

**NEBRASKA COMMUNITY COLLEGE ASSOCIATION  
BOARD OF DIRECTORS  
First Quarterly Meeting Minutes  
February 23, 2009**

**1. PUBLIC MEETING NOTICE**

All NCCA Board of Directors, Area Presidents and the general public having been duly notified a meeting of the NCCA Board of Directors was held February 23, 2009, at Southeast Community College – Continuing Education Center. President Lynn Schluckebier stated that the public meeting notice was published in the Lincoln Journal Star and the rules for the Nebraska Public Meeting Laws are available for public viewing. The public meeting notice is attached to these minutes.

**2. ATTENDANCE**

Directors Present:

President Lynn Schluckebier – Southeast  
Vice President Merlyn Gramberg – Western Nebraska  
Treasurer Tim Potter – Metropolitan  
Linda Aerni – Central  
Robert Feit – Southeast  
Steve Grabowski – Metropolitan  
Jane Hornung – Mid-Plains  
Don Oelsligle – Northeast  
M. Thomas Perkins – Western Nebraska  
Larry Poessnecker – Northeast  
Wayne Sasges for Secretary Diane Keller – Central  
Roger Wilson – Mid-Plains

Staff Present:

Dennis Baack – Executive Director  
Melanie Williams – Administrative Assistant

Also present: Dr. Greg Smith – Central, Randy Schmailzl, Bob Cannella, and Jim Thibodeau – Metropolitan, Dr. Michael Chipps – Mid-Plains, Dr. Jack Huck – Southeast, Dr. Eileen Ely – Western Nebraska, Tom Grafton – Grafton & Associates P.C., Neal Stenberg – Stenberg Law Office, and Paul Hammel – Omaha World Herald.

**3. CALL TO ORDER AND QUORUM DETERMINATION**

President Schluckebier called the meeting to order at 9:02 a.m. and asked for roll call and quorum determination. Present and responding were twelve board members representing their respective area governing boards. It was determined that a quorum was present.

**4. APPROVAL OF AGENDA**

President Schluckebier asked for any additions or changes to the agenda. Potter asked that the Consideration of Expulsion and Termination of Metro action item be moved to the end of the action items so that there is no confusion as to Metro's right to vote.

**MOTION BY TIM POTTER AND SECOND BY STEVE GRABOWSKI for the NCCA Board of Directors to approve the agenda as amended.**

President Schluckebier asked for any objections or discussion. There were none.

A roll call vote was taken.

**Voting Aye:** Aerni, Feit, Grabowski, Gramberg, Hornung, Oelsligle, Perkins, Poessnecker, Potter, Sasges, Schluckebier, Wilson

**Voting Nay:** None

**RESULT: Motion carried by twelve (12) ayes and no nays.**

**5. APPROVAL OF MINUTES**

President Schluckebier asked for any corrections to the November 18, 2008, meeting minutes. There were none.

**MOTION BY TOM PERKINS AND SECOND BY DON OELSLIGLE that the NCCA Board of Directors approves the November 18, 2008, meeting minutes.**

President Schluckebier asked for any discussion. There was none.

A roll call vote was taken.

**Voting Aye:** Aerni, Feit, Grabowski, Gramberg, Hornung, Oelsligle, Perkins, Poessnecker, Potter, Sasges, Schluckebier, Wilson

**Voting Nay:** None

**RESULT: Motion carried by twelve (12) ayes and no nays.**

**6. TEAM 2 / BUDGET AND PERSONNEL COMMITTEE**

Potter stated that at the last quarterly meeting, the Board discussed the management letter from the auditors and what they found to be significant deficiencies in internal control. One of them had to do with new audit standards, which the Board relayed to Baack that they would like to see and also that there was a lack of capable

skills to prepare the financial statements with the current staff and that the members of the Board lacked that expertise. The Board wanted to pursue that and get more information from the auditor to what the Board can do to take care of some of those deficiencies.

Baack introduced Tom Grafton of Grafton and Associates, P.C. who is the association's auditor.

Grafton explained that what has happened since the management of large companies failed its shareholders and the auditors failed as well, the standards have been upped across the board on an ongoing basis. What they as auditors are trying to do is educate the Board and management that the auditor industry is enforcing on our industry increased responsibilities. Grafton continued to state that they made two comments so that the Board is aware that there is a federal commission and they are saying if you are an auditee, you should have a system of internal control that prevents, detects, and deters fraud. He then stated that he does 125 audits a year and only one client which he did not have to state this comment to. Grafton stated that it was mentioned to be listed as a significant deficiency and that is the lowest level they can label it as under professional standards.

Grafton stated that the most current standards state that someone with a financial background should review the financial reports for accuracy. Feit stated that he was CFO of the utility company he worked at prior to retiring. Grafton replied that he would then be the person on the Board to review those documents. As it is right now, the Board is relying on the auditors and according to new professional standards, they are required to inform us that is considered a control risk.

Feit asked if they had any trouble with the financials the Association has. Grafton replied that this is a reporting issue. Last year, they made a total of two adjustments with one concerning depreciation because they have the appropriate software to compute that accurately. Feit then asked if a shuffling of officers needed to occur so that he is in the office of Treasurer. Grafton replied in the negative and this only has to do with someone taking the responsibility of the financial statements.

Oelsligle asked what Grafton's other clients have done to address this. Grafton replied that some of his non-profits have gone to the accounting industry to try to get their help by appointing a CPA to their board. It has also been ignored and included on the management letter every year or some have hired their external CFO consultant who would come in and document the system and then make suggestions to the Board. The idea behind the second item is to have something in writing that the Board reviews and determines is an adequate level of internal controls.

Potter asked if the Association should contract with someone who would be able to come in and prepare the financial statements when Feit is no longer on the Board. Grafton replied that his accounting firm can continue to prepare the financials but

someone else could be brought in to review and take responsibility that they are in accordance with general accounting principles. He then stated that none of his other clients have done that. If they have someone already on their board who is convenient, they do that but if not, it just gets included on the management letter like segregation of duties because it must be considered that we are a small organization.

Potter asked Grafton if he could provide a copy of the new audit standards which were mentioned on page one of the management letter. Grafton replied that he has given it to Baack. Baack then stated that he will forward them to the board.

Grafton then thanked the Board for taking this seriously because not all organizations do. Baack then stated that he has talked to Grafton about the possibility of making some policy changes to address some of these issues and will continue to work with the auditors.

## **7. TEAM 1 / LEGISLATIVE COMMITTEE**

### a. Session Update

Baack stated that there are three bills in the Education Committee that have to deal with the community colleges. One bill, which was introduced on behalf of Metro by Senator Cook, would study the funding formula. Another bill introduced on behalf of Metro by Senator Cornett would deal with their issue with REU's and how they are calculated. LB 103 is also still in committee and that bill has to do with the level that triggers a capital construction review by the Coordinating Commission. The current level is \$500,000 dollars and the bill would change that level to \$2 million dollars. The Coordinating Commission wants a \$1 million dollar level for the community and state colleges while the University would get a \$2 million dollar level. They feel that if it is \$2 million dollars across the board, they would not be able to review the majority of the proposals. The Higher Ed Forum which Baack participates in is currently working with the Coordinating Commission to come up with one level for all of higher education that everyone can agree with. Baack then stated that the appropriations hearing will be March 2 and the hearings for LB 400, which was introduced on behalf of Metro by Senator Lautenbaugh, and LB 673, which was introduced on behalf of Metro by Senator Price, will be held on March 3.

