

MEETING OF THE BOARD OF FINANCIAL INSTITUTIONS

June 10, 2009

11:30 a.m.

Minutes

BOARD MEMBERS PRESENT:

Jim Anderson, Kip Cashmore, Commissioner Ed Leary, and Preston Jackson.

DEPARTMENT OF FINANCIAL INSTITUTIONS STAFF PRESENT:

Paul Allred and Sonja Long

1. Call meeting to order – Commissioner Leary

2. Minutes –

There are no minutes for the past meeting as we have had our office torn up to have new carpeting put in.

They will be sent for the next meeting.

3. Budget review – Commissioner Leary

Michael is on vacation so Commissioner Leary will be reviewing the budget. He briefly went through the actual vs. estimated budget. Then he went through the expenditures page. The restricted account balances are on the third page and he went through how we should end the fiscal year.

Since the legislative session, we had one examiner leave to go to an institution. There is an offer pending from FDIC for another examiner.

4. Out of state travel – Commissioner Leary

The new items have been bolded.

5. DFI Board Resolution update – Paul Allred

Commissioner Leary told that there was an independent writer who attend the recent Board of Bank Advisors meeting and then did an article in the Deseret News.

Paul thanked everyone for their help in getting the resolution signed and moved along. Commissioner Leary took the draft to the associations after the board members had all seen it and commented on it.

During the process of the resolution being signed, Paul and Commissioner Leary had a meeting with Kevin Garn, the Majority Leader on another matter. Commissioner Leary took a copy of the resolution in and presented it to him to let him know that it was coming. Howard Headlee had told the department that he had talked with The Speaker of the House and made him aware of it. That is the extent of us going to the legislature to let them know that it was coming. Commissioner Leary advised the Governor's office that it was coming. We delivered it to both the Speaker and the President of the Senate and the Governor's office. We got an interesting reaction from the Speaker of the House, his assistant called Commissioner Leary to indicate that he didn't understand why there was concern expressed.

Preston Jackson asked if there would be any recourse. Commissioner Leary said that the only recourse he could see is in the next session that we ask for a supplement.

Paul explained that the legislature is relying on Utah Code Title 63J-1-307(2) which they are correct, it does say "Notwithstanding any other statute that limits the legislature's power to appropriate from its restricted account, if the Legislature determines that an operating deficit exists, unless prohibited by federal law or court order, the Legislature may, in eliminating the deficit, appropriate monies from a restricted account to the General Fund." So that is a question that would probably have to be litigated. Jim Anderson said that we are at a point where you have to ask yourself, do you help yourself or hurt yourself by fighting this battle.

Commissioner Leary said that we will talk more about this in the upcoming meetings, but he doesn't want to make it hard for our friends to support us.

6. Money Management Council Rules 11 and 12 – Paul Allred

Money Management Council is created by statute within the Treasurer's Office. Their primary responsibility is to provide counsel, advice, and procedures that help municipalities, counties, any public treasurer in performance of their duties. The treasurer's function is to collect the money until they have to spend the money, they invest the money. The idea is to invest prudently. One of the most common places that public treasurers have put their funds is in Utah based institutions. Commissioner Leary's first experiences 30+ years ago, they created the Money Management Council for that very purpose. They have written rules over the years, controlling investments and deposits in the financial institutions. They have created two rules that in essence established an allocation system based upon the percentage of capital in the institution. It was a figure of you could hold up to 2 times your capital in public funds, provided that you were at this threshold. And as your capital went down, there were restrictions put in on the public funds that you could hold. The other component developed is out of state based banks with branches here wanted to hold public funds, so they wrote an allocation

formula based upon the amount of Utah deposits to the whole deposits in the institution. We take the quarterly CALL Reports of all these institutions that want to be recipients of public funds, we compute a ratio for them and list them as a qualified depository institutions to hold public funds. We do that quarterly, Tom Bay staffs that meeting does the performance of those duties for us and represents us. The allotment is public information. We provide that to the council and they send out their normal process to the treasurer's. The system has served well. Except for the case of Bank of Ephraim where three public treasurers's lost money. The good news that with everything that happened, within a year each of those treasurers had received 93¢ on the dollar.

As we move into this current crisis, we have already closed Magnet Bank and America West Bank, both cases neither of those institutions did not have any public funds. But this had made the Money Management Council and the State Treasurer's Office very nervous about the potential for public funds being lost going forward. Therefore, they have come to us between the Treasurer's Office and the Money Management Council looking at their rules saying maybe there is a better way to insure that the treasurer's never loose any money in deposits in financial institutions. Be aware that all of this explanation only relates to funds held in financial institutions, there are a whole separate set of rules pertaining to investments.

