

## Summary Update Number 12, March 15, 2005

Lionel M. Raff  
Regents Professor  
Chair of the General Faculty

The purpose of this and previous Summary Updates is to keep all Faculty informed of recent events that have occurred and of initiatives currently in progress. All Summary Updates may be found on the webpage for the Faculty Council.

### Special Report: Update on Financing for the Stadium

Mr. Kirk Jewell, President and CEO, OSU Foundation  
Dr. David Bosserman, Vice-President for Business and Finance, OSU

The first half of the Faculty Council meeting on March 8, 2005, was devoted to hearing a special report on the current plans for financing Phase II of the stadium construction. The report was delivered jointly by Mr. Kirk Jewell and Dr. David Bosserman. The essential details of the financing plan are as follows:

#### The Interim Financing Agreement (IFA)

1. The OSU Foundation agrees to make up to \$40,000,000 available to the University. All funds will be repaid by March 31, 2010. There shall be no prepayment penalty.
2. Interest only shall be paid on money advanced to the University at a floating interest rate equal to the LIBOR rate, adjusted monthly, plus 200 basis points. Interest is payable quarterly. If default occurs, this interest rate increases to the LIBOR rate plus 500 basis points. The LIBOR rate is defined to be the rate of interest quoted for the London Interbank Offered Rates (LIBOR) 90-day category of the "Money Rates" column in the Wall Street Journal from time to time as the average of quotations at major money center banks.
3. The collateral pledged by the University is all revenues from club seats, suites, and any cash pledges from the South and North sides of the stadium, a first and prior right to any and all Revenue Enhancements and all proceeds of football season tickets sales, all proceeds and products of the items or types of security described in Article II including without limitation, all cash, money, and deposits of the University at any time in the possession or control of the Foundation. Revenue Enhancements are defined to be surcharges, seat licenses, donor/priority seating increases or like revenue enhancements as may be necessary or appropriate to achieve adequate interest and reimbursement service coverage.

A complete copy of the IFA can be obtained by contacting the office of the Vice-President for Business and Finance.

Following the presentation, Mr. Jewell and Dr. Bosserman responded to questions from the Councilors for approximately 30 minutes. The specific questions can be found in the minutes of the meeting that will be available for distribution in the near future.

The most important question asked during the discussion was "Why is the IFA not a loan? What is the difference between the IFA and a loan?" Mr. Jewell responded to this question with the statement, "I don't know. The attorneys say it's (IFA) legal." Dr. Bosserman did not comment on this question.

The significance of the question and the response is that Oklahoma law prohibits State agencies, including universities, from taking out loans. If the IFA is a loan, it is illegal. The IFA provides money to the University in return for a carefully described rate of interest. The agreement has a definite time period for complete repayment of the money (March 31, 2010). The University has pledged substantial collateral to secure the money provided by the Foundation. The IFA contains detailed provisions concerning default and remedies. These are all the provisions that one normally expects to see in a loan. Yet, both the University and the Foundation claim the IFA is not a loan and is legal. However, neither the CEO of the Foundation nor the Vice-President for Business and Finance at OSU could tell Councilors why it is not a loan.

This situation causes great concern among the Officers and the Councilors in the Council. To be certain that OSU is on sound legal and moral ground, we have requested a review of the IFA by Attorney General Drew Edmondson as to its legality under Oklahoma law. The letter transmitted to the Attorney General on March 11 follows:

**The General Faculty  
312 Public Information Building  
Oklahoma State University  
Stillwater, Oklahoma 74078**

*Officers*

Lionel Raff, *Chair*  
Bob Darcy, *Vice Chair*

Birne Binegar, *Secretary*  
Carol Moder, *Past Chair*

March 11, 2005

The Hon. W.A. Drew Edmondson  
Attorney General of Oklahoma  
State Capitol, Room 112  
Oklahoma City, OK 73105

Dear Attorney General Edmondson,

At the March 4th 2005 meeting of the Board of Regents for the Agricultural and Mechanical Colleges held at Oklahoma State University a motion passed by which "the administration of Oklahoma State University is hereby authorized to execute, deliver and perform an Interim Financing Agreement with the Oklahoma State University Foundation to provide interim financing to complete the balance of Phase II of the Boone Pickens Stadium renovation."

The Faculty are not convinced this is legal. We are repeatedly told that our University cannot borrow yet the Chair of the Board of Regents routinely refers to the arrangement as 'borrowing.' Faculty asked the President of the OSU Foundation, Kirk Jewell, to explain how the Interim Financing Agreement is not a loan and he said he could not.

To be certain that Oklahoma State University is not engaged in a sham arrangement to circumvent state requirements and is on safe legal ground in entering into the Interim Financing Agreement, we request that your office study the enclosed agreement and issue a formal opinion on its legality.

Faculty are also concerned because there is a very real threat our University will become involved in a costly mess that will set back much needed progress. A stadium construction schedule was set that took no account of the lack of available funds. Available money was short and costs underestimated. We are told about \$82 million of the \$100+ million needed has been raised but it is also clear that of the approximately \$44 million needed for Phase II the only available money is the \$9.6 million realized from last Fall's \$32.3 million extension of student fees from 2024 to 2034.

