

NEW MEXICO INSURANCE NOMINATING COMMITTEE

MEETING AGENDA
FRIDAY, OCTOBER 11, 2019
10:00 A.M.

New Mexico Gaming Control Board
4900 Alameda NE, Albuquerque, New Mexico

1. CALL TO ORDER

Chairman Thompson called the meeting to order at approximately 10:00 a.m.

Members Present

R.E. Thompson, Chair
Allegra Carpenter
Jennifer Ford
Benny Hodges
David Hunton [telephonically]
Randall Perkins
Geoffrey Romero
Patricia Greene Williams
Scott Yurcic

Staff Present

Melissa Martínez, Board Administrator

Others Present

John G. Franchini, Superintendent of Insurance
Bryan E. Brock, OSI General Counsel
Marah deMeule, Assistant Attorney General
Ray Vargas, Chairman Candidate
Amy Landau, Attorney

A. INTRODUCTIONS

Each of the members of the Committee introduced themselves. Staff members and other attendees also introduced themselves.

Ms. deMeule indicated Member Hunton found it impossible to be present in person so his presence on the phone is acceptable, as it complies with the Open Meetings Act.

B. Approval of the Agenda

Chairman Thompson asked for any corrections or additions to the Agenda.

There were no additions or corrections to the Agenda.

No motion was requested, and the agenda was accepted as proposed without opposition.

C. Approval of Minutes

- Regular Meeting Minutes of September 19, 2019

Member Williams said her middle name was misspelled. Green should be Greene; She referred to page 3 and said the statutory cite in Section 5 is incorrect but she did not know what the correct cite was. Also in Section 5, the fourth indented paragraph October 9 was incorrect and should be changed to October 1.

On the fourth page, last line, it does identify a correct date but was not sure that publication in a trade journal could be done by that date.

In Section 7 in the third page halfway down the page, it said Member Hodges agreed to serve along with Members Ford, Carpenter, and Williams and it should be Member Romero, not Member Hodges.

Ms. deMeule suggested for the future, to show Melissa Martinez as the staff member who was present and to list her title as Board Administrator. The others were not staff for the Nominating Committee. She also provided the correct spelling on page two of Sally as Malave, from the Attorney General's office. She noticed a symbol at the bottom of page 2 that did not fit. On page 3, third paragraph there was an omission where she had said they could go into closed executive session only for limited purposes... And after coming out of closed session, the determination would be made publicly. In the next paragraph, she was pretty sure she did not legislative conferencing, in talking about this meeting.

The citation was 59A 2-2.1830. She asked that hyphens be changed to the statutory symbol (§).

On page 4, she concurred with October 1 as the deadline.

At the top of page 6 in a suggestion for future minutes, physical language is not included in the minutes so nodding should not be included. There was also some punctuation to be cleaned up. Also, she did not believe she said the Superintendent should be addressed in the committee.

One page 9 in the large paragraph, it should be possessive. Further down she said,

"unless I request OSI provide information to the Board..."

And on page 4, she did not say interviews in closed session. She said they could not be done in closed session; they must be done in open session.

There were no objections to the amendments.

RE asked her to get with Ms. Martínez on final.

Member Hodges/Member Yurcic??

vote - unanimous by voice vote.

Member Hodges asked that they be numbered.

John arrived a little late and introduced himself.

MOTION: Member Hodges moved, seconded by Member Romero, to approve the minutes of September 19, 2019 as amended.

VOTE: The motion was approved by unanimous voice vote.

Chair Thompson noted the arrival of Superintendent John Franchini and asked that he stand and introduce himself.

Superintendent Franchini apologized for being late and said that work responsibilities caused him to be late.

2. SELECTION OF COMMITTEE VICE CHAIR

Chair Thompson opened nominations for Vice Chair.

Member Romero nominated Randall Perkins.

Member Williams seconded the nomination.

Member Perkins accepted the nomination.

There were no other nominations made.

MOTION: Member Hodges moved, seconded by Member Romero, to elect Member Perkins as Vice Chair by acclamation.

Member Carpenter asked for clarification on the method of voting.

Chair Thompson suggested having a vote by a show of hands.

