just trying to find out who in the end was interested in what, so we know how people got involved. So basically, Paul got involved because his name was recommended and –

Sheila: Yeah, after Bill had presented the fact that he was leaving. My thought was that we would have to post it again.

Tom: So, I don't know if the Board has reached consensus or not. It sounds like there perhaps, has a motion to post the position as soon as possible. With the quick fourteen-day turn around period, to continue discussion about the business model and how the Board wants to pursue in the future.

Berkshire County Retirement Board Meeting
September 3, 2021

Paul: Yes, I would make the motion to post the job of the accountant. I don't know what the exact title is for two weeks, as stated by Gerry and Tom. As well, as to talk about the future business model of the Board in the future Board meetings.

Karen: Second.

Sheila: Can I ask a couple questions? So, Paul made the motion and Karen seconded it. In the last week, I have seen some of the job descriptions that I've come across for positions that are available in other places, specifically accounting, and I actually had this discussion with Mike the other day, and the job description basically entails pretty much, every item that goes on in the retirement system and while it was lengthy, it was a good exercise and opened my eyes to the fact that the positions here are a little bit defined and there is probably a better way of creating some efficiencies in the office. And my question to you, would be, I can certainly post the job description the way that Bill currently has, but I could also post it as, these are the duties and responsibilities in the retirement office. It is up to you in what you want me to do. My thoughts would be that it just – I mean, I know we are looking for some specific skills because I would like somebody who has a little bit of cash disbursement and that type of thing. Maybe what a treasurer does a little bit. And have treasurers experience a little bit, but maybe open it up and broaden it just to see what we get. I mean, it's a financial office. Anyone that is applying for it, has to know that they have to have the financial skills to do it. But it's up to you. I can post it either way.

Mark: I think you post it for the position that you need to be filled. So whatever Bill did. Whatever his position was for.

Sheila: I understand that Mark. But what I'm saying too is that I think there are some efficiencies that I think can be gained by removing some of those things. When I don't want is for someone to take the job and to think you know what I'm going to just do transfers, but now you're doing the transfers. How come I'm not doing the transfers? That's all I'm saying is that I know there's always disclaimer, like you're going to do what you have been asked to do by the Executive Director, but you are going to do the major financial ones, that are done will be listed in there. But I would also like to list that any other detail would be included in the job posting.

Paul: In regard to job descriptions, I've always been a fan of including as much as you can, for the fact that you can get you an employee base that is cross-trained. So, I would be already with you creating it like that.

Sheila: Yeah, like I said, Beth I think you saw it from Franklin County. And that was pretty inclusive with everything. And I would like to model it after that.

Beth: Yeah, that's okay.

Sheila: And the other question that I have is, what's the salary range. Should we start at what we did before?

Mark: I would think the big thing is based upon experience. You could get someone that is the best option we have is the person that has very little experience and they start at the beginning. And then obviously, you get someone from the other part of the state and I've already done it, and within a month they are acclimated and well, and then of course they would get more.

Beth: We also have to put a range.

Mark: Right.

Sheila: Do we want to put a range or just that it commences upon experience.

Mark: Yeah, I've seen that a million times. And that way it doesn't lock us into a corner. And we can talk at another Board meeting once the applicants come in, and you of course can talk

Berkshire County Retirement Board Meeting
September 3, 2021

and have an input in that, Sheila, because you know what you are looking for and what is needed.

Karen: Personally, I think it is difficult to lock yourself into a number. On the other hand, if I'm looking at a job posting I want to know what the salary is.

Beth: A beginning range anyway

Mark: Well, I'll ask you first. It's for all of us to talk. What do you think the bottom minimum is? Someone with no experience. Well, not no experience but with the minimum you would have to accept that could learn the job.

Sheila: I would say what we posted –

Paul: Tom, do you need to go?

Tom: Oh no, I love this.

Sheila: Then I would say, it's probably the same salary range we had before.

Mark: But we had a range before. But we just had a start and a cap.

Paul: Yeah, we had a range. We had a from and a to.

Sheila: I think with this one we should say it is measured upon experience. Then I think it's conflicting. Quite honestly, if someone calls me and says, Sheila you got this job posted, what does it pay? I would at least like to have a start.

Paul: The same ranges as the other job.

Sheila: Right, I would say the start is –

Beth: I just want to say, I think the responsibilities are a little more on this than the first one.