Commissioner Leary turned it over to Paul to explain what has been going on this year. Paul said that the Treasurer and his deputy had attended a national association of state treasurers' meeting where they listened to their colleagues talk about economic crisis. One of the folks that spoke was the Treasurer for the state of Washington. He talked about who talked about a couple of bank failures that had occurred in Washington. The state of Washington has a pledge system for their public fund allocation. The model that you find out there is an allotment vs. a pledge. Washington has a fund that the banks contribute to back up the public funds. The closures have put that fund in jeopardy. After this meeting they came back to talk to the department about amending Rule 11 and 12 to certify qualified depositories and to set the allocation of those funds. We are the only state that does not require a pledge system. The sense we got from the meeting that there was no desire from our Treasurer's Office to go to a pledge system. They wanted to amend the allocation process. We indicated a willingness to discuss with them, their suggestions to do that. We had a follow-up meeting in April with the Deputy Treasurer and their counsel to review their proposal and found that they had taken the allotment system which is based on Tier 1 capital ratios and eliminated the Tier 1 capital ratios and replaced it with a specific rating from a rating agency. They were going to take a rating agency that rates institutions on their safety and soundness and plug that in to the allotment. We asked them why they picked the rating agency that they did and they indicated that they picked them because we use that agency. We explained them that we do not use that company for ratings, we use it for the tools that they provide for us to manipulate the CALL Report data. We don't even look at their ratings. During the discussion they also focused on the Texas Ratio. They had done their own rating chart where they had taken the Texas Ratio and they rated the banks in the State of Utah based on the UBPER information. They asked us for our input. We explained the weaknesses that we think exist in the Texas Ratio. That received a lot of public attention. We pointed

out to the Treasurer's Office that that kind of approach to things is not helpful when you are having banks that are struggling. We expressed our opposition to the proposal; we didn't feel that it was appropriate to pick a rating agency that we didn't understand their formula and methodology for reaching their conclusions on their ratings, and using that in setting the allotment. We didn't feel it was appropriate to publish a list of qualified depositories with any connection to those ratings because we were concerned about safety and soundness. We pointed out to them that we can't treat the public treasurer's any different than we treat any other citizen. We don't divulge our ratings to any one.

At their next monthly meeting they provided this proposed amendment to their council, so all the council members had copies. We had suggested that they meet with the associations and run this proposed rule by them. They met with Scott Simpson from the Utah League of Credit Unions and with Howard Headlee from the Utah Bankers Association. But we found out later that they didn't go into any detail on their proposed rule change. They put it on the agenda, what that did is made it public. They held the meeting; Howard attended the meeting and expressed his concerns about having numbers associated with institutions and their strengths and weaknesses. We had provided a letter to the Treasurer expressing our concerns about the proposal. They made that public in the meeting. With the council discussing, the decision was made to table it and discuss it through the summer and bring it up again in their September council meeting. We have been invited by the Treasurer's Office at the direction of the council to participate in the discussion on how the rule ought to be amended. We have indicated to the Treasurer's Office that we are interested in participating in those discussions. It should be clear to them that we are not comfortable with numeric ratings assigned to institutions to determine what the public fund allotment should be. Commissioner Leary said that especially based upon a specifically named rating agency and how those rating are derived is totally proprietary.

Commissioner Leary said that he thinks that the council thinks that they are somehow liable if any public treasurer loses money. That is an extreme read of their mandate. There is a big dialogue here that is ongoing.

7. Congressional Reform Efforts – Commissioner Leary

Commissioner Leary just hit the high points. Going forward, while we are still in the middle of the crisis the concern is always that Congress comes along and tries to fix the problems. Nine times out of ten that means it makes the problems worse and we are probably in the middle of that arena where they will probably overreact and over regulate as a result of it. The real issue seems to come down to a focus over a systemic regulator. One view being that it is naturally the job of the Federal Reserve, but as soon as you say that there are all kinds of political concerns: they become too powerful, they are not a political body subject to the voter review and appeal, who checks on them, they missed a lot of this coming in so why are we giving them even more power. The other view is maybe you create some kind of a commission or a council of all regulators and they have the ability to get the information from everyone else. He thinks that the discussion about systemic regulation is the most important and to some degree it has to be decided before

you say, okay now that that is done we decide how we reform financial services regulation. Right now, Congress seems to be trying to do both at the same time. Every one of the discussions has talked about doing away with State regulation of financial services, both at the bank level as well as at the insurance and securities level. Naturally at the bank level and at the State regulation of banking level CSBS and everyone else has been fighting against that.

8. Application status update – Commissioner Leary

Commissioner Leary quickly went through the handout.

9. Other Business –

A brief discussion was held on the general status of banks and credit unions in Utah.

10. Date of upcoming meeting – September 16, 2009