Ms. deMeule said raising of hands to vote might not comply with the Open Meetings Act because the Open Meetings Act requires that the vote be recorded to reflect the vote of every member. If it is unanimous, the record can just say unanimous but if one member votes differently, the rest of the members must be stated. A show of hands would not satisfy the record.

Member Carpenter added that in the event of a tie, the Committee could open discussion again in order to gain a majority vote.

Ms. deMeule agreed that would be perfectly appropriate. Statutorily, you could discuss how you want to vote but should make sure the vote reflects each member's vote.

Chair Thompson requested a roll call vote.

VOTE: The motion passed with the following roll call vote:

For: R.E. Thompson, Jennifer Ford, David Hunton, Scott Yurcic, Benny Hodges, Patricia Greene Williams, Allegra Hall Carpenter, Randall Perkins. Geoffrey Romero.

Against: None.

Mr. Thompson gave the gavel to Vice Chair Perkins and sat in the audience.

Vice Chair Perkins presided at the meeting at this point.

3. INTERVIEW AND SELECTION OF A COMMITTEE CHAIR

Vice Chair Perkins identified the candidates for the Chair position as 1) Mr. Michael Olguin, Sr, 2) Mr. R. E. Thompson, and 3) Mr. Ray Vargas.

Member Hodges stated we have received a late application by Ms. Amy Landau, who said she would challenge it if her application was not considered because of the deadline in the minutes saying October 9 was the deadline.

Ms. deMeule pointed out that notice was properly published with the October 1 deadline and posted on the OSI web site and several applicants were able to meet that deadline. The draft minutes of the meeting are not binding and did require amendments. This applicant had other opportunities to participate in the process such as public comment to address her intent. It is entirely up to the Committee in its discretion if they want to consider the application that did not meet the posted deadline.

Member Hodges agreed with that assessment. It should be part of the record and it was discussed.

Vice Chair Perkins opened the matter for discussion whether to accept the application.

Member Carpenter said we have to follow our rules. Not only did we agree to make the deadline the first, we delegated the entire project to Mr. Romero. And he put in the ad October first. So, although she was sympathetic, there were other people who could have had the opportunity to participate rather than just the one applicant.

Member Romero agreed.

Member Hodges moved, based on the circumstances, that Ms. Landau's application be denied.

Ms. deMeule apologized but did not know if the Committee could formally vote, because this application, unfortunately, was not received in a timely fashion to be on the agenda. So she thought they could have discussion, but any action would have to be on what was on the agenda/

Member Yurcic believed it would be proper to not have that named involved in this action.

Ms. deMeule said the communication could be made through our Board Administrator. The Committee can discuss it at this point, but really cannot take action because it is not duly noted on the agenda.

Member Williams believed the agenda is correct and describes the will of the Committee, based on the discussion. There are three applicants and one withdrew, so we have two applicants to interview today.

A. Requirements for the Chair Position.

Vice-Chair Perkins agreed with that and went to the agenda item on Requirements for the Chair Position.

Ms. Martínez provided a copy of the requirements (also included in the Board Packet) and Vice-Chair Perkins read them aloud.

B. Introduction of Candidates for the Chair Position

1. Michael Olguin, Sr. [withdrawn]

2. R. E. Thompson

Mr. Thompson said he met those qualifications that were read. He noted that Mr. Vargas was a friend of his for 24 years. and he had only good things to say about him.

His family was in the insurance business when he was a child. His Dad bought a farm in southeastern New Mexico and he worked summers there for several years. He went to law school at the University of Texas in Austin and after graduation went to work with a New Mexico law firm and started doing insurance defense work there. Now fifty years later, he is still doing the same type of work. He is contemplating retirement soon, perhaps by the end of year or until a current case is completed. He has represented the assigned risk pool for many years and was exposed to rulemaking, etc. He was hired by the State of Wyoming to consider raising rates and spent a year and a half for the legislature on three levels of the program, hearings and state fund solvency. Over the years, he has had various contacts with the Department of Insurance. He stood for questions.

Member Carpenter asked if he has done any work on behalf of consumers.

Mr. Thompson said he has had a request now from a lady to deal with the denial of her claim. But more typically, he has represented insurers.

Member Carpenter asked if he represented insurers before the PRC or the OSI.

