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Greg Ott, *Acting Deputy Attorney General*

DEFERRED COMPENSATION SUB-COMMITTEE MEETING MINUTES

Friday, April 6, 2018

The sub-committee meeting of the Deferred Compensation Committee was held on Friday, April 6, 2018, at 10:00 a.m. in the Main Board Room of the Nevada State Library and Archives Building, 100 North Stewart Street, Carson City, Nevada. Attendees participated in person or by teleconference.

A copy of the meeting material including this set of meeting minutes, the agenda, and other supporting material, is available on the Nevada Deferred Compensation website at:

<http://defcomp.nv.gov/Meetings/2018>.

MEETING ATTENDEES

Rob Boehmer, NDC Executive Officer
Kent Ervin, NDC Committee Vice Chair
Greg Ott, Deputy Attorney General
Frank Picarelli, SegalMarco (by phone)
Mark Stevens, NDC Committee Chair
Melanie Walker, SegalMarco (by phone)

1. Call to Order/Roll Call

Chair Mark Stevens called the sub-committee meeting to order at 10:25 a.m., on Friday, April 6, 2018. Mr. Boehmer took roll.

2. Public Comment

No public comment.

3. Informational- Discuss potential changes to the Nevada Public Employees' Deferred Compensation Program (NDC) Plan Documents.

Chair Stevens discuss potential changes to the NDC Plan Documents. Most of it was centered around the term administrator and whether they should use it in each of the instances in the Plan Document or if it would be better to identify the Executive Officer of the Committee and in certain instances the Committee and Executive Officer should be referenced as the administrator, when appropriate.

Vice Chair Ervin wanted to hear from Ms. Walker where the term administrator came from and if it had some special meaning. Whether the term came from IRS or Department of Labor, what were the duties and responsibilities of a "administrator" particularly in reference to policy oversight and managerial, day to day administration. What did the term specifically mean in the Plan Document?

Mr. Boehmer asked Ms. Walker to start with the term 'administrator' explaining why it was used in plan documents as a general practice and how they are identified. It was used consistently in the industry for someone similar to his role as executive officer, doing the day to day managerial and operations of the plan from an administrative standpoint.

Ms. Walker said the term administrator was a defined term in the Employee Retirement Income Security Act (ERISA) and was a required definition for all ERISA plans similar to NDC in defined contribution and defined benefit plans. In general, the term administrator under ERISA meant the person who was fiduciarily responsible for administering the plan. Commonly that would be a board of directors or committee that had oversight responsibilities and then there would be explicit delegation of day to day administrative duties to a recordkeeper or administrative staff either in the plan document or governance policies and procedures. It was commonly found in defined contribution plan documents because of the use in ERISA plans and it was always referenced in recordkeeper plan documents. In most plan documents, the administrator was generally the oversight body of the plan because it was usually the only body that had fiduciary responsibility. The NDC structure was a little bit different because of the changes to the governing structure since there were fiduciary duties for the executive officer, so it was a bifurcated approach.

Vice Chair Ervin heard the oversight board was usually the administrator and specific duties could be delegated to a recordkeeper or executive officer or other staff. He noted that statute clearly said the Committee was the overall fiduciary for the NDC Plan. In reference to Senate Bill (SB) 502 his understanding was the Committee could delegate administrative duties to the executive officer and the context was concerning fiduciary responsibility by the executive officer.

Deputy Attorney General (DAG) Ott agreed with how Vice Chair Ervin laid out the responsibilities but would defer to Ms. Walker with her knowledge of ERISA to know if she found something in statute or regulation somewhere else that put a fiduciary responsibility on the executive officer or whether it came from the delegation from the Committee.

Ms. Walker clarified that some of the responsibilities of the executive officer came from statute and not from delegation by the Committee. It was her understanding that the executive officer had fiduciary responsibility for making discretionary decisions about day to day administration as well as selecting vendors for the plan.

DAG Ott asked if that came from SB 502 or from statutes preexisting 2017.

Ms. Walker understood it was part of the new statute through the Nevada Department of Administration (DOA) Director that were formerly part of the Committees duties.

Vice Chair Ervin quoted SB 502 Section 2 regarding the appointment of the executive officer by the Director of DOA who *"Shall, with the concurrence of the Governor and the Committee to Administer the Public Employees' Deferred Compensation Program, appoint the Executive Officer of the Public Employees' Deferred Compensation Program. Section 4 stated "The Committee may delegate administrative duties for the Program to the Executive Director. The Executive Director and the staff of the Program shall act to discharge their duties in the collective best interest of the participants of the Program and with the care, skill, prudence and diligence that, under the circumstances existing at the time of the actions, a prudent person who is familiar with similar programs would use while acting in a similar capacity in conducting an enterprise of similar character and purpose."* So he did not see anything specifically in the statute that specifically stated which duties were delegated but it was the Committee that did that.

Mr. Boehmer clarified the Committee had the ultimate authority in selection of vendors as the chief of the using agency. They could delegate that authority to the executive officer but it was at their discretion.

Ms. Walker stated in her opinion that they did not have to use the term administrator and perhaps it was not appropriate to the NDC Plan because the connotation of it carried under an ERISA plan. It was okay to use the term administrator but it was not necessary. If it was important to separate the duties of the Committee and executive officer they should write the plan document so it was clear.

Chair Stevens remarked that his issue was when the term administrator was used it was not always clear who it referenced. In some instances it was a Committee function but in others it was clearly an executive officer function and the Committee was included. In his lengthy legislative experience he had not seen where two different entities were both responsible for the same thing.

Vice Chair Ervin liked the idea of leaving out the term administrator and just referring to the Committee or administrative staff. His next question was delegation to the executive officer and staff versus to a recordkeeper. Was that usually outlined in a plan document because there was sometimes reference to a recordkeeper?

Ms. Walker commented they should be clear in the plan document whether the function was performed by the Committee, recordkeeper, or the executive offer and administrative staff.

Mr. Boehmer noted there had been problems with recordkeepers in the past so it was important for the contractor to realize that the executive officer, under the authority of the NDC Committee, had full authority to manage the contract(s).

After the discussion, Vice Chair Ervin thought it would be appropriate that they go through the plan document at a high level and determine whose function it was where administrator, executive offer, Committee, or recordkeeper appeared.

Mr. Picarelli summarized what he had heard was that the overall guidance of the NDC Plan was in the hands of the Committee who delegated some of the operation to the executive officer in executing and overseeing the contracts. The recordkeeper performed the recordkeeping and administration of processing transactions for the Program.

The sub-committee went through the document with suggested additions, deletions, and changes.

- Remove the administrator definition and just use Committee
- Revise Committee definition to include "The Committee may delegate administrative and managerial duties under this Plan to the appointed executive officer"
- Administrative staff definition was broad enough to cover all staff
- Executive Officer – identify with responsibilities and authority
- Remove definition of Adoption Agreement which occurred five times in the document and correct the references in those sections

They went page by page to define the delegation of duties.

Mr. Boehmer would go through the FICA Plan Document and make the appropriate changes.

4. Public Comment

No comments.

5. Adjournment

The meeting was adjourned at 12:27 p.m.

Respectfully submitted,

Micah Salerno
NDC Administrative Assistant