

**NORTH DAKOTA TEACHERS' FUND FOR RETIREMENT  
MINUTES OF THE  
JUNE 25, 2009, BOARD MEETING**

**BOARD MEMBERS PRESENT:** Mike Gessner, President  
Clarence Corneil, Trustee  
Kim Franz, Trustee  
Lowell Latimer, Vice President  
Wayne Sanstead, State Superintendent  
Kelly Schmidt, State Treasurer  
Bob Toso, Trustee

**STAFF PRESENT:** Steve Cochrane, Executive Director  
Fay Kopp, Deputy Executive Director  
Darlene Roppel, Administrative Assistant  
Shelly Schumacher, Retirement Program Manager

**OTHERS PRESENT:** Erica Cermak, NDRTA  
Gloria Lokken, NDEA-Retired  
Gary Rath, NDEA

**CALL TO ORDER:**

Mr. Mike Gessner, President of the Teachers' Fund for Retirement (TFFR) Board of Trustees, called the meeting to order at 1:00 p.m. on Thursday, June 25, 2009, at the State Capitol, Peace Garden Room, Bismarck, ND.

**THE FOLLOWING MEMBERS WERE PRESENT REPRESENTING A QUORUM: PRESIDENT GESSNER, MR. CORNEIL, MRS. FRANZ, DR. LATIMER, DR. SANSTEAD, TREASURER SCHMIDT, AND MR. TOSO.**

**APPROVAL OF AGENDA:**

The Board considered the June 25, 2009 meeting agenda.

**TREASURER SCHMIDT MOVED AND MR. CORNEIL SECONDED TO APPROVE THE AGENDA AS PRESENTED.**

**AYES: TREASURER SCHMIDT, MRS. FRANZ, DR. SANSTEAD, MR. TOSO, PRESIDENT GESSNER, MR. CORNEIL, AND DR. LATIMER.**

**NAYS: NONE**

**MOTION CARRIED.**

**MINUTES:**

The Board considered the minutes of the May 14, 2009, board meeting.

MRS. FRANZ MOVED AND DR. LATIMER SECONDED TO APPROVE THE MINUTES OF THE MAY 14, 2009, BOARD MEETING.

AYES: PRESIDENT GESSNER, MR. TOSO, DR. LATIMER, TREASURER SCHMIDT, MR. CORNEIL, DR. SANSTEAD, AND MRS. FRANZ.

NAYS: NONE

MOTION CARRIED.

INVESTMENT UPDATE:

Mr. Steve Cochrane, Executive Director, gave an update on the TFFR investment program. The estimated net return as of June 24, 2009, fiscal year to date is -25.66%. The State Investment Board (SIB) June 26, 2009, meeting agenda items were reviewed.

IRS DETERMINATION LETTER:

At the April 23, 2009 meeting Mrs. Fay Kopp, Deputy Executive Director, discussed with the board seeking an Internal Revenue Service (IRS) determination letter. The TFFR plan received a favorable determination letter in January 2001. Mrs. Kopp stated although TFFR has made every effort to do so, it is possible that tax law changes enacted since the last IRS determination letter may not have been reflected in plan statutes and administrative rules. Consequently, Mrs. Kopp and Mr. Aaron Webb, TFFR legal counsel, believe it would be prudent for the TFFR Board to request an IRS determination letter to confirm that the TFFR plan provisions continue to be in compliance with IRS requirements.

Mrs. Kopp and Mr. Webb contacted Ms. Carol Calhoun with Calhoun Law Group in Washington DC, who specializes in tax issues and governmental pension plans. TFFR and the Public Employees Retirement System (PERS) had previously retained Ms. Calhoun in 2000 to assist with a tax related issue and she has continued in that capacity on an "as needed" basis since that time.

The Board reviewed the June 3, 2009 written proposal from Ms. Calhoun to assist TFFR in filing an application for another IRS determination letter in 2010.

DR. SANSTEAD MOVED AND MR. TOSO SECONDED TO FILE AN APPLICATION FOR AN IRS DETERMINATION LETTER DURING CYCLE E AND TO ACCEPT MS. CALHOUN'S PROPOSAL DATED JUNE 3, 2009 TO PROVIDE SERVICES RELATING TO THE IRS DETERMINATION LETTER REQUEST.

AYES: MR. CORNEIL, DR. SANSTEAD, DR. LATIMER, PRESIDENT GESSNER, TREASURER SCHMIDT, MR. TOSO, AND MRS. FRANZ

NAYS: NONE

MOTION CARRIED.

IRS TAX WITHHOLDING TABLES:

Mrs. Kopp updated the Board on the IRS tax withholding tables for retiree pension payments. In March 2009, the IRS issued Publication 15-T providing new federal tax withholding tables in order to implement the "Making Work Pay" tax credit passed under the American Recovery and Reinvestment Act of 2009. The publication specifically indicated that the new tax withholding tables applied to tax withholding for pension benefits, even though the "Making Work Pay" tax credit did not apply to pensions. As a result, the new tax withholding tables create the potential for taxes withheld on pension payments to be less than the full amount required over the tax year and pensioners could owe unexpectedly higher taxes at the end of the tax year.

