

Summary Update Number 13, March 23, 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.

Update on Financing for the Stadium

In Summary Update Number 12 (see Faculty Council webpage), I summarized the content of the special report given by Mr. Kirk Jewell, President and CEO, OSU Foundation, and Dr. David Bosserman, OSU VP for Business and Finance, on the Interim Financing Agreement (IFA) between the OSU Foundation and the University to partially fund Phase II (north side) of the stadium. The Officers and Executive Committee of the Faculty Council are concerned that this agreement may violate State Law that forbids the University from obtaining loans. We, therefore, sent a copy of the IFA to the Attorney General of the State along with a request for a ruling on its legality. The Attorney General refused on the grounds that Faculty do not have the legal right to request a ruling by the Attorney General. I then contacted Mr. Scott Meacham, Director of the State Finance Office, and the Governor's Secretary of Finance and asked that he request this ruling from the Attorney General. I was never able to speak directly with Mr. Meacham, but Ms. April Marciszewski, reporter for the Tulsa World, also contacted Mr. Meacham and raised the issue. She informed me that Mr. Meacham refused to make the request.

With the above refusals, the Council is left with no straightforward way to obtain an independent legal opinion on the legality of the IFA. The only other possibility would be to retain legal counsel to pursue the issue in the courts. The financial requirements for such an approach are beyond the means of the Council.

The Daily Oklahoman has reported that counsel for the OSU Foundation claims the IFA to be legal on the grounds that no State money will be used to repay the loan or the interest. These payments will come from revenue generated by the football stadium and from private donations. Assuming this legal position to be correct, what guarantee exists that the revenue from these sources will be sufficient to repay the loans plus interest? If these revenue streams fall short, what revenues will be used? The only response we have received to this question is 'The loans would have to be repaid using funds from some source.'

To put the above question in perspective, we need to examine the extent of the debt incurred by the University in behalf of the stadium and the magnitude of the revenue produced by the stadium. The debt is easy to document. It is as follows:

Phase I of the stadium (south side):

1. \$16,000,000 loan from BoA. Interest rate: LIBOR + 0.95% (this was 2.31% on June 30, 2004). (Source: Page 16, OSU Foundation Report, 2003-2004)
2. \$19,370,000 Athletic Facilities Revenue Bonds, Series 2003. I have no information on the term of the bonds or the interest rate. (Source: Page 17, OSU Foundation Report, 2003-2004)

Phase II of the stadium (north side):

1. \$33,000,000 extension of G/I Arena bonds secured by student fees through 2034. This amount includes the interest. (Source: Faculty Council Minutes and Vice President Bosserman) This extension was opposed by the Faculty Council by a 17-6 vote, which was ignored by the Regents and Administration.
2. \$35,000,000 to \$40,000,000 IFA agreement. Interest rate: LIBOR + 200 points. Term of loan is 5 years. (Source: Actual IFA agreement-available upon request)

Total Debt:

Phase I: \$35,370,000 + interest

Phase II: \$35,000,000 to \$40,000,000 + interest + \$33,000,000

Total Debt to Date: \$103,370,000 + interest to \$108,370,000 + interest.

With a total debt of between \$103 to \$108 million plus interest, it is relevant to examine the net revenue generated by athletics in FY04. Since the loans, bonds, and IFA are secured by revenue from the stadium, the most cogent data would include only that portion of the net revenue generated from that source. That figure is difficult for me to determine, but we do have the Income Statement prepared for all athletics by Dr. Birdwell. This was distributed at the last meeting of the Faculty Council. The total income from intercollegiate athletics and the OSU Foundation for FY04 was \$46,902,052. This total includes donations through the OSU Foundation of \$19,376,956. The total expenses reported were \$45,333,160. The net profit was, therefore, \$1,568,892. However, one of the listed expenses is \$1,892,226 for 'debt service'. Consequently, the total money in FY04 that could have been applied to service the principle and interest on the \$70 to \$75 million in loans is about \$3,461,000. This amount will do little more than pay the interest, if that. The counter argument is that revenues will increase once the north side of the stadium is completed. This is true provided donations continue unabated and the athletic teams continue to win.

Do not think that this process of borrowing is going to end with Phase II of the stadium. Phase III, west end, is already planned. After that, there are plans to add a second deck. A 'bubble' over the stadium has been discussed. And when these are complete or before, the baseball stadium will probably be the next item on the agenda. The Regents have frequently spoken in terms of "keeping the momentum going". The only momentum I can see is 'Borrowing Momentum'.

Appointment of Director and Dean of Agriculture and Natural Resources

As most of you know, Dr. Robert E. Whitson has just been appointed as Director and Dean, College of Agriculture and Natural Resources. The Officers and Executive Committee of the Faculty Council are concerned about the process by which this appointment was made and its nature. Specifically, we are concerned that the action may violate affirmative action and EEO hiring laws. We have, therefore, transmitted the following letter to the OSU/A&M Regents:

**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*

To: Oklahoma A&M Regents
From: Lionel M. Raff, Regents Professor, Chair of the General Faculty
Subject: Affirmative Action and Equal Employment Opportunity Regulations
Date: March 16, 2005

At your meeting on March 4th in Stillwater, you, as Regents, approved the appointment of Dr. Robert E. Whitson as Director and Dean, Agricultural Sciences and Natural Resources.

