

MINUTES
Tennessee School Boards Risk Management Trust
Friday, October 8, 2004
Music City Sheraton Hotel

The Tennessee School Boards Risk Management Trust met at the Music City Sheraton Hotel in Nashville on Friday, October 8, 2004. Trust Chairman Patricia Gruenewald called the meeting to order at 2:15 p.m. Other trustees present were David Jones, Tony Tucker, Dawn Robinson, Darryl Deason, Gordon Morris, Mark Farley, Robert Stidham, and Gloria Sweet-Love. Also in attendance were Dan Tollett, Kristi Coleman, John Evans, Keith Dennen, Trust Attorney, and Judge Lyle Reid, former Deputy Commissioner of Insurance and former Chief Justice of the Tennessee Supreme Court. Roger Greene and Don Elledge of the Unemployment Compensation Trust were also present.

Remarks by Chair. Patricia Gruenewald welcomed the trustees and discussed the importance of cooperation. She expressed appreciation for Keith Dennen and Judge Reid being present. She praised Judge Reid for his achievements to the state and especially to Haywood County.

Invocation. David Jones gave the invocation

ROBINSON/JONES. Motion to adopt the consent agenda. **CARRIED UNANIMOUSLY**

Overview of the Meeting and Activities. Dan Tollett provided an overview of the agenda, pointing out the items which require action.

LEGAL STATUS OF THE TRUST.

Judge Reid and Keith Dennen reviewed the legal status of the Trust including the following:

Mr. Dennen said that the Trust was established under TCA 29-20-401.

Judge Reid said that since the Trust was established under the statute enabling governmental entities to create pools, the Trust is limited in activities in which it may engage. He warned that the fee paid to TSBA must be carefully considered. He said that TSBA is a 501(c) (3), a private, non-profit corporation. He said that funds of governmental entities and the pools, which they may establish, may only be spent for a proper purpose and for value received. He said that the Trust may provide insurance only to governmental entities.

Judge Reid said, "You will do well to put distance between the Trust and TSBA." He said that persons who sit on both boards are in a difficult situation because each board member is required to act in the best interest of each at the time you sit on the board. He said that any member of the Trust or anyone else may ask, "What have you been spending money for? Is it for a permissible purpose?" He said that bad news or hard

questions could come from any member, public official, office of the AG or local district attorney.

Judge Reid said:

- Pay careful attention to funds paid for services that are not bid. It is not prudent to assume that because something is offered by a sole service provider that the fee paid can be whatever you wish. This is very important to each of you as trustees to individually be able to say that funds spent were for a permissible purpose and for value received.
- The sponsorship fee has to meet the fair market value test.
- The membership of the Trust must select the members of the board of trustees.
- The association (TSBA) may not be a member of the Trust because it is a private charitable corporation and not a governmental entity. It is clear that "there is no place to hide." Only governmental entities may participate in the Trust.

In response to the question, "Is there more reason to worry about the contract with TSBA than a contract with an attorney or broker?" he replied, "No. You just have to be certain that you get fair market value."

FINANCIAL ISSUES

Kristi Coleman presented a brief report on financial considerations related to the proposed agreements with TSBA, including the following:

1. The Trust had a \$2.5 Million loss during the last fiscal year while TSBA had a surplus of \$330,000.
2. TSBA has had a surplus every year during her employment there.
3. TSBA has reserves of at least 80% of its annual budget while the Trust has reserves of less than 40% of its annual budget.
4. The Trust occupies about 45% of the building excluding common areas while TSBA occupies 55%. If the Trust did not exclusively occupy the workroom on its side of the building, its percentage would decline making it very difficult for the Trust to justify paying 50% of the operational costs of the building.
5. She reminded the trustees that TSBA had insisted on similar salary schedules in the building. She said that no trust employee had received a salary increase and one employee took a \$3000 decrease to get to work for the Trust. However, TSBA has increased salaries in spite of its insistence of comparability.

UNDERWRITING ISSUES

John Evans said that there are two elements to consider in coverage: fixed costs and the loss fund. He said that trustees must be aware that the cost of the sponsorship agreement adds 3% to the cost of each trust member's insurance. He reminded the trustees that the Trust is competing with insurance companies which pay nothing to TSBA or any other association and the margin of difference in competitive bids is often

small—sometimes as little as \$500. He said that the County Pool which is a major competitor pays the County Association nothing. Their trustees sponsor County Association events. He reported that the County Association pool pays local agents 7% in comparison to 3.5% which the Trust pays Next Generation Underwriters.

DISCUSSION OF ADMINISTRATIVE SERVICES AGREEMENT.

