



STATE OF NORTH CAROLINA  
Office of the State Auditor

Leslie W. Merritt, Jr., CPA, CFP  
State Auditor

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December 12, 2005

Dr. James Moeser, Chancellor  
University of North Carolina at Chapel Hill  
103 South Building  
Campus Box 9100  
Chapel Hill, North Carolina 27599-9100

Dear Chancellor Moeser:

We received a number of allegations through the State Auditor's Hotline concerning the University of North Carolina at Chapel Hill – School of Education Foundation, Inc. (the Foundation). The allegations included fiscal mismanagement and the absence of a governing board of directors.

We have completed a special review of these allegations. The following findings and recommendations are based on an examination of various documents and records including the Foundation's by-laws, applicable general statutes and interviews of School of Education employees.

**Violation of the Foundation's By-Laws and State Law**

Our review confirmed the Foundation has not maintained a governing board of directors. The Director of Administrative Services for the School of Education stated no active board has been in place for the Foundation and no annual meetings have been held since 1995.

The Foundation's by-laws require the establishment of a governing board of directors comprised of seven ex-officio directors and five or more elected directors. The by-laws also require annual meetings for review and discussion of Foundation activity. Ex-officio directors are required to serve terms concurrent with their respective offices within the School of Education or the University and elected directors are required to serve terms up to a maximum of three years.

In addition, Article 8 of the North Carolina Nonprofit Corporation Act requires that nonprofit organizations establish a board of directors for the purpose of managing the affairs of the organization except when the articles of incorporation provide for alternative governance.

**§ 55A-8-01. Requirement for and duties of board.**

(a) Except as provided in subsection (c) of this section, each corporation shall have a board of directors.

(b) All corporate powers shall be exercised by or under the authority of, and the affairs of the corporation managed under the direction of, its board of directors, except as otherwise provided in the articles of incorporation.

(c) A corporation may dispense with or limit the authority of a board of directors by describing in its articles of incorporation who will perform some or all of the duties of a board of directors; but no such limitation upon the authority which the board of directors would otherwise have shall be effective against other persons without actual knowledge of such limitation.

(d) To the extent the articles of incorporation vests authority of the board of directors in an individual or group other than the board of directors, the individual or group in the exercise of such authority shall be deemed to be acting as the board of directors for all purposes of this Chapter. (1955, c. 1230; 1985 (Reg. Sess., 1986), c. 801, s. 18; 1993, c. 398, s. 1.)

Thus, the Foundation is in violation of its by-laws as well as the above general statute. These violations could jeopardize the Foundation's tax exempt status under Internal Revenue Code Section 501(c)3. The loss of the Foundation's tax exempt status could in turn affect the School of Education's fund-raising efforts. Moreover, operating the Foundation without fiscal oversight from a board of directors increases the risk of asset misappropriation or other fiscal mismanagement.

**Recommendations**

The University should appoint seven ex-officio board members to the Foundation who in turn should elect five or more additional directors to ensure compliance with the Foundation's by-laws and state law. In addition, the Foundation should hold annual meetings to ensure compliance with Article III, Section 1, of its by-laws.

Please provide your written response to these findings and recommendations, including corrective actions taken or planned, by December 28, 2005.

In accordance with General Statute § 147-64.6(c)(12), the Governor, the Attorney General and other appropriate officials will receive a copy of this management letter.

If you have any questions or wish to discuss this matter further, please contact us.

We appreciate the cooperation received from employees of the University of North Carolina – School of Education.

Sincerely,



Leslie W. Merritt, Jr., CPA, CFP  
State Auditor

**Management letters and responses receive the same distribution as audit reports.**



UNC  
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December 20, 2005

Leslie W. Merritt, Jr., CPA, CFP  
State Auditor  
State of North Carolina  
2 S. Salisbury Street  
20601 Mail Service Center  
Raleigh, NC 27699-0601

Dear Mr. Merritt:

On behalf of Chancellor Moeser I write in response to your letter dated December 12, 2005 regarding the University of North Carolina at Chapel Hill School of Education Foundation, Inc. I am pleased to let you know that steps have been formulated to guarantee corrective action by the School of Education Foundation in reconstituting the board of directors.

I convened a meeting of the ex-officio members named in the bylaws dated May 1994. At that meeting, an action plan was approved to recruit and elect five additional directors in accordance with the bylaws. A recruitment letter will be sent to these individuals in January of 2006. Following receipt of this letter, a personal recruitment call or visit will be scheduled with each potential board member to secure their commitment to serve terms of up to a maximum of three years. A meeting of the Foundation Board will be scheduled in April of 2006. We believe that this plan complies with your request for corrective action and is in accordance with the Foundation's by-laws as well as Article 8 of the North Carolina Nonprofit Corporation Act.

Your letter also referred to allegations of fiscal mismanagement. I trust that after a thorough review by your office, these allegations have been cleared. If this is not the case, an appropriate notice from your office detailing your concerns would be appreciated. The most recent audit of the School of Education Foundation, conveyed to us in June 2005 by Blackman and Sloop, did not report any mismanagement of assets.

If you have any questions regarding this plan for corrective action, please feel free to contact me at 919-966-1356.

Sincerely,

Thomas James  
Dean

cc: Chancellor Moeser  
Pat Crawford  
Mike Abel  
Matt Kupec