We, the Officers of the General Faculty, are deeply concerned about the propriety and legality of the process by which he has been hired. The letter of offer from President Schmidly and Provost Strathe to Dr. Whitson is attached to this communication. It states that "At the April 2005 Board meeting, we will ask the Regents to change your title to Vice President of Agricultural Programs and Dean of the College of Agricultural Sciences and Natural Resources. This will be a 12-month administrative appointment with an annual base salary of \$225,000 (\$18,750/month). The appointment will be effective June 1, 2005, unless mutually agreed upon otherwise."

This position was advertised nationally as Director and Dean, Agricultural Sciences and Natural Resources, not as Vice President of Agricultural Programs and Dean of the College of Agricultural Sciences and Natural Resources. Consequently, the candidates for the position assumed they were applying for a deanship. Had the position been advertised as a vice-presidency, the applicants could have been very different. Affirmative Action rules require a position to be filled as advertised. Under Equal Employment Opportunity, this is the law. Discussions with the Affirmative Action and EEO office confirm this view. The letter of offer makes it clear that Dr. Whitson is to be appointed as a vice-president before he assumes his deanship responsibilities on June 1, 2005. We believe such an appointment to be illegal.

Elevating the position of the dean of any college to the level of vice-president without any public discussion or faculty input is inappropriate. More seriously, even if such a decision had

been appropriately made, if OSU is to conform to fair hiring practices, to convert his appointment to a vice-presidency, the position must be advertised and a national competitive search conducted with appropriate search committees and Faculty counsel. In view of the stated position of the Administration to confer the appointment upon Dr. Whitson, there would be substantial questions of fairness and equal employment opportunity even in the event such a search were to be initiated. The University would have to take extreme care to ensure fairness and EEO.

The Officers of the General Faculty would like to know the position of the Regents in this matter. Thank you for considering this request.

Respectfully,

(Letter signed by Officers, Lionel Raff, Chair, Bob Darcy, Vice Chair, Birne Binengar, Secretary, and Carol Moder, Past Chair)

The letter of offer extended to Dr. Whitson is reproduced below:

March 3, 2005

Dr. Robert E. Whitson
4902 Firestone Drive
College Station, TX 77845

Dear Bob:

We take great pleasure in formally offering you the position of Director and Dean, Agricultural Sciences and Natural Resources, subject to the approval of the OSU/A&M Board of Regents. At the April 2005 Board meeting, we will ask the Regents to change your title to Vice President of Agricultural Programs and Dean of the College of Agricultural Sciences and Natural Resources. This will be a 12-month administrative appointment with an annual base salary of \$225,000 (\$18,750/month). The appointment will be effective June 1, 2005, unless mutually agreed upon otherwise.

The position will also carry the title of Professor with tenure in the Department of Plant and Soil Sciences, and we will work with you in obtaining an appointment to the Graduate Faculty.

A portion of your annual salary, which we have determined to be \$12,000 per year (\$1,000/month), is considered an administrative increment for your duties as Vice-President and Dean. In the event that you relinquish your administrative duties, the increment would be removed and the Provost would make a salary recommendation equal to 11/12th of your adjusted base, with an eleven-month faculty appointment.

You will also receive a telephone allowance of \$1,320 (\$110/month) for which you will maintain the appropriate telephone in accordance with OSU's wireless telephone policy. Additionally, you will receive an automobile allowance of \$15,000 (\$1,250/month).

OSU will pay for the move of your household to Stillwater from College Station, Texas, in an amount not to exceed \$10,000¹. A procedure exists whereby we can guarantee payment of the moving expenses by voucher, based on proper bids, etc, thus avoiding your having to make that personal cash outlay, which may help as you commit to the many other expenses associated with moving. Mr. Steve Stone will work with you to initiate the requisition and bidding process. Additionally, OSU will pay for one trip to Stillwater for house hunting purposes. You will be reimbursed for actual expenses not to exceed \$2,000.

As a full-time employee, you are eligible for enrollment in a full benefits package. OSU will pay the cost of standard health care and life insurance. You are responsible for paying the premium to cover family members in these programs and also the premium for optional programs such as long-term disability, dental, and vision..

You will have full authority to establish an organization with existing budgetary authorizations, or as modified by mutual agreement among you, the Provost, and me, to position and sustain the agricultural programs at Oklahoma State University as the premier component of our land-grant institution. You will be responsible and have the authority to represent the OSU agricultural and natural resources programs to the State legislators and our Congressional delegation. You also may reevaluate and make appropriate adjustments to the OSU strategic plan to reflect your priorities for our agricultural and natural resources programs.

Bob, we welcome you to our team. Please sign and return a copy of this offer at your earliest convenience.

Sincerely,

(letter signed by President David Schmidly
and Provost Marlene Strathe)

¹. The move of your household does not include boats, automobiles, or animals. The contract for moving your household will be bid by the OSU Purchasing Office. Should the bid exceed the amount stated; your department will be given the opportunity to modify the amount. Should the bid be less than the amount stated; OSU will be responsible for the lesser amount only.

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The above documents were FAXed and mailed to each Regent on Wednesday, March 16. As of this writing, we have received no response from the Regents.

I shall keep you informed of future developments.