Perkins asked if Baack was aware of a bill that was introduced which would allow a person without a high school diploma or GED to enter the University after receiving an associates degree from a community college. Baack replied in the affirmative and Perkins then asked where that bill stands and what it means. Baack replied that in the last couple of years, the community colleges have been working very close with the University in the development of a project they have called On Course. The goal of this project is to get more community college students to continue their education at the University. In some cases, students of a community college may earn an associates degree but do not have a high school diploma or GED. State law dictates that in order

to attend the University a student must have a high school diploma or GED and this bill would allow the student to bypass this requirement. Baack continued to state that this bill was introduced on behalf of the University for their purposes and not the community colleges.

Potter stated that this is an action item and as the Board knows, the chair of the Metro Board did send an email requesting that the NCCA Board consider taking a position on LB 400. He continued to state that there are a number of bills in the Legislature that concern the community colleges and thinks it would be appropriate for this board to state on the record their position on those bills. LB 400, which was included in the board packet, calls for freezing the funding formula as it currently exists. Metro would like to make one last attempt to solving the issue or at least making some progress on the issue with the funding formula within the NCCA. If the NCCA Board would go on record supporting LB 400 as it currently is, Metro would be willing to pay their dues for 2009 with the provision that the Board undertake a good faith effort to begin negotiations on revising the funding formula.

**MOTION BY TIM POTTER AND SECOND BY STEVE GRABOWSKI that the NCCA Board of Directors endorse and support the passage of LB 400.**

President Schluckebier asked for any discussion.

Feit stated that this bill would freeze the formula at the present year level and Metro got a wind fall with the present year level. If the Board agrees to this bill, the other community colleges are going to give Metro state aid until a resolution is passed and Feit asked how that is right for the remaining areas. Potter stated that the numbers have been discussed and if the increase in state aid of \$11 million dollars to \$12 million dollars, which the Board had agreed upon to request and is pretty unrealistic, does not occur, when the numbers are run again it hurts some colleges pretty severely and another college gains fairly substantially. We can go back and forth regarding the numbers but Metro feels that in order to get negotiations started, the system should just maintain the status quo for the time being, enter into negotiations and hopefully come up with a formula that is acceptable to everyone. Potter continued to state that we can go back and forth about the numbers but he feels that this is not the place to do that. A point has been reached where either we agree to negotiate, agree to try to solve the problem within the NCCA or the NCCA is essentially going to cease to exist within its current form. That is Metro's position and they would like to see negotiations take place within this organization but so far that hasn't been well received which makes them wonder what the purpose is of this organization if a discussion can't even be had regarding one colleges concerns. Feit responded that Metro hasn't given the Board anything and is talking negotiations when it's actually blackmail. Potter stated that this is not the place to get into a discussion of the numbers. If the Board would be willing to have the CEO's get together and discuss the formula as Metro had originally requested back in August, that would be the place to get into a discussion of numbers. What is being discussed right now is simply agreeing to discuss it which is something this Board

hasn't been willing to do in the recent past. That is Metro's offer and beyond that are not at this point going to get into a negotiation of the formula at this point in this body.

Aerni stated that she does not see an action item specifically to vote on this item and if there is no action item, she will not vote. It was explained that the agenda states session update but included in the supplemental information was a copy of the legislative bill as well as Metro's request that a vote be taken on LB 400.

Wilson stated that the Board has never had any discussion regarding LB 400 and is now being asked to support it and asked under what circumstances should we do that. Potter replied that considering the bill was included in the board packet, everyone had an opportunity to read it and now there is the opportunity to discuss it. Wilson then asked why the Board should support it. Potter replied that there is another action item relating to Metro's non-payment of their total dues and they are simply stating that if the Board agrees to freeze the funding formula now and begin negotiations then Metro will pay their dues which are owed for 2009 and hopefully the negotiations will be fruitful. Wilson again asked why the Board should support LB 400. Potter replied that from their point of view that is what they would like to see happen as a Board expression of a willingness to negotiate. Under those circumstances, Metro would pay the rest of the dues owed, negotiations would commence, and hopefully it would result in something fruitful. They are simply expressing their point of view that they would like to see if it could be solved within this organization because going to the Legislature introduces more variables. Potter continued to state that Metro is willing to take their case to the Legislature and they feel that they do have a good case but they wanted to make one last attempt to try to get it dealt with in the association. Wilson stated that it seems to him that in the last two meetings, the Board has offered to negotiate and sit down with Metro and they refused. Potter replied that that is not the way he remembers the vote. Wilson stated that this discussion has gone on several times and he feels that Metro has had tunnel vision as far as he's concerned and we are now down to supporting LB 400. Potter stated that that is not his recollection.

Baack stated that he knows that Metro does not want to talk about the numbers but in order for the remaining areas to take a position, they have to know what it would do to their college and understand what they are voting on. They have to understand that the colleges that are taking a hit under the formula the first year and will continue to take hits until the formula is changed while Metro will continue to take in money. Baack then stated that he doesn't see how Metro can expect the other areas to say that they are willing to take hits until this is straightened out. If LB 400 were put into place, he doesn't see what motivation Metro has to negotiate anymore because they have a good deal going on at that point and he doesn't know if that is the direction the Board should be going. Potter asked if the other colleges have run the numbers to determine the effect if the system does not get 12% increases. There are some other colleges, Western and Central, that take a real big hit if only a 1% increase comes through and he can't believe that those colleges would be happy with that situation. Potter continued to state that it is a mathematically flawed formula, a formula that creates such a

disparity of aid between colleges depending on whether you get 12% or 1% and the numbers come out so differently that one college comes out real well while other colleges suffer pretty badly is a flawed formula. Baack replied that he doesn't think it is flawed and he believes that the colleges who are getting hurt next year are looking at the long term. The key number for those colleges is the bottom line number, which he knows that Metro does not like to look at, and that bottom line number is the access to resources to run your college. Baack continued to state that if you are in rural parts of the state, that is the key number for them because they will have the resources to run their college. In Central's case, even though they are taking a hit in state aid and a small hit in total resources, they know that they are still able to access the resources they need to make their college run and that is what they are looking at. When you then look down the road a few years, they start generating state aid again and are looking at their access to resources which is an important feature for them. Baack then stated that when you get into tough economic times like we are now, that access to resources becomes a key number for the colleges to have the resources to run their college so that we do not have to go to the Legislature and continually ask for additional levy authority.

Potter stated that he thinks that everyone hopes that the long term turns out well but that taxpayers are looking at what they have to pay this year in property taxes and they are thinking in terms of survival for the next couple of years. Depending on a good long term outcome is probably a luxury we cannot afford right now, we need to deal with the present and what our taxpayers are likely to think about how we are managing our fiduciary responsibility with our colleges. Potter then stated that this is Metro's offer as far as how the association can get back to the negotiation table.

Oelsligle stated that he feels everyone has expressed the idea that we are willing to talk about formula and that it was a work in progress when it was put together. We have all had troubles with our state aid and no one has ever threatened to withdraw or not pay their dues until it could get worked out. It appears to him that the whole process of how this was put together is not the way we work together as an association.

Potter stated that what matters is the vote that would have given the authorization to the CEO's to discuss and negotiate changes to the formula. That is an official vote of this Board and opinions can be discussed but the vote is what counts.

Baack stated that he feels that it must be added that Metro was asked on numerous occasions to bring a proposal to the Board or the CEO's and they have flatly refused to do that. They have never brought forward a proposal as to what they want to see changed in the formula. He does not feel it is incumbent on the Board to guess what Metro wants. Metro did pass a resolution which contained some philosophical, theoretical principles which is fine but Baack could argue that each one of those are in the current formula today, maybe just not in the form they would like. Baack continued to state that he remembers when he met with Potter, Newell, Koebel and Schmailzl in June and the first thing Baack told them was that Metro needed to give the system a

proposal that shows what they want changed and then discussion could then begin. It's been problematic and that is part of the vote which was previously taken because we have never seen a proposal and it's hard to negotiate something when you don't know what you're negotiating.

President Schluckebier asked for a vote on the motion for the NCCA Board to endorse and support the passage of LB 400.