Mr. Thompson said he represented New York Life Insurance Company under the Department of Insurance. And on behalf of the Assigned Risk Pool for Workers' Compensation Insurance proposals for rate increases or decreases that were subject to approval or disapproval.

Member Carpenter reasoned that he represented insurance interests before the PRC but not for the insured.

Mr. Thompson agreed.

Member Romero asked about his relationship with the Governor's Office. In historic notes, he saw some business that remained pending, including the Superintendent's pay raise. He asked if Mr. Thompson could tell the Committee about his relationship with the current administration.

Mr. Thompson said he had a good relationship with the current Governor since she was in charge of Health and Human Services for the State. He thought he has a good enough relationship to get the salary moving with this administration. The statutory language clearly is not more and not less than cabinet secretaries.

Member Williams asked why he wanted to be Chair of this Committee.

Mr. Thompson said there is no pecuniary gain sought, but he has been around through many Superintendents and just want to make sure we get a Superintendent that is good and effective.

Member Williams asked how he viewed his role as Chair here.

Mr. Thompsons said his role is to make sure the Committee functions as it should, to move things along and to resolve issues that may come up; and to ensure each member has a vote and voice.

Ms. deMeule suggested it would be helpful to ask about the Open Meetings Act to all candidates; if they are familiar with it and commitment to transparency.

Mr. Thompson said he does have a history with the Open Meetings Act. He was a lobbyist for the New Mexico Press Association when it was proposed and adopted by the Legislature.

Member Carpenter said, when this committee first began organizing for meetings, it seemed to her as though even after the Committee had been advised to avoid rolling quorums, that Mr. Thompson sent several emails that seemed to invite a rolling quorum.

Mr. Thompson said he did not think he ever asked for action - no vote on it. They were primarily to share an idea.

Member Carpenter said she was surprised at the first meeting that the issue of the Superintendent salary came before the Committee as a public comment rather than being an agenda item.

Mr. Thompson explained that it was addressed in the prior meeting by the prior committee to be at \$126,000 and is currently at \$112,000. And at that time, we were still trying to get it approved with Governor Martinez. Now it is clear that the current Governor has raised all secretaries to \$156,000 and it needs to be addressed.

Member Carpenter asked why it was not listed on the agenda so the public could know it was going to come up.

Mr. Thompson said he could not answer that.

Ms. deMeule thought the agenda was adopted at that meeting. There was discussion and that discussion was on the record for working on the salary.

Member Carpenter thought that was not clear enough. Her question was on the retroactive part and concerned that it was not on the agenda.

Vice-Chair Perkins said it caught him off guard that we were dealing with an

unfinished item and most of us had not given it any thought or time to formulate an opinion.

Mr. Thompson said he did not think the Committee was asked to take any action, but it was stated what had happened in the past regarding his salary.

Member Hodges asked, if in his mind the issue is resolved.

Mr. Thompson said it is not resolved, although you could make the point that the statute says not less or more than cabinet secretaries. It is still unresolved.

Ms. deMeule said it just occurred to her that the Committee has the responsibility of selecting the Superintendent of Insurance and also for removing a Superintendent for malfeasance. There is that oversight responsibility so you could ask both about the ability to exercise oversight.

Mr. Thompson did not have the statute in front of him but thought it does not say one thing about removal, but just about appointment.

Ms. deMeule read from the statute, "The Nominating Committee may remove the Superintendent for ..." But it went on to say, "after providing the Superintendent with notice and a hearing." So it might be required for the members to make a difficult decision.

Vice-Chair Perkins asked Mr. Thompson if he would have any difficulty making that recommendation to the Committee.

Mr. Thompson said that would be very unpleasant situation, but he would make the recommendation if the situation arose.

There were no further questions of Mr. Thompson.

3. Ray Vargas

Mr. Ray Vargas was invited to introduce himself to the Committee.

"I am a lifelong New Mexico resident. I grew up in Albuquerque and went to Albuquerque schools and UNM Law School for graduate degree."