Sheila: Yes, but if you're like Mark said. If you are just at the beginning, but I think that I can train you and I think that you have the skills, then I think that you start where Mark said, this is where you start.

Mark: Where I'm getting confused –

Sheila: Because you always have the ability to give more, if you say look, we found someone that maybe wants to just make a lateral move, they want to come over and make a lateral move, they say that they have to make at least this, then we say okay. That's a good deal.

Mark: That's fine. What I'm trying to say is that before, we knew it was going to be between fifty-two and a max of whatever. What I'm saying is it –

Sheila: Right, but here's the issue though, Mark. What I look at in the difference is, if you are looking at someone who has the skills to do the tasks that are involved. Can they do a cash disbursement? Can they do a bill? Can they process a payroll? Can they do all that? That is a skill that I knew we are not going to get a Chapter 32. So, the reality is, that if I can work with those skills and then I can teach Chapter 32, then we are kind of at the beginning. So, the beginning is the beginning of the scale. And if you come to me and say, look at, I have someone who just did this in Adams. They have skills and they know how to do this, then we are going to have to pay to get them. Then that's what you do. Right?

Mark: What if we said, and I'm just picking a number here. This is a little bit more, we said fifty-five. It commences upon experience, is the lowest. Because if we have someone who is just starting and we say it's between this and this, but we have someone – I wouldn't want to give that big of a gap because you could have someone at fifty-five or you could have a Bill and would need a substantially more than fifty-five. So why not just have the base?

Sheila: Right, I'm agreeing with you. If you want me to measure upon experience, but the starting is fifty-five, or fifty-two or whatever we said.

Mark: And then you come to the Board and say listen, this person is a shining star, then we as a Board can discuss that.

Berkshire County Retirement Board Meeting
September 3, 2021

Sheila: Honestly Mark, what I would pay more for is Chapter 32 experience. But the reality is, we aren't going to get it. So, we are looking at those payroll clerks, we're looking at those accounting clerks. We are looking at people who have that kind of experience so they will have that piece. So, we compensate them for it, but we want to make sure –

Mark: So, fifty-five. Is that a good starting? Commence start, but that's the minimum. I mean, I'm asking. There are other Board members here.

Sheila: That's fine, I can do that. The earliest that it would be posted is Tuesday. I'll put it out by four o'clock on Tuesday afternoon. I will put something together in the morning, hopefully. Check your email by noon and if you have any issues or edits, please get it to me. Otherwise, I will send it out to PERAC by four o'clock on Tuesday with a fourteen-day return.

Tom: Do we have a vote on this?

Paul: Well, that was still discussion, now we are going to have a vote.

Beth: MMA and Mass Hire?

Sheila: MMA, we already did that one. yes. MMA though, wasn't free.

Karen: Mass Treasurer Collectors, their listserv?

Sheila: Is their listserv free? The Treasures Collectors is free. I can put it there.

Karen: I put it in the Stockbridge. I asked her if it was alright.

Sheila: The MMA, I know it costs money. And the other thing is they do everything monthly. By the time it was going to be posted, what we paid for with the fourteen-day turn around wouldn't work. The Treasurer Collector, I'll put up and I'll put up PERAC.

Paul: So, the motion that was made and I'll second it was to post the job as we discussed with the responsibilities that Sheila stated for a period of two weeks, with a salary starting at fifty-five thousand dollars. We have a vote. All in favor?

Group: I

Paul: Any opposed? And there is one abstained, Michael.

Tom: Michael, you are voting as present, correct?

Sheila: He is abstaining.

Tom: If you are present at a meeting, it is difficult to abstain. The proper vote would be present.

Paul: Okay, he has voted as present.

Tom: I lost a bet on that one time.

Paul: So, Tom and Gerry, thank you very much. Tom, thank you for taking the time out of your vacation. Please tell your wife that we appreciate that. And I hope you enjoy the rest of your weekend. Thank you for your great information and insight. And Gerry, thank you for your input as well.

Tom: Michael, if I treated you harshly today, it was for your own protection.

Michael: The motion came up, so given the restructuring of the hiring process. I will withdraw my interest in the expanded position of Chairman to take on the day-to-day accounting position previously held and recently vacated by Bill Flynn. Because it's still there am I still of interest or is that of moot point.