A roll call vote was taken.

**Voting Aye:** Grabowski, Potter

**Voting Nay:** Aerni, Feit, Gramberg, Hornung, Oelsigle, Perkins, Poessnecker, Sasges, Schluckebier, Wilson

**RESULT: Motion failed two (2) ayes and ten (10) nays.**

Potter stated that another bill which deserves discussing is LB 655. It was introduced by Senator Harms and would make any community college that does not meet the membership requirements by the NCCA would make them ineligible for state aid. Potter then stated that he would like to hear some background on the genesis of that bill, how it came about, what it intends to accomplish, and how it contributes to a solution to the funding formula issue. He then specifically asked Baack for any background on it.

**MOTION BY STEVE GRABOWSKI AND SECOND BY TIM POTTER that the NCCA Board of Directors oppose LB 655.**

President Schluckebier asked for discussion.

Aerni asked if that was on the agenda and Grabowski replied that it is not. Baack responded that it is a legislative issue so it would fall under this category.

Baack stated that he does not know the genesis of LB 655. It was introduced by Senator Harms and Baack does not know where Senator Harms got it. Senator Harms did not consult with Baack or anyone else.

Feit stated that as he remembers it, LB 655 has in it more than just what was discussed. Grabowski replied that that is about it. Baack stated that it simply states that if a community college does not belong to the association, they would not receive their state aid. Baack continued to state that he guesses that Senator Harms was thinking there should be something in statute which states what the penalties are for not belonging because statute does require membership. Perkins then stated that if that bill does pass, it would apply to every community college area. He feels that is pretty important and frankly that is why he would support the bill. It would require the system

to have some serious discussion about the issues that confront us whether it be about the funding formula or other issues we do not currently know about. Potter stated that he feels that the timing of it would indicate that one particular college is the target of it. Sure it would apply to any college who does not meet the membership requirements but the timing is interesting as well as the source.

Grabowski stated that it seems to be punitive. With the timing of the bill as Metro is talking about withdrawing from the NCCA, he can't believe that Senator Harms did not talk to anyone about the bill. Perkins replied that Senator Harms did not run anything past him. Grabowski continued by saying that in the previous discussion regarding LB 400 it was stated that it was blackmail and in his opinion this bill is the same thing. If the Board did not support LB 400 because it was blackmail then we should not support LB 655 because it is basically the same thing. LB 655 states that either you come back to the table or you lose your money while LB 400 said Metro would come back to the table if the funding formula was frozen.

Feit stated that he would like to clean up his blackmail statement. The comparison was between trying to force the Board to say they support LB 400 so Metro would pay its dues. In his opinion, that is not negotiation but blackmail.

Grabowski then stated that there was some mention about negotiation saying this would help with that but again it just does the same thing to Metro which is to pay their dues.

Aerni asked the Metro representatives if they have talked to Senator Harms and why they are asking the Board about it. Grabowski replied that they are not asking anything but just for the Board to show that they do not support the bill. Aerni stated that this is not on the agenda and that if they do have a concern, they should talk to Senator Harms. Grabowski agreed and stated that he believes some Metro people have.

Hornung stated that she would like to rise to a point of order because she agrees with Aerni that this is not an agenda item. Everything that we want to talk about and act on cannot be put under legislative issues. LB 400 was on the agenda but LB 655 is different and she feels that it is not an agenda item the Board should be taking action on unless it is advertised. Perkins stated that he agrees with Hornung because the bill is not on the agenda and was not included in the board packet for board members to review and develop an opinion about it.

Baack than stated that he did forget to mention LB 655 during his legislative report but he does recommend that the Association remain neutral on that bill. Grabowski asked how Baack would make that recommendation and whether the Board would need to take a vote as to whether the Board supports Baack's recommendation. Perkins stated that if Baack does not show up at a hearing, it becomes moot. Grabowski agreed but then asked if there was ever an agenda item stating Baack

should oppose LB 340 and LB 283. Baack replied that there was never an agenda item but he did send out an email to the Board stating his intentions and did not receive any response from the Board. Grabowski then asked if that is technically legal without a vote or a motion. He continued by stating that he does not believe it is legal because if it is not an action agenda item and how can the Board direct their Executive Director and lobbyist to speak on behalf of the NCCA. He does somewhat agree with Hornung and Aerni because maybe this shouldn't be on the agenda but there were other things that probably the NCCA spoke in favor of that no action of any kind was taken. If this is going to be off the table, then ones in the past that Baack supported should then be neutral. Feit stated that one of the thing we did as a Board was discuss having extra meetings as necessary to discuss legislative bills that came up. This bill was one the Board could not support in November because we were not aware of it. He then stated that he believes that any college has the right to bring something up and have it voted on during the meeting. President Schluckebier stated that when the agenda was being put together, he felt that is why legislative update is put under an action item so that the Board could come up with suggestions to support or not support different bills because this is the only time the Board gets together. Even though it is not specifically listed, this is the time for the Board to communicate and that was the idea for the legislative update to be an action item.

Aerni stated that the Board approved the agenda but there was no other mention of adding to or subtracting from the agenda. If there is a bill that we have issues or concerns about, before the agenda is approved, they are placed on the agenda for a vote but right now she has no knowledge about it, has not reviewed it, does not see it on the agenda and therefore votes to table the discussion of LB 655.

**MOTION BY LINDA AERNI AND SECOND BY TOM PERKINS that the NCCA Board of Directors table the motion of opposing LB 655.**

President Schluckebier asked for discussion regarding the tabling of the previous motion.

A roll call vote was taken on the motion to table the previous motion of opposing LB 655.

**Voting Aye:** Aerni, Feit, Grabowski, Gramberg, Hornung, Oelsligle, Perkins, Poesnecker, Sasges, Schluckebier, Wilson

**Voting Nay:** Potter

**RESULT: Motion carried eleven (11) ayes and one (1) nay.**

Potter stated that he believes that there needs to be a more formal process when bill hearings come up between when this Board meets and has an opportunity to consider what position Baack should take on a bill. He does not believe it is good

enough for Baack to send out an email stating what he is going to do and if nobody objects, he will go ahead and do it. When Baack takes a position, it is recorded in the press that the NCCA is for or against something before the Board has even voted on it. Potter continued to state that that is an inaccurate picture of what is happening because if the Board hasn't endorsed or opposed a bill then the NCCA hasn't taken a position. He thinks the Board needs to come up with a more formal process for how positions are going to be taken by Baack before the Board meets and he is sure the open meetings laws do not allow phone votes or email votes. We need to come up with something because he doesn't think it's accurate for Baack's position to be portrayed as the NCCA's position before the Board has voted on it. Baack wanted to add that he would hope the Board would leave some flexibility for him as the Board's administrator. If the Board would have a more formal process, when an amendment would be brought up on the Legislative floor, he may not have enough time to contact everyone to decide what should be done. He then stated that we need to rely a little on the general philosophy of the organization, what the organization stands for, and what the goals of the organization are. Those are the types of things he takes into account as he decides which way the organization should go. On some of the major bills, he doesn't mind receiving guidance but when some minor issues are being discussed, he does not want to be so tied that he cannot be involved in those discussions and have to say that he needs to discuss it with the Board before he can do that. Baack continued to state that he believes the Board doesn't want to tie the hands of their lobbyist to that extent and therefore unable to do anything. Potter stated that that is something the Board should discuss and maybe a moot point as far as Metro is concerned. What Baack just discussed and what Potter previously discussed are things the Board should discuss and determine how to pursue it.