"I care about my state and the people who live here and our economy and what is happening to it. I look at how broad the actions of Superintendent are and how they affect our state, our economy, consumers and individuals. So I view this as a very important position to fill. It is my hope that my 21 years of insurance law expertise representing insurers from 1998 to 2005 when I gave regulatory advice to our insurance clients. I represented policy holders. In 2005, I left that firm and opened my own,

representing policy holders against insurers. And since then, I also have dealt with malpractice cases. The Superintendent manages the compensation funding to repay victims of malpractice and that is an extremely important part of what the Superintendent of Insurance does. And it affects a lot of people across the State. It is my hope, should you select me to be the Chair, to know that I have the qualifications to handle that."

Vice-Chair Perkins asked why he wanted to be Chairman.

Mr. Vargas said he is familiar with all the different things the Office does. Plus, he has an interest in an open and transparent process. He has always been a believer in it. And the selection of a Superintendent must be open and transparent, and he can handle that.

Member Carpenter asked what experience he has had chairing boards and committees.

Mr. Vargas said the most relevant was President of the Trial Lawyers' Association of New Mexico in 2012. As President, he was the Chair of the Board of 22 members. That is the only experience running them but has much more experience before other boards and agencies. So he has a lot of experience with the Open Meetings Act. In 2001, he had the unique privilege of representing New Mexico Legislature in the litigation involving redistricting the House and Senate Districts. As a consequence, he referred directly to the Legislative Council Service which was also subject to the Open Meetings Act.

Vice-Chair Perkins said obviously this Committee is tasked with the appointment process and also of potential removal of the Superintendent, if needed. He asked Mr. Vargas if he would have any problems with doing that. What challenges would there be?

Mr. Vargas pointed out that the Chair does not make that decision - it is the Committee and provides me a little help. If we had a Superintendent who committed malfeasance, the Statute requires us to act and we would deal with it.

Member Williams asked how he viewed his role as Chair.

Mr. Vargas said his role is as the coach in supporting the Committee in its task, not trying to control the process but to direct it and support the members in the difficult tasks. And, if there is a tie vote in the selection of a Superintendent, we would deal with it and keep an open and transparent process.

Member Romero disclosed that he had been a co-counsel with Mr. Vargas on some cases in the past. So, both as plaintiff and defense lawyer, we run to each other. I am familiar with Mr. Vargas's experience in insurance in the past. In working out resolution with insurance carriers, we step up to the plate to do the right thing. He just

wanted to make that clear.

Member Romero asked about his relationship with the Governor.

Mr. Vargas said he has a very good relationship and had many clients referred from her while she was in Congress. In addition, he was one of the founders of the Governor's PAC at her request.

Member Romero noted that, in representing both sides, Mr. Vargas is often chosen as a mediator, particularly from the insurance side.

Mr. Vargas agreed and said his practice lately has transitioned more to mediation to get cases settled. "They know I speak their language, for one, and number two, the plaintiffs tend to seek my counsel, mainly because of my knowledge of insurance law."

Ms. deMeule said regarding mediation, she wanted to know if there could possibly be a conflict of interest where he would need to step back from a case. She clarified that this was just in response to what he had said.

Mr. Vargas said if there were a conflict, he would disclose that. He has represented policy holders and other than that, he did not recall any conflict.

Member Williams asked if he has represented insurance companies.

Mr. Vargas said yes, mainly in 2005. He helped them understand their requirements and to get them in compliance.

Mr. Vargas thanked them for their time.

C. Interviews of Candidates

The interviews took place above.

D. Invitation for Nominations - Selection of Chair by majority vote

Vice-Chair Perkins asked for advice at this point.

Ms. deMeule clarified that the Open Meetings Act would allow a closed executive session for hiring but not this is not a paid position. This is for election of volunteer position and every vote must be recorded.

Vice Chair Perkins opened the floor for nominations.

Member Ford nominated Ray Vargas to be Chair of the Committee. Member Carpenter seconded the nomination.

Vice-Chair Perkins nominated R.E. Thompson and Member Hodges seconded the nomination.

MOTION: Member Carpenter moved, seconded by Member Romero, to close nominations.

The motion was not voted on. Instead, a roll call vote for both clients was taken.

VOTE: The nomination of Mr. Vargas resulted in the following roll call vote:

For: Member Ford, Member Williams, Member Romero and Member Carpenter.