In response to the question, "What are the major differences in the proposal from TSBA and the one adopted by the Trust?" Gordon Morris said, "Very little." Dawn Robinson pointed out several major differences. She said that there were also several differences in the proposal recommended by the committee of the TSBA Board of Directors and the one which TSBA sent to the Trust.

The issue of the workroom on the Risk Management side of the building was discussed. It was pointed out that TSBA had a smaller workroom on their side which was never used by Trust employees. TSBA also has vacant offices one of which could be converted to a workroom. It was pointed out by Trustees Tucker and Deason that HIPPA privacy act rules dictate that no private medical or other information can be in an open area where unauthorized or untrained persons could view it. Trust employees have confidential information which must not be available to persons who are not employed by the Trust.

Darryl Deason asked if the issue of the commons area was big enough that the agreement would not be accepted or did we need to make another amendment to change this. Gordon Morris said that it was a real issue for TSBA to have the workroom because of the space available. Gloria Sweet-Love said that she did not believe that it would be a big deal and that we could get this one back. Darryl Deason asked if that was a problem that TSBA would need to address or was that something that the Trust needed to change and asked Gordon Morris if he was willing to take it on. Dr. Morris stated that if an alternative space were available for TSBA to use for a workroom it should not be a problem.

TSBA requested that the tech support and the receptionist services be deleted from the sponsorship agreement and included in the administrative services agreement. Dr. Deason asked if the changes that had been made by the trustees would help the agreements to be passed by the Board of Directors. Gloria Sweet-Love responded that she believed that they would.

SWEET-LOVE/TUCKER.

Motion to remove the provisions regarding tech support and receptionist services from the sponsorship agreement and include both in administrative services with the provision that there be no additional charges for these services.

MOTION CARRIED UNANIMOUSLY

DISCUSSION OF SPONSORSHIP AGREEMENT.

Ms. Gruenewald called for discussion of the sponsorship agreement. She suggested that proposals to amend the sponsorship agreement already adopted by the trustees would be in order.

TUCKER/STIDHAM.

Motion to adjourn.

MOTION DEFEATED 3-5.

STIDHAM

Motion to compromise by splitting the difference between the \$250,000 offered by the Trust and the \$325,000 requested by TSBA.

MOTION DIED FOR LACK OF A SECOND

David Jones asked Gordon Morris (TSBA President) if trustees passed the \$325,000 if he could take these agreements back to the Board of Directors and get them both approved. He replied that he would try his best to get the agreements approved but he could not speak for the entire Board of Directors. He said that the \$325,000 would go a long way in helping to resolve the differences.

Robert Stidham asked how the Trust could justify paying \$100,000 more than in previous years for less benefits. He stated that the Trust must compete with other insurance companies while TSBA is the only organization around that provides its services. He pointed out that the Trust ended the year with a deficit while TSBA ended the year with a huge surplus. Gordon Morris responded that TSBA needed the money because their costs had increased and that a deficit existed even after increasing the fees of almost every line item possible. He said that trustees should look at how Trust expenses had also increased. Tony Tucker responded that the Trust has to cover those increases and that TSBA should cover their own increased costs. Gloria Sweet-Love called for the question. Chairman Gruenewald asked if there was anything new to be added before the vote.

Dawn Robinson pointed out that the \$325,000 would be a good will gesture because TSBA would no longer be able to participate in the Trust programs based on the facts that had been presented at the meeting whereas in the past they could participate in the Trust programs. She said that TSBA will be required to get coverage from a different provider.

Dr. Deason asked if number 14 (TSBA's participation in the Trust) in the sponsorship agreement is legal now. Keith Dennen responded that the language is legal and therefore could remain in the contract. Patricia Gruenewald asked if this was a place that TSBA could hide. Mr. Dennen said that the language could stay because it did not say that TSBA was eligible to participate. It said that if TSBA met the eligibility requirements then they could participate. He also stated that if TSBA was not eligible that the language would be appropriate for that outcome as well.

FARLEY/SWEET-LOVE.

Motion to amend the agreement by deleting the sponsorship fee of \$250,000 and replacing it with \$325,000.

Tucker No

Stidham No
Robinson Yes
Jones No
Morris Yes
Deason Yes
Farley Yes
Sweet-Love Yes
Gruenewald Yes
MOTION CARRIED 6-3.


FARLEY/ROBINSON.

Motion to authorize staff and Trust attorney to develop a procedure to propose at the February meeting about how trustees are elected.

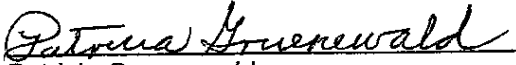
MOTION CARRIED UNANIMOUSLY

The meeting was adjourned to an executive session at 4:20 p.m.

Respectfully submitted,



Dan Tollett
Trust Administrator



Patricia Gruenewald
Chairman