## **8. CONSIDERATION OF EXPULSION & TERMINATION OF METRO**

### **a. Approve Action of President giving notice to Metro**

President Schluckebier stated that the next item on the agenda is for the Board to consider the possible expulsion of Metro from the Association and the termination of its membership in the Association. Metro will be provided with a hearing before action is taken by this Board concerning those matters. There are several preliminary matters which require the action of the Board. First, in his capacity as President of the Association, he gave preliminary notice to Metro that the NCCA Board would consider its expulsion and termination. That notice was contained in his letter of January 21, 2009, addressed to Randy Schmailzl which a copy was provided to the Board in the board packet. President Schluckebier would entertain a motion for the Board to approve and ratify the actions which he took giving that preliminary notice to Metro.

**MOTION BY ROBERT FEIT AND SECOND BY TOM PERKINS that the NCCA Board of Directors approve and ratify the actions taken by the President in giving notice to Metropolitan Community College on January 21, 2009, that this Board would**

**consider the expulsion of the institution and the termination of its membership in the Nebraska Community College Association.**

President Schluckebier asked for any discussion. There was none.

A roll call vote was taken.

**Voting Aye:** Aerni, Feit, Gramberg, Hornung, Oelsigle, Perkins, Poesnecker, Sasges, Schluckebier, Wilson

**Voting Nay:** None

**Abstain:** Grabowski, Potter

**RESULT: Motion carried by ten (10) ayes, no nays, and two (2) abstain.**

**b. Approve Hearing Procedures**

President Schluckebier stated that with the assistance of attorney Neal Stenberg, he has prepared a statement of procedures to be used by the Board in providing Metro with a hearing regarding the possible expulsion and the termination of its membership in the Association. Those procedures are contained in the letter that he sent to Randy Schmailzl on February 4, 2009. A copy of that letter was provided to the Board in the materials sent to each board member prior to this meeting. He would entertain a motion for the Board to approve and ratify those hearing procedures.

**MOTION BY ROBER FEIT AND SECOND BY TOM PERKINS that the NCCA Board of Directors adopt the hearing procedures contained in President Schluckebier's letter of February 4, 2009, to Randy Schmailzl to be used in connection to today's hearing.**

President Schluckebier asked for any discussion. Grabowski stated on number 9 of the procedures it states its effective five days following the date on which the resolution is adopted. He asks if that is five working days or five business days. Stenberg clarified that it would be five calendar days.

Grabowski then asked that in reference to the hearing officer, if he is here to represent the Board. Stenberg replied in the affirmative. Potter then asked if that implies that the hearing officer is neutral. Stenberg replied in the affirmative.

A roll call vote was taken.

**Voting Aye:** Aerni, Feit, Gramberg, Hornung, Oelsigle, Perkins, Poesnecker, Sasges, Schluckebier, Wilson

**Voting Nay:** None

**Abstain:** Grabowski, Potter

**RESULT: Motion carried ten (10) ayes, no nays, and two (2) abstain.**

**c. Appoint Attorney Neal Stenberg as Hearing Officer**

President Schluckebier stated that attorney Neal Stenberg is present today at his request to serve as hearing officer. In that capacity, Stenberg will provide the services which were described in paragraph six of the hearing procedures. President Schluckebier will entertain a motion to appoint Stenberg as hearing officer for today's hearing.

**MOTION BY ROBERT FEIT AND SECOND BY TOM PERKINS that the NCCA Board of Directors appoint Neal Stenberg as the hearing officer for the hearing regarding the possible expulsion of Metropolitan Community College from the Association and the termination of its membership in the Association.**

President Schluckebier asked for any discussion. There was none.

A roll call vote was taken.

**Voting Aye:** Aerni, Feit, Gramberg, Hornung, Oelsigle, Perkins, Poesnecker, Sasges, Schluckebier, Wilson

**Voting Nay:** None

**Abstain:** Grabowski, Potter

**RESULT: Motion carried ten (10) ayes, no nays, and two (2) abstain.**

President Schluckebier then stated that he will turn the meeting over to Stenberg for the purpose of conducting a hearing regarding the possible expulsion of Metropolitan Community College and the termination of its membership within the Nebraska Community College Association.

Perkins requested a five minute break before the hearing commences. The Board took a break beginning at 10:09 a.m. and ending at 10:16 a.m.

**d. Hearing Regarding the Possible Expulsion of Metro**

Stenberg stated that the purpose of the hearing was to consider the possible expulsion of Metro from the Association. The NCCA is organized under the provisions of the Nebraska Non-Profit Organization Act and the procedures for considering termination,

expulsion, and suspension are contained in Nebraska Statute § 21-1947 which talks about the procedures that have to be employed. Statute requires that a procedure be fair and reasonable and carried out in good faith. It specifies that a procedure is fair and reasonable when one of two things happen: either the articles or bylaws set forth a procedure that provides not less than 15 days prior written notice to the expulsion, suspension, or termination and the reasons for considering those actions and an opportunity for the member to be heard orally or in writing not less than five days before the effective date of the expulsion, suspension, or termination; or if those procedures aren't specified in the articles of incorporation or bylaws it is necessary to use a procedure that is fair and reasonable taking into consideration all of the relevant facts and circumstances. Stenberg continued to state that he has come up with a list of procedures that would have been sufficient under the statute had they been included in the articles of incorporation or bylaws so that the same process will be used. In other words, Metro was given notice more than 15 days prior to the hearing of possible expulsion/termination and the reasons why that would be considered. Under the statute, the process can be quite informal with it possibly being handled with the submission of written arguments. In light of the significance of the issue, it would be more fair and more proper to have an in-person hearing so that there could be some discussion. There will be a hearing regarding the expulsion and termination and should that be voted, will become effective for five days following the adoption of the resolution. The hearing has to take place before persons who are authorized to decide if expulsion, termination, or suspension will take place. Under the bylaws of the Association, the Board of Directors gives the authority to make that decision. Stenberg again stated that under the statute complex, the hearing will be informal and then reviewed the procedures with the Board which already had them in hard copy. A list of those procedures which were discussed is as follows:

1. MCC will be given a hearing before the Association's Board of Directors before any decision is made regarding the possible expulsion of MCC from the Association and the termination of its membership in the Association. MCC shall be given notice of such hearing not less than fifteen days prior to the date of the hearing. Such notice shall be given by certified mail.

2. At the hearing, a representative of the Association will make a presentation to the Association's Board of Directors regarding the bylaws, policies, correspondence and other documents which relate to the setting of dues by the Association; the obligation of members to pay dues; and MCC's alleged failure to pay required dues. The Association's representative will be given the opportunity to testify, to ask other persons to testify, and to present documentary evidence regarding any matter which is pertinent to MCC's alleged failure to pay dues or the possible expulsion of MCC and the termination of its membership in the Association.

3. Following the presentation of the Association's representative, MCC and its representatives will be given the opportunity to present oral and documentary evidence regarding MCC's payment or non-payment of dues. MCC will be given the opportunity to ask persons to testify and to present documentary evidence regarding any matter which is pertinent to MCC's payment or non-payment of dues and the possible expulsion of MCC and the termination of its membership in the Association.

4. After the MCC presents its evidence, the Association's representative shall be permitted to present rebuttal evidence.

5. The hearing will be informal. Members of the Board and/or the Hearing Officer appointed by the Board, will be permitted to ask questions of any person who testifies. Otherwise, there shall be no cross examination or questioning of any witness. The formal rules of evidence will not apply. The Board may accept evidence of any kind which in its judgment is relevant to the issues at hand.

6. The Board may be represented at the hearing by an attorney who will serve as a Hearing Officer and Advisor to the Board of Directors. The attorney will provide the Board with legal advice. The Hearing Officer may ask questions of any witness. He will also rule on objections relating to evidentiary matters or any other procedural issues which may arise during the hearing. The Hearing Officer's ruling on any such matter may be reversed upon a majority vote of the Members of the Board present and voting.

7. Each side shall be permitted the opportunity to make closing remarks.

8. The members of the Board shall make no decision until all evidence has been adduced and closing arguments have been made. The Board will then deliberate and make a decision regarding the possible expulsion of MCC and the termination of its membership in the Association.