Finally, faculty are concerned because the stadium is threatening the education mission of the University. The Regents acknowledged the threat in their resolution when they said "It is imperative that the Boone Pickens Stadium Phase II be completed on schedule so maximum fundraising efforts can be applied to scholarship and academic fundraising initiatives."

We ask that you do what we cannot. Look into this arrangement and determine if it is legal, proper and sound.

Respectfully,

(The letter is signed by all Faculty Council Officers, Lionel Raff, Bob Darcy, Birne Binengar, and Carol Moder. Copies were transmitted to Mr. Kirk Jewell, Dr. David Schmidly, and Dr. David Bosserman.)

Copies of the letter to the Attorney General were sent via email to each OSU/A&M Regent along with the following cover letter from the Chair of the General Faculty:

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To: Members of OSU Board of Regents  
From: Lionel M. Raff, Regents Professor, Chair of the General Faculty

At the meeting of the OSU Faculty Council on March 8th, Mr. Kirk Jewell, President and CEO, OSU Foundation, and Dr. David Bosserman, Vice-President for Business and Finance, OSU, gave a special report on the details of the proposed Interim Financing Agreement (IFA) that is now pending to provide financing for completion of Phase II of the stadium. Their presentations were followed by approximately 30 minutes of questions and comments by the Councilors representing the OSU Faculty.

The most important question asked was why is the IFA not a loan that, under Oklahoma law, is illegal for the University to negotiate. The councilors made the points that the IFA provides money to the University; it charges the University interest on the money loaned that Mr. Jewell

stated would be about 5% per annum; there is a carefully defined time period for retiring the debt (5 years); specific penalties are enumerated for default; collateral is pledged to secure the monies advanced by the OSU Foundation. All of these features are precisely those one sees in a loan. In response to the question of why the IFA is not a loan, Mr. Jewell responded "I don't know. The attorneys say it's legal." Dr. Bosserman added nothing that answered this question.

We have informally obtained an opinion from a different attorney. His comment was that the IFA may be legal but, at best, it is right at the edge of being illegal and it may be illegal. Under such circumstances, the Officers of the General Faculty feel that it is both appropriate and prudent to obtain an official ruling by the Attorney General of the State before proceeding to enter into this agreement. Pursuant to this view, we have transmitted a copy of the tentative IFA along with the attached letter to the Attorney General asking for such a ruling. As Chair of the General Faculty, I urge the Regents and the Administration to join us in this request.

If Oklahoma State University seeks to be a role model for the young men and women of the State, Faculty, Administration, and Regents must obey the law. We must also not take actions that are at the edge of legality and, therefore, questionable without first making certain that we stand on solid legal and moral ground.

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I have now been informed via the Daily Oklahoman who obtained the information from Mr. Charles Price, Public Relations Director for the Attorney General's Office, that Faculty do not have the legal right to request a ruling from the Attorney General. Only the Regents can make such a request in behalf of the University. Perhaps the Regents will see fit to make this request. At this writing, I am exploring other possible approaches to the problem.

## Recommendations and Resolutions Passed by Faculty Council

At the March 8 meeting, the Faculty Council approved the following recommendation to President Schmidly.

### Recommendation on "Login Procedures for Student Computer Labs"

The following recommendation passed unanimously:

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The Faculty Council Recommends to President Schmidly that: the Administration sets a goal that the login procedure for student computer labs be unified regardless of which entity controls the lab and reports regularly to the Faculty Council on the progress of such action. Although these labs may operate with different software and purposes, a unified login procedure will ensure that students know they can use the same username and password to enter and access an initial desktop at any computer lab on campus.

The rationale given in support of the recommendation is that the multitude of login names and passwords often leads to a situation in which a student logs in incorrectly and is

subsequently locked out of the system and unable to access services. In such a case, to regain access, the student must determine which entity controls the system and then hope that the entity is open at the time or has a help desk for consultation. One negative point raised during the discussion relates to possible additional security problems if common login and passwords are employed.

## Pending Actions

The survey of health care benefits at Big 12 universities has been completed. Assistant Vice-President Anne Matoy distributed a report of their findings. At present, Human Resources is considering various options for OSU employees. One of these is the inclusion of a catastrophic insurance option. A copy of the report can be obtained in Human Resources.

Toward the latter half of March, all Faculty will receive ballots for the election of the new Vice-Chair and Secretary of the Council and for elections of about one-third of the councilors. Please consider your choices carefully and vote.

Votes on the revisions to Appendix D and on the Rank-in-Class evaluation proposal will come up at the April meeting of the Council after which votes of the General Faculty on these issues will be sought.

## Committee Updates:

### Athletic Committee

Dr. Don Murray, Chair, distributed a report of income and expenses incurred by the Department of Athletics during FY04. The report shows a total income of \$46,902,062. This income includes money raised by the OSU Foundation for athletics that totals \$19,376,956. The report shows total expenses of \$45,333,160 so that the Intercollegiate Athletics Program showed a net profit for FY04 of \$1,568,892.

I think it is worth noting that without donor support from the OSU Foundation, athletics would have run a deficit of \$17,808,064. The complete report can be obtained from the Committee Chair, Don Murray.