TFFR began using the new tables April 1, 2009 per IRS instructions. Retirees who have taxes withheld from their monthly TFFR payment received a TFFR Retiree Change Notice on April 1, 2009 which showed the difference in their net benefit amount and included a brief explanation of the reason for the change. A detailed notice was posted on the RIO website and is included with all requests for tax withholding forms. An article has been drafted for the summer retiree newsletters explaining the tax withholding issue and notifying retirees to complete a new tax withholding form if they are not having enough taxes withheld.

In response to concerns that the new tables would create under withholding for a significant number of retirees, on May 14, 2009 the IRS issued Notice 1036-P which also permits pension plans to adopt procedures to increase taxes withheld on pension payments. The Notice allows pension plans to choose one of two options: 1) continue using the tables implemented April 1, 2009; or 2) continue using the new tables implemented April 1, 2009 AND adopt an additional withholding procedure that increases the withholding by a specified amount depending on the pensioner's payment frequency, marital status and pension amount (per new table in Notice 1036-P).

Mrs. Kopp reviewed the options available to the board and the costs and concerns associated with adopting the new optional tax withholding procedure. After discussion,

**TREASURER SCHMIDT MOVED AND MR. CORNEIL SECONDED TO CONTINUE USING THE FEBRUARY TAX WITHHOLDING TABLES, AND NOT ADOPT ADDITIONAL WITHHOLDING PROCEDURE. STAFF SHOULD CONTINUE FOCUSING ON EDUCATING RETIREES ABOUT THE TAX WITHHOLDING CHANGES BY INCLUDING INFORMATION WITH THE RETIREE STATEMENTS IN DECEMBER, REMINDING THEM TO SEEK ASSISTANCE FROM TAX PROFESSIONALS, AND MAKE INDIVIDUAL TAX WITHHOLDING CHANGES IF NECESSARY.**

**AYES: MRS. FRANZ, TREASURER SCHMIDT, PRESIDENT GESSNER, DR. LATIMER, DR. SANSTEAD, MR. CORNEIL, AND MR. TOSO**

**NAYS: NONE**

**MOTION CARRIED.**

**TFFR FUNDING IMPROVEMENT STUDY:**

The TFFR Board will meet on August 17, 2009, with member and employer group representatives to begin a TFFR Funding Improvement Study. The Legislative Employee Benefits Programs Committee (EBPC) will review any legislative proposals. Proposals must be submitted to the EBPC by April 1, 2010 after review by TFFR's attorney and actuary. Mrs. Kopp reviewed EBPC current membership with the Board.

As requested by the Board, Mrs. Kopp provided a draft of questions relating to the constitutionality of possible member benefit and contribution changes. She also shared questions from NDEA relating to this issue. The Board asked that TFFR's legal counsel from the Attorney General's Office update legal research and respond to these questions at the August 17 meeting, or as soon as the updated legal review is completed.

Mrs. Kopp distributed projected funding levels based on variable employer contribution rate increases. Discussion followed on this and options available to the board as they proceed with the study. Based on topics discussed at this meeting, Mrs. Kopp will put together a list of items to be discussed at the August 17, 2009, meeting.

**2009-10 BOARD CALENDAR & EDUCATION PLAN:**

Mrs. Kopp reviewed the 2009-10 meeting schedule and education plan. Mrs. Kopp will continue to develop the education plan as needed.

No action was taken by the board.

**CONSENT AGENDA:**

**TREASURER SCHMIDT MOVED AND DR. LATIMER SECONDED TO APPROVE THE CONSENT AGENDA.**

**AYES: DR. LATIMER, MRS. FRANZ, DR. SANSTEAD, MR. TOSO, MR. CORNEIL, TREASURER SCHMIDT, AND PRESIDENT GESSNER**

**NAYS: NONE**

**MOTION CARRIED.**

**OTHER BUSINESS:**

Board members discussed possible attendance at the National Council on Teacher Retirement (NCTR) annual convention in Indian Wells, CA, on October 10-15, 2009.

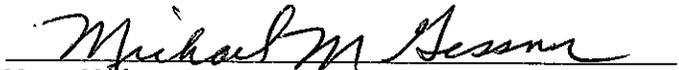
Treasurer Schmidt informed the board she has hired a new Deputy Treasurer, Ms. Carlee McLeod, effective June 15, 2009.

The next board meeting will be held on August 17, 2009, at 8:30 a.m., at the State Capitol, Peace Garden Room, Bismarck, ND.

**ADJOURNMENT:**

With no further business to come before the Board, President Gessner adjourned the meeting at 3:20 p.m.

Respectfully Submitted:

  
Mr. Mike Gessner, President  
Teachers' Fund for Retirement Board

  
Darlene Roppel  
Reporting Secretary