9. If the Board of Directors adopts a resolution to expel MCC and to terminate its membership in the Association, such expulsion and termination shall become effective five days following the date on which the resolution is adopted.

Stenberg then stated that he is assuming that Baack will be presenting the case for the Association. He then asked who will be presenting Metro's case. It was stated that Schmailzl will be presenting Metro's case. Stenberg asked if he was represented by counsel. Schmailzl replied in the affirmative and Stenberg asked for them to be introduced. Introduced were Robert Cannella and James Thibodeau for Metro.

Stenberg asked Baack to come before the Board and present his case. To facilitate the discussion, Stenberg asked if Baack would be offering any exhibits and Baack replied in the affirmative. Stenberg then asked how many exhibits Baack had. Baack replied that he had nine exhibits. Stenberg asked if Baack had shown those to the representatives of Metro. Baack replied that he had not and took a moment to show them to the Metro representatives. Grabowski asked if the Board would have access to them and Baack replied in the affirmative.

Stenberg asked if Cannella had the opportunity to review the exhibits and Cannella stated that he had no objections.

Stenberg asked Baack if he would be submitting exhibits one through nine into evidence. Baack replied in the affirmative. Stenberg stated that exhibits one through nine would be received into evidence and asked that copies be distributed at this time.

Stenberg then swore Baack in. Stenberg then told Baack to testify in a narrative fashion since he does not have his own counsel. Most everyone attending the hearing is familiar with the Association but Stenberg asked Baack to give a brief description of the Association as well as himself.

Baack stated that the Association was established in the mid 70's but did not take its current form until the mid 80's. In the 70's and 80's, it was simply an attorney and staff person who represented the community colleges before the Legislature but did not have a real established organization. They slowly became more established and in the mid 80's an Executive Director was hired to run the Association. Tom Johnston was originally hired for the position with Baack assuming the role in 1993. The Board is made up of two board members selected by each community college area with a term of one year.

Stenberg thanked Baack for that brief introduction and told him to proceed.

Baack then reviewed each exhibit with the Board and gave a brief explanation as to its contents. (A copy of those exhibits is enclosed with these board minutes.) After Baack's testimony, Stenberg asked if any member of the Board had any questions. Grabowski stated that on exhibit three Southeast had two asterisks by its name and asked if there should be two asterisks below on the footnote. Baack replied in the affirmative. Stenberg asked for any other questions for Baack. There were none.

Stenberg asked Baack if he had any other witnesses to call or any more exhibits to introduce. Baack replied in the negative. Stenberg asked if Baack rests his case and Baack replied in the affirmative. Stenberg stated that that will conclude the case on behalf of the Association and will now hear the case on behalf of Metro.

Schmailzl introduced himself to the Board and stated that he is interim President at Metro. Stenberg then swore Schmailzl in. Grabowski asked if the other presenter was sworn in. Stenberg replied in the affirmative. Cannella stated that on behalf of the Board he moves that the oath be stricken because he does not believe that Baack was sworn in.

Schmailzl stated that the focus of Metro's presentation centers around the funding formula. As the funding formula unrolled a couple of years ago, Metro supported the initial funding formula with the opportunity to tweak the formula after it started. That did happen with Metro presenting three tweaks to the Association which were accepted. At the time the formula was accepted, Metro stood to lose \$3 million dollars if the formula was not tweaked. At that point in time, Metro would receive about \$20 million dollars and if the formula was implemented, Metro would have received \$17 million dollars. So Metro proposed the tweaks and three of the six were accepted. Then when it was time to submit their budget to the state, in order to meet the LER level, Metro moved capital to tuition and all the levy went to general fund. At that period of

time, the general fund movement and the tweaks allowed Metro to receive the \$3 million dollars. So instead of losing \$3 million dollars, Metro gained \$3 million dollars to its current \$23 million dollar level. Schmailzl continued to state that the Metro Board at that time recognized that there would be continued negotiations that would go on in the second and third year and that is the year that they are in question now with movement to a revenue sharing phase and movement to a REU. Metro did not support that and as recently as the March 5, 2008, NCCA Board meeting, went on record requesting negotiation. At that time as the summer of 2008 moved on, the Metro Board felt there was not a movement towards listening to Metro's concerns. So exhibit five which was presented by Baack was the August 26, 2008, resolution that set in motion Metro's desire to only pay one-sixth of the expenses related to the NCCA. That one-sixth represented only the expenses, not the administrative salary costs. On December 19, 2008, Schmailzl did send a letter to Baack that indicated that Metro would pay the dues based on the August 26 resolution. Metro allowed the resolution to stay in place from August to December in order to see if any additional negotiations would take place. With that, Schmailzl closed Metro's side of the case.

Stenberg asked if any members of the Board had any questions for Schmailzl. There were none. Stenberg asked Schmailzl if he had any additional witnesses or exhibits. Schmailzl replied in the negative.

Stenberg asked Baack if he had any rebuttal he would like to offer. Baack stated that he believes the statement was made by Schmailzl that the thing that caused them to go from \$17 million dollars to \$23 million dollars was the fact that some tweaks were made to the formula when in all actuality what really made that happen was the fact that the Legislature and the Governor put in extra money into the formula to make sure that all the areas were at least held harmless for the first implementation of that formula. An additional \$12 million dollars was put into the community college formula to make sure that no one got hurt badly by that formula.

Stenberg asked for any questions for Baack based on his rebuttal testimony. There were none.

Stenberg then stated that by the rules provided there will be closing arguments although if both sides would prefer to waive that, we can certainly proceed that way. Both Baack and Schmailzl waived their closing arguments. Stenberg continued to state that if the closing arguments are waived, that would conclude the hearing and the Board will now need to deliberate and adopt a resolution to expel Metro from the Association and terminate its membership in the Association or alternatively, adopt a resolution to continue Metro's membership in the Association. In his opinion, all deliberations and a vote on any such resolution should take place in an open session.

President Schluckebier stated that he believes the best way to handle the resolution that was in the handouts would be for someone to offer a motion on the draft resolution and if it is seconded, continue discussion based on the motion offered.

**MOTION BY TOM PERKINS AND SECOND BY ROBERT FEIT that the NCCA Board of Directors adopt the resolution to expel Metro.**

President Schluckebier asked Stenberg to read the draft resolution.

**Resolution to Expel Metropolitan Community College from the Nebraska Community College Association and to Terminate Its Membership in the Association**

This matter came on for consideration at the first quarterly meeting of the Nebraska Community College Association Board of Directors held on February 23, 2009, in Lincoln, Nebraska. In addition to the regular business of the Board, it also considered the possible expulsion of Metropolitan Community College (MCC) from the Nebraska Community College Association and the possible termination of its membership in the Association. MCC was permitted to adduce evidence and to make arguments regarding such possible expulsion and termination. Being fully advised, the Board of Directors finds as follows:

1. Notice of this meeting was duly published in full compliance with the Nebraska Public Meetings law and the Bylaws and Policies of the Association.

2. MCC was given notice via U.S. Certified Mail not less than 15 days prior to the meeting that the Board of Directors would consider expulsion and termination at such meeting. The notice included a statement regarding the procedures to be followed by the Board in considering expulsion and termination.

4. The NCCA office mailed agendas and supporting material to all NCCA board members and area offices no later than 10 days before the date of the meeting.

5. The Board finds that, according to NCCA Bylaw Article IX Section 3, each area member is to be assessed annual dues as determined by the Board of Directors based on the proposed budget for the ensuing fiscal year. Association Policy 5005 details how dues are to be allocated and states in pertinent part that: "Dues allocation will be based in the following manner: the first one-half of the total budget will be apportioned to each of the six areas equally and the second half of the dues will be apportioned among areas on a ratio of each area's audited REUs as to the total REUs of all areas." The policy also provides that: "Membership dues for the Nebraska Community College Association will be payable in full on or before January 1 of each year."

