

11-28-2005 - After a review of closed session minutes by legal counsel and the Board of Trustees, these minutes have been partially opened.

**SAUK VALLEY COMMUNITY COLLEGE
DIXON, ILLINOIS
BOARD OF TRUSTEES
CLOSED SESSION MINUTES**

Date: June 23, 2003

Time: 7:17 p.m.

This meeting was called to discuss:

- Appointment, employment or dismissal of an employee
- Closed Session minutes review
- Closed Session minutes consideration
- Attorney-Client Consultation (pending litigation)
- Collective negotiating matters

Members Present:

<u>Yes</u> Ed Andersen	<u>Yes</u> Henry Dixon, Jr.	<u>Yes</u> Bill Simpson
<u>Yes</u> Bob Thompson	<u>Yes</u> Nancy Varga	<u>Yes</u> Pennie von Bergen Wessels
<u>No</u> B.J. Wolf	<u>Yes</u> Student Trustee Engleking	

Others attending:

President Richard L. Behrendt
Attorney Ole Bly Pace III
Vice President Ruth Bittner
Secretary Pro-tem Shirley Walker

Subjects Discussed:

Pending litigation, Closed Session Minutes of May 19, 2003, and Closed Session Minutes Review

CLOSED SESSION MINUTES

June 23, 2003

Ruth Bittner reviewed her memo regarding litigation with Wallace's Bookstores. It was the direction of the majority of the Board for Attorney Pace not to pursue the litigation and to try to get a settlement of up to \$80,000.

Ruth Bittner left the Closed Session.

The Board reviewed the recommendation of two faculty appointments; one for Assistant Professor of Technology/Electronics and one for Assistant Professor of Radiologic Technology.

The Board reviewed the recommendations for appointment of two administrative positions; one for the Dean of Health and Physical Education and one for Director of Financial Assistance and Career Services.

The Board reviewed the resignation of Belinda A. Dalton, Coordinator of Student Support Services.

The Board reviewed the President's Contract Resolution.

The Board discussed the repositioning of the president's secretary position and the secretary to the Board of Trustees position.

It was then moved by Member Andersen and seconded by Member Dixon that the Board adjourn. In a roll call vote, all voted aye. Motion carried. Student Trustee Engleking advisory vote: aye.

The Board returned to regular session at 8:16 p.m.



Carmel Paulsen, Secretary to
The Board of Trustees



Closed session -
Memorandum
pending litigation

File

TO: Richard Behrendt
FROM: Ruth Bittner *reb*
DATE: June 19, 2003
SUBJECT: Wallace's Bookstores bankruptcy update

This afternoon I discussed the Wallace's Bookstore bankruptcy case in a conference call with Lisa Treviranus from WMP&J and the two attorneys in Kentucky who are handling the legal work for us in that state (Brian Burnette and Michael Brodarick from Lloyd and McDaniel). To refresh your memory, Wallace's is claiming that we must turn over the \$95,000 of financial aid funds used by students to charge books in the store in January 2001; we claim that we should be able to set off that money against the larger amount that Wallace's owes Sauk for monthly commission and initial inventory payments.

Last week the judge in Kentucky denied our motion for summary judgment. The crux of the matter is how our fiduciary relationship between the US Department of Education and the students for the financial aid money affects the nature of the debt we owe to the store. In order to allow setoff, the natures of the debts due from Wallace's to Sauk and from Sauk to Wallace's have to be similar. Wallace's says they're different because what we owe is really the students' money, so it isn't our debt, so it can't be used as offset. The judge agreed with Wallace's in the preliminary hearing. Obviously, we disagree. I listened to an audio recording of the hearing, and Brian did an excellent job of stating our case clearly and repeatedly - the judge just disagreed with us.

Our legal fees accumulated so far total about \$6,000. We estimate that the additional legal fees plus my travel cost to go to Lexington, KY, to testify in person at the scheduled July 29 trial would bring the total cost up to as much as \$20,000. Given the clear case already stated at the hearing by Brian, I don't think we'd be able to present any new, more persuasive arguments at a trial, especially with the same judge. Brian, Mike and Lisa believe we might have a 25% chance of winning at trial, for a goal of winning the \$95,000. Therefore, it would cost us \$20,000 to try to win, in effect, \$23,750. That doesn't seem worth the effort.

Brian and Mike said we could go to trial, lose, and file an appeal. An appeal would cost about \$5,000 in legal fees, and they think we'd have no more than a 50% chance of winning - probably less.

Brian and Mike said the judge is known as being fair, detail-oriented, thorough, meticulous, firm, and not prone to flip-flopping. Judges in this type of case in Kentucky are allowed a great deal of discretion on setoff issues. In an appeal, it would not be done "de novo," where the appellate court starts from scratch in looking at the arguments. Instead, they consider the work already done by the original judge. So, it's not likely we'd win either the trial or the appeal.

A final option is to have Brian and Mike negotiate a settlement with Wallace's. They said that our case with Wallace's is unlike the other colleges because it centers on the setoff issue. We're different because of the newness of our relationship with Wallace's, since they still owed us so much money for the initial inventory purchase at the time of bankruptcy. The other cases have not been decided yet in court, either. But, with other colleges, Wallace's has been knocking off a "discount" of about 20% to 25% from the amount owed to them if the colleges stop the legal proceedings. So, instead of having to pay them \$95,000, negotiating could reduce that amount to about \$75,000. That's still not as good as getting a setoff, but it looks like the best we can do.

So, I suggest we instruct the attorneys to stop the legal proceedings and enter into negotiations with Wallace's to try to reduce the amount we have to pay them.

Lisa and I told Brian and Mike that we'd report back to them Tuesday morning, after our Board of Trustees meeting. Thank you.