Tom: Well, because it was a discussion of you being a possible candidate for it, I would advise you not to participate.

Michael: Okay, so I withdraw my interest in that structured position.

Tom: Sorry, can you repeat that, Michael.

Berkshire County Retirement Board Meeting
September 3, 2021

Michael: So, I'm withdrawing from the expanded, the possibility of expanding as we discussed today because of the nature of the duties. The nature of the duties was day to day spreadsheets, number crunching. Instead of administrative –

Tom: The Board just voted to post the position currently. But the voted to continue the discussion of expanding the duties of the first member.

Mark: We can still discuss expanding the duties, but I think what he's saying is, he's withdrawing just like Paul did. Just to simply it. He's not going for the position. Am I correct? I don't want to take the words out of your mouth.

Michael: My understanding was that it is going to include the day-to-day functions. And you are clearly stating that the position is not going to include the day-to-day functions. That was all a misconception coming into this meeting. So no, I'm not –

Tom: I don't know what the Board as envisioned and is going to envision for your duties, until they make that model and discuss it.

Michael: But your recommendation was that the expansion of the Chairman cannot take on the position that Bill held.

Tom: Should not. I wouldn't say could not, but it should not. The recommendation was not to take A though L and give it to you. That was the recommendation.

Michael: There's nothing saying that the Board –

Mark: We're going to have to address that. If you can expand your position as Chairman. You will still have to participate in that conversation, but we could expand it as long as we say that you aren't just going to do exactly what the other guy's job was. As the Board, we could say, as Chairman, we consider you should do other Chairman duties, just not what that job is.

Michael: So potentially, that restriction of participation could go on because if there is any modification and financial gain. Its only, for the Chairman's position. The expansion.

Tom: Are you saying that you are not going to apply for the position that's going to be posted?

Michael: No, the expansion of the Chairman.

Paul: Okay, so Tom. I think for clarification, is this. So, Mr. Ovitt is not going to apply for the position that we just voted to have posted.

Michael: No, I didn't say that. The discussion was about the expansion of the Chairman's position to hit the ground running and replace some of the duties that Bill had been doing.

Paul: Yeah, so then you still can't talk about that. You just said that you will not say whether you will or will not withdraw from applying for that position.

Michael: As Chairman, if I apply for that, then it's an employee. And I wouldn't be Chairman anymore.

Paul: Right, you would have a thirty-day break.

Michael: So, there's two difference positions there with the different duties.

Mark: Right. Whether or not you were going to have expanded duties as Chairman and everything that Bill did. Or if you remove yourself from the Board and resign from your position, step away for thirty days, and then apply for this position. Like you said, they are two distinct different things.

Michael: So, I guess the point is, depending on the choice you make, if there are other discussions about the duties and expanding the duties of the Chairman in an administrative role, I am not to participate in.

Mark: No because you are financially benefit.

Tom: Correct.

Berkshire County Retirement Board Meeting
September 3, 2021

Michael: For further clarification though, for day-to-day duties, I guess –

Tom: I don't know what you're talking about though for further clarification and day to day duties. We haven't really said that yet. We are talking about what a business model might look like. What are some possible business models that would look like that would benefit the retirement system where you would be working more as an executive in your role as treasurer and custodian of the funds and in an executive capacity? I think that is where the discussion. If I understand where the Board members have been speaking on. That is the discussion that is going to take place next time of the relatively near future.

Mark: Yes

Paul: That's how I understand it.

Tom: Okay.

Mark: Thank you Tom, thank you Gerry.

Tom: Have a good Labor Day everyone. Sheila, I will be in touch with you on Tuesday. You sent me a couple things about ordinary disability and –

Sheila: Yeah, and we have the accidental that we have to finish up in September too.

Tom: Did the Board vote to change the group classification of the Lee firefighters.

Sheila: Yes, they did. We're all set.

Tom: Okay, thank you.

Paul: All of us in favor of adjourning the meeting at 2:50 pm.

The next regular board meeting is scheduled for Wednesday September 29, 2021 at 9:00am.

RESPECTFULLY SUBMITTED:

Sheila LaBarbera, Executive Director

APPROVED BY:

Michael Ovitt, Chairman

Mark Bashara, Elected Member

Karen Williams, Elected Member

Paul A. Lisi, Jr., Advisory Council Member

Beth Matson, 5th Member Appointed