6. Consistent with this policy, it was determined that MCC's dues for 2009 are in the amount of \$73,648.20. Said sum was due and payable in full to the Association on or before January 1, 2009.

7. On October 14, 2008, invoice #2592 was sent by the Association to Metropolitan Community College requesting payment of \$73,648.20 for MCC's share of the NCCA's 2009 annual dues.

8. Thereafter, MCC indicated to the Association that it would not pay its full share of dues as computed in accordance with Policy 5005 and instead would pay only 1/6 of that amount or approximately \$9,452.

9. MCC thereafter tendered partial payment of dues to the Association in the amount of \$9,451.80. That partial payment was rejected. The Association through its representatives notified MCC that it was liable for the full amount of the annual dues assessed to MCC.

10. By letter dated January 7, 2009, Association President Lynn Schluckebier notified MCC that, unless MCC tendered full payment of its dues in the amount of \$73,648.20 on or before January 19, 2009, he would have the Board of Directors consider the possible expulsion of MCC from the Association and the termination of its membership in the Association.

11. MCC failed to tender payment in accordance with the President's letter.

12. The Board finds that 2009 dues in the amount of \$73,648.20 were correctly allocated to MCC in the manner specified by Association Policy 5005 and that MCC was obligated to pay dues in that amount to the Association on or before January 1, 2009.

13. MCC has, as of the date of the meeting referenced above, failed and refused to pay its 2009 dues to the Association and is now indebted to the Association in the amount of \$73,648.20.

14. The Board finds that under Article III, Section 2 of the Association's Bylaws, the payment of dues is a condition of membership in the Association.

15. Further, because of MCC's failure to pay its dues, it will be necessary to allocate the share of the budgeted costs which should be have been paid by MCC to the other community college areas and indirectly to the taxpayers who reside therein. The Board finds that it would be unfair and at least arguably unlawful to permit MCC to continue to receive the benefits of Association membership while allocating the burden associated with MCC's nonpayment of dues to the other areas and to the taxpayers who reside therein.

16. The Board has considered the provisions of NEB. REV. STAT. § 85-1502 which states in pertinent part that:

(1) . . . It is . . . the intent of the Legislature that coordination of the community colleges by the Coordinating Commission for Postsecondary Education be conducted through an association of the boards. (2) All of the boards shall be a part of and shall be represented by such association.

17. The Board finds that it was the intent of the Legislature in enacting a statute which requires all community college areas to be part of an association to also require each area as a condition of membership to provide financial support to such association as reasonably allocated by the Association's Board of Directors. The statute cannot be reasonably interpreted as permitting an area to receive the benefits of Association membership while that member's share of the costs of operating the Association are paid by the remaining members and indirectly by the taxpayers residing therein.

18. Accordingly, the Board finds that Metropolitan Community College should be, and hereby is, expelled from the Association and its membership in the Association is terminated.

19. The expulsion and termination shall become effective five days following the adoption of this resolution.

20. Upon the expulsion of MCC and the termination of its membership in the Association, MCC will immediately forfeit all rights as a member of the Association, including but not limited to its right to participate in Association activities or to participate in any way in the formulation of Association Policy or in the governance of the Association. Because membership in the Association is a necessary condition to a member's right to have representation on the Board of Directors, membership on the Board of the representatives designated by MCC as Directors shall immediately terminate upon the effective date of the expulsion of MCC and the termination of its membership in the Association.

21. Upon making full payment to the Association of its 2009 annual dues prior to the end of the 2009 calendar year, MCC shall automatically be reinstated as a member of the Association with all of the rights, privileges and responsibilities pertaining thereto. If MCC seeks reinstatement following the end of the 2009 calendar year, it shall be readmitted only upon the full payment of its 2009 annual dues and an additional amount equal to the dues which the Board finds would have been allocated to MCC in any such subsequent year had its membership in the Association continued uninterrupted.

22. Notwithstanding the expulsion of MCC, it shall remain liable to the Association for dues, assessments, or fees as a result of any obligation incurred or commitments made prior to the effective date of the expulsion. Such obligations include, but are not necessarily limited to MCC's 2009 annual dues in the amount of \$73,648.20. The Association reserves the right to collect any such amounts which are due to the Association through such reasonable means as may hereinafter be authorized and approved by this Board.

President Schluckebier thanked Stenberg and asked for any discussion or comments.

Grabowski stated that in reference to number 15 in the resolution, it says 'The Board finds that it would be unfair and at least arguably unlawful to permit MCC...'. He would like to make a motion to strike the part that says at least arguably unlawful because if we were to look at the entire resolution, things could be arguably unlawful.

**MOTION BY STEVE GRABOWSKI AND SECOND BY TIM POTTER that the NCCA Board of Directors amend the resolution to strike 'at least arguably unlawful' from Section 15.**

Potter stated that he would like to mention that when Baack stated that the budget would remain unchanged even with decreased revenue in his testimony and this refers to allocating the burden to the other colleges, he does not buy the idea that the budget has to remain unchanged and all of the costs have to be allocated to the other colleges. This Board has authority over the budget and he thinks it would be regrettable for an organization that's faced with reduced revenue for the governing body to not reduce the budget accordingly or at least to some extent, he thinks would be somewhat irresponsible. He thinks it's the duty of the board when faced with less revenue to take

the appropriate steps so he does not buy the argument that the budget can't be reduced and the other colleges have to absorb Metro's share.

Perkins stated that he is having a difficult time relating the discussion about budget to unlawful. He thinks that does not speak to Grabowski's amendment thru his statement.

Stenberg stated that the reason arguably unlawful appears in the resolution is because the Nebraska Supreme Court has held that there are constitutional provisions that prohibit commutation of taxes which states that taxpayers in one political subdivision cannot be taxed for the benefit of other political subdivisions. Grabowski asked Stenberg to repeat it. Stenberg stated that the Nebraska Constitution provides that taxpayers in one political subdivision cannot be taxed for the benefit of another political subdivision. Potter stated that that was interesting and that it has some bearing on the formula. Stenberg stated that it is an old case and goes back to what used to be called non-resident tuition. That is why the language is in there and whether it is decided to keep it or not is up to the Board.

President Schluckebier asked for any further discussion to the amendment to strike 'at least arguable unlawful' in Section 15 from the resolution.

A roll call vote was taken.

**Voting Aye:** Grabowski, Hornung, Perkins, Poessnecker, Potter

**Voting Nay:** Aerni, Feit, Gramberg, Oelsigle, Sasges, Schluckebier

**Abstain:** Wilson

**RESULT: Motion failed five (5) ayes, six (6) nays, and one (1) abstain.**

President Schluckebier asked for any further discussion.

Grabowski stated that he would like to amend number 17 which states 'The statute cannot be reasonably interpreted as permitting an area to receive the benefits of Association membership while that member's share of the cost of operating the Association are paid by the remaining members and indirectly by the taxpayers residing therein.'. He thinks that is someone's opinion that this statute cannot be reasonably interpreted but he could find ten attorneys that would say yes it could be reasonably interpreted.

**MOTION BY STEVE GRABOWSKI AND SECOND BY TIM POTTER that the NCCA Board of Directors amend the resolution to strike the last sentence from Section 17.**

President Schluckebier asked for any discussion on the amendment to strike the last sentence of Section 17 from the resolution.

Stenberg stated that this relates to the same principle as he discussed before. A burden cannot be imposed on taxpayers in one political subdivision for the benefit of another political subdivision. That was a significant factor in how he arrived with an interpretation of statute. It has not been construed by a court and if we ended up in litigation, it would be up to a court to set but it seems to him that the constitutional provision is controlling. It is just a constitutional fact that taxpayers in one political subdivision cannot be taxed for the benefit of another political subdivision.

Sasges asked Stenberg to explain what a political subdivision is. Stenberg stated that most units of government if they are not specifically an agency of state government, they are considered a political subdivision.

President Schluckebier asked for any other comments on the amendment to strike the last sentence of Section 17 from the resolution.

A roll call vote was taken.

**Voting Aye:** Grabowski, Potter

**Voting Nay:** Aerni, Feit, Gramberg, Hornung, Oelsligle, Perkins, Poessnecker, Sasges, Schluckebier, Wilson

**RESULT: Motion failed two (2) ayes and ten (10) nays.**

President Schluckebier asked for further discussion on the resolution.

Potter asked Cannella if he had any comments to make on any of the points of law mentioned in the resolution. Cannella replied in the negative.

Grabowski stated that on number 19 where it states 'The expulsion and termination shall become effective five days following the adoption of this resolution', he would like to insert the word calendar between five and days.

**MOTION BY STEVE GRABOWSKI AND SECOND BY DON OELSLIGLE that the NCCA Board of Directors amend the resolution and insert calendar between five and days in Section 19.**

President Schluckebier asked for any discussion on the amendment to insert the word calendar between five and days in Section 19 of the resolution.

A roll call vote was taken.

**Voting Aye:** Aerni, Feit, Grabowski, Gramberg, Hornung, Oelsligle, Perkins, Poessnecker, Potter, Sasges, Schluckebier, Wilson

**Voting Nay:** None

**RESULT: Motion carried twelve (12) ayes and no nays.**

President Schluckebier asked for any further amendments to the resolution.

Grabowski stated that in Section 20 it states that 'Upon the expulsion of MCC and the termination of its membership in the Association, MCC will immediately forfeit all rights...'. His question is whether that should be changed to five days because further down in the paragraph it states that it shall immediately terminate upon the effective date of the expulsion but the top portion does not reflect that upon the effective date MCC will be expelled. Grabowski stated that he would like to add to the top portion the phrase will immediately terminate upon the effective date of expulsion. The top portion speaks to right now but the bottom portion refers to after the effective date.

Stenberg stated that Section 19 states that the expulsion and termination won't become effective for five days. Section 20 states that upon the expulsion of MCC. Grabowski stated that the second sentence says will immediately forfeit all rights as a member. Stenberg stated that it is only after the effective date of the expulsion. Grabowski withdrew his motion.

President Schluckebier asked for any further amendments to the resolution.

Potter stated that it has pretty much been stated before, mostly at the September board meeting, but since this is the official expulsion proceeding, he wanted it to be part of the record as far as Metro's reasons for reducing their dues. He wanted to point out that they have not withdrawn because if they were withdrawing, they would have not paid any dues. They did send about \$9,000 to the NCCA and the reason for the partial payment and substantial reduction of the dues was because they feel that whatever benefits there are for belonging to the NCCA have not accrued to Metro. They feel that they are not getting the benefits that they should from membership in terms of having a fair hearing for their concerns which was reflected in the vote in September on allowing the CEO's negotiate. Potter continued to state that from the point of view from their taxpayers and students, if they were to continue sending money to the NCCA to be continually out voted on the Board to have their concerns ignored and to have the Executive Director and the lobbyist work against their interests, they should all be voted out of office if their taxpayers and students knew about that. Metro cannot in good conscience continue to pay dues with that being the case. They feel they have made significant efforts including today to try to encourage the Board to pursue negotiations and they have been continually rebuffed. That being the case, the Board can vote how it please regarding Metro's membership but after the vote goes as anticipated, it will be the end of the NCCA as it's currently constituted. Metro will not be a member of this

organization as it is currently constituted, there will need to be changes and those changes will probably be up to the Legislature as will changes in the formula. Those are Metro's reasons, they stick by them, are comfortable with their position, and the Board will work its will on the resolution.

Perkins stated that he has pondered this situation since it began and would like to make two observations. One of which is there will be no winners, we will all be losers in this situation of that he has no doubt. The second being that a few years ago Western was in a similar situation as Metro. They were being placed in a situation where they were being asked to give up two or three million dollars in order to make things even and they opposed that. One thing that they did not do was believe that they should not pay their dues. They believed they needed to continue to participate in the Association so that things could get worked out. Perkins continued to state that there are other issues that will come before community colleges besides money and in some point in time, someone may find themselves alone but that is the benefit of an association. Western felt like they needed to continue to participate in the NCCA regardless of the fact that they had similar anxieties, similar anger about what was going on. Those are two different positions, Metro has made its point and Western has also made its point when they had their back to the wall a few years ago.

Sasges asked Potter for a point of clarification in his comment that this will disband the NCCA Board. Potter replied that with Metro leaving obviously the NCCA will cease to exist with six members, it will have five so obviously it won't be the same organization so there will be some kind of change in the offing he assumes depending on the reading of some state statutes. So there will be some kind of change coming forward he thinks.

Sasges then asked if that was an ulterior intent that it will dissolve the NCCA because he knows that Newell made that statement at one time. Potter replied that in evidence to their offer today, they wanted to stay in but it doesn't seem like they are getting anywhere in terms of a fair hearing for their points of view. They are not going through all this just for the sake of trying to reorganize the NCCA, that is not their goal. Their goal has been with coming up with a funding formula that is acceptable to all the colleges. Now that means that all the colleges are not going to be happy with it and that is the nature of compromise. Potter continued to state that that has been their goal and just going through this just for the sake of reorganizing NCCA was not part of that goal.

Feit stated that Potter has made a statement a couple of times that if we were to go back and look at this again and none of the colleges are going to be happy with it when it comes out but if the Coordinating Commission would meet, review it and say this looks pretty good, Metro probably still wouldn't accept it based on what Potter is saying right now. Potter asked why does Feit assume that. Feit responded with Potter's statements that it would not be acceptable to Metro and that no college is going to be happy with it. Does that mean that Metro is going to continue to fight us? Potter replied that what he said was the nature of compromise is that all of the parties are probably

going to a little unhappy with the results. It is a matter of give and take and he wasn't aware that the Coordinating Commission was going to take a look at the formula. Feit replied that he didn't say it was but that was one of the proposals. Potter stated that one of their legislative bills is that the Coordinating Commission does a study of the community colleges if that is what Feit is referring to but that is not for the Coordinating Commission step in and review the formula and come up with a new formula. That is an overall study of the community colleges and the efficiency of them. Feit stated that it would study the formula and Potter replied that the formula would probably be part of it. Feit then stated that Potter is saying that if it were studied, they would say okay but that is not true. Potter stated that that is not what he said. Feit stated that it was said that Metro wanted to throw everything out and start again. Potter replied that that is not what he said.

Grabowski stated that it is not their intent to disband the NCCA, it never was and it never will be. It is a great organization and it's not to say that if Metro leaves everyone else will leave. That is not true, no one on the Metro board has thought that would be the case. Grabowski then stated that it has been said that Metro wants the entire formula thrown out and that is absolutely not true. They have never said that at least in the last two and one-half years that he has been on the Metro board. As far as having the Coordinating Commission possibly looking at the system, there was a piece of legislation introduced to possibly have that done but this Board chose to oppose that so that probably won't be an option either. Grabowski just wanted to reiterate that it is not Metro's intent to destroy anything.

President Schluckebier asked for a roll call vote on the motion to adopt the resolution to expel Metro as amended.

**Voting Aye:** Aerni, Feit, Gramberg, Hornung, Oelsigle, Perkins, Poesnecker, Sasges, Schluckebier, Wilson

**Voting Nay:** Grabowski, Potter

**RESULT: Motion carried ten (10) ayes and two (2) nays.**

President Schluckebier stated that the resolution passed and will become effective March 1, 2009.

Grabowski asked that before the Board leaves the action agenda, an item was tabled earlier which needs to be brought up. Roberts Rules of Order states that if an item is tabled it can be brought back up before the action agenda is done. Since there was a deadline put on the item, he would like to bring it back up off the table and vote on that item. President Schluckebier asked if Grabowski was moving to bring it back up off the table and Grabowski stated that he doesn't think it needs a motion to bring it up. President Schluckebier stated that it does.

**MOTION BY STEVE GRABOWSKI AND SECOND BY TIM POTTER that the NCCA Board of Directors bring the previously tabled item of opposing LB 655 off the table.**

President Schluckebier asked for discussion. Perkins asked for clarification on the vote. President Schluckebier stated that a yes vote would bring the item off the table for debate now and a no vote would leave it on the table. Grabowski stated that it cannot be left on the table before the end of the meeting but another motion could be made to indefinitely postpone it. President Schluckebier stated that in the original motion though there was no time table set. Grabowski stated that according to Robert Rules of Order anything that's tabled should be brought up before the end of that particular meeting. Someone can indefinitely postpone a motion if that was the correct thing to do originally would have been to indefinitely postpone. Grabowski is just bringing it back up off the table to see if we can vote on the opposition of LB 655.

Grabowski asked for a ruling on whether he needs a vote to bring it up off the table. Aerni stated that it's a moot point because it is not on the agenda and she has no information on it and therefore cannot vote on it. Potter requested the opinion of Cannella. Cannella stated that his understanding is that it needs to be brought up but the chair can make that ruling. The proper way in his opinion would be to bring it back up or if the Board doesn't want to consider it, move to indefinitely postpone it.

Sasges agrees with Aerni that it has never been published as an action item, he has not seen the bill or a summary of it, he does not feel it is appropriate to even bring it up for a vote. Cannella agrees with Baack that if the things that are before the Legislature affecting the Association are on the agenda as an action item, then anything the Legislature is looking at this Board can take a position on. Stenberg stated that the Public Meeting Laws will control over Robert Rules of Order. As to the sufficiency of the agenda, he thinks it certainly could have been clearer. The agenda has to give reasonable notice to people who may be interested in attending the meeting about what sort of business is going to be transacted. Here it talks about legislative matters and appears under the heading of action items and it needs to be read in the context that it appears. Even though it is not a model of clarity on that question, Stenberg does believe that it does give reasonable notice that the Board would consider and possibly take action on that item. He believes that Cannella's suggestion is a good one to bring it off the table and then if people are inclined not to further debate it to entertain a motion to indefinitely postpone it.

Feit stated that he does not mind bringing it up off the table to discuss it but what he does mind is not having enough information. In the case of LB 400, it was brought up and the Board had copies. Feit continued to state that from his side, he does not have enough information to vote on it.

Grabowski asked if the Board could take a ten minute recess, have Baack get the bill and present it. The Board was going to take a five minute recess anyway and the bill is basically three paragraphs.

Aerni called for a vote to bring it up off the table.

President Schluckebier asked for a vote to bring it off the table. Discussion was then had concerning the need to actually have a vote to bring it off the table.

Baack stated that to him the clearer procedure would be for the Chair to simply rule that it is up off the table and then have a Board member make a motion.

President Schluckebier stated that the motion to bring LB 655 off the table is now off the table. He asked for any discussion.

**MOTION BY DON OELSLIGLE AND SECOND BY TOM PERKINS that the NCCA Board of Directors indefinitely postpone the Board's consideration of LB 655.**

President Schluckebier asked for any discussion. Grabowski stated that he would at least like copies of LB 655 passed out to the Board so that they know what they are postponing. He would like copies distributed so that people are at least knowledgeable about what they are postponing.

President Schluckebier stated that the Board will go ahead and vote.

A roll call vote was taken.

**Voting Aye:** Aerni, Feit, Gramberg, Hornung, Oelsligle, Perkins, Poesnecker, Sasges, Schluckebier, Wilson

**Voting Nay:** Grabowski, Potter

**RESULT: Motion carried ten (10) ayes and two (2) nays.**

The Board took a break beginning at 11:30 a.m. and returned at 11:40 a.m.

Grabowski and Potter left the board meeting at 11:30 a.m.

**9. COUNCIL OF CHIEF EXECUTIVE OFFICERS REPORT**

Dr. Ely briefly discussed the February 6 CEO meeting and some of the items which were discussed at that meeting. Those items were the SENSE Consortium, discussion of LB 103 with Dr. Marshall Hill, Foundation and Institutional Advancement, and succession planning. Dr. Ely then stated that EMSI economic impact study will be distributed to the State Senators. Baack stated that the association office will be

distributing the executive summary of the statewide report as well as some individual benefit summary pages to the Senators within the next week. Dr. Ely then stated that the CEO's did meet with Senator Adams after the meeting to discuss the current problems within the system. Senator Adams did ask to meet with the Metro Board in small groups to discuss how to possibly move forward and try to resolve some of the issues they have been talking about. Baack stated that they did not meet with him.

## **10. TREASURER'S REPORT**

Baack reviewed the financial statements with the Board and asked if they had questions. There were none.

Baack then stated that the Board will need to make some sort of decision regarding the position of Treasurer. Hornung asked if there was a succession rotation that would come into play. Baack replied in the affirmative and stated that Mid-Plains is next in line on the rotation.

Aerni asked if it would be presumptuous on the Board's position today considering Metro does have five days and they still are a member of this group. She then asked if the Chair could temporarily appoint someone. Baack stated that the Chair could temporarily appoint someone according to the rotation until the next board meeting. Wilson volunteered to temporarily assume the position until the next board meeting.

## **11. EXECUTIVE DIRECTORS REPORT**

Baack started off by thanking the Board members and stating that it has been a hard year. This was a hard thing to do and no one enjoys doing it. He continued to state that this has consumed a lot of his time and is hoping that he has not missed anything in the Legislature this session due to that. Baack then stated that he thinks Stenberg did a very good job and was very thorough. He does think that President Schluckebier should send out a letter after March 1 to inform the State Senators and other high ranking members of State Government that Metro is no longer a member of the Association.

Baack stated that he feels that the Board will need to rework the policies of the Association so that it can be brought up to date. The Bylaw and Policy Committee will need to get together for at least one day and review the entire manual. Perkins stated that there is some weakness in the bylaws/policies because nothing was in place that would have given the Board some guidance in situations like the one that happened today. Baack stated that he will be having Stenberg review the bylaws and policies to make any recommendations as to what we should have in them.

Aerni asked if our policies are sent to the Governor for review every year. Baack replied that we are not required to send them in for review. Aerni stated that it may be a

good idea to do that so that someone else can look at them and say that we are on the right track. Baack replied that the committee can discuss that when they meet.

Aerni suggested that the Association office release a press release following this meeting. Sages stated that a letter to the State Senators and state government heads may be enough at this time and suggested holding off on a press release for the moment. The Board agreed to hold off on a press release at this time.

## **12. ACCT STATE COORDINATOR REPORT**

Feit distributed a written report and reviewed it with the Board.

Perkins stated that Feit has worked very hard as state coordinator and informed the Board that his term in office on the ACCT Board will be up in October. Feit will be running for the position that Perkins will be vacating and asked the Board members who will be attending the conference this fall to help Feit campaign for the position.

## **13. COMMENTS & CONCERNS OF GOVERNING BOARD MEMBERS**

Perkins stated that everyone needs to start monitoring the stimulus bill and agreed that the Board needs to have a Bylaw and Policy Committee meeting.

Gramberg agreed that everyone needs to keep on top of the stimulus bill.

Feit reminded the Board that if he gets elected to the ACCT Board, they will need to find a new State Coordinator.

There being no further business, the meeting adjourned at 12:23 p.m.

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Lynn Schluckebier, President

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Diane Keller, Secretary