Against: Member Yurcic, Member Hodges, Member Perkins, Member Hunton,

The nomination of Mr. Thompson resulted in the following roll call vote:

For: Member Yurcic, Member Hunton, Member Hodges, and Member Perkins.

Against: Member Ford, Member Romero, Member Carpenter, and Member Williams

The result was a tie vote.

Vice Chair Perkins reopened the discussion for the selection of Chair.

Member Carpenter said this committee has only existed for 6-7 years. Mr. Thompson did a fine job during his tenure and she favored a fresh approach. She thought new blood is appropriate. She also had concerns about the strong-armed approach.

Vice-Chair Perkins said he appreciated the new blood because of our newer role but also felt continuity is very important rather than a one-year term, or two one-year terms. Personally, he believed the continuity should be there for a little while.

Member Hodges agreed with both Vice Chair Perkins and Member Carpenter if Mr. Thompson had completed a full term. But Mr. Thompson inherited a partial term. He would expect all of us to be independent politically. He has a level of experience with Mr. Vargas and appreciated it.

Member Romero said he also has a lot of experience. He knew Mr. Vargas has a very good relationship with the Governor's Office and Mr. Vargas is a very honorable person. When it comes to the issues we face, regulatory or administrative, he has never seen anyone who studies more than Mr. Vargas and always has a high level of preparedness.

Member Hodges agreed the Committee should have a great relationship with the Governor. But there is a reason why the Governor does not appoint the Superintendent.

Member Williams appreciated that comment a lot and said she does not have a long history with OSI involvement. So she has fresh eyes and no relationship with either candidate. In her short term, she saw two things that prompted her to vote for Mr. Vargas.

First is the Retroactive Salary. This Board did not work well with the former Governor and the Committee was not able to accomplish the salary resolution. So the relationship with the Governor is very important.

Second was that during Mr. Thompson's tenure - and she appreciated the time needed to spend on this, but if you cannot accomplish the solution during that time, it is a flaw in the ability of the Chair.

Member Yurcic said, as one who has tenure on this Committee, first, to refer to this as an oversight committee, we are not a board of directors. To consider how well the Office of the Superintendent is operating is our only agenda. This Committee is to comply with the statute and have decisions to make in accord with the Statute. But we cannot make DFA do anything. We don't have that power. Being able to oversee the work of the Superintendent without micro-managing is important. Having consistency with that is important in reviewing a new Superintendent, to have familiarity with the process.

Member Ford said, as a new consumer member, she did not have an interest in insurance. She is an attorney. Mr. Vargas has experience on both sides, and we need someone who achieves that balance. He brings that fairness and balance to us. There are no consumers here at the meeting and that is an important consideration.

Member Hunton said he was sure Mr. Vargas is a great attorney. A few years ago, in New Mexico, interest in this department was taken out of power and moved back to making it political. As an insurance agent for 37 years, I found that off putting.

Member Hodges assumed that all of us were appointed to be unbiased and balanced.

Member Ford agreed. She noted that actually, Mr. Thompson has not worked on the consumer side and Mr. Vargas has.

Member Carpenter pointed out that the composition of this Committee, by Statute, is supposed to be equally represented by consumers and industry. The Superintendent, at the end of the day, is the regulator of insurance, not just a person from the industry.

So, to have the Chair who comes to the job with the personal experience of being on both sides is a difficult one to find and it is embodied in Mr. Vargas, which makes him a superior candidate.

Vice-Chair Perkins said he has a past with Mr. Thompson when he was Chair of an insurance company that was equally owned by the policy holders. He witnessed the work of Mr. Thompson on behalf of policy holders as well as the corporation. He said he does not know Mr. Vargas so he cannot comment on his experience and has no reason to doubt his integrity or knowledge on both sides of the fence.

Vice-Chair Perkins said the Committee has had some good discussion and needs to work on moving one vote one way or another. He opened the floor for another vote.

Ms. deMeule referenced the language of statute §59A2-2.1(a)(3) stating that the ninth member who serves as the Chair, shall be selected by a majority of the other eight members. So a majority will accomplish it.

Vice-Chair Perkins asked for another roll call:

VOTE: Mr. Vargas resulted in the following roll call vote:

For: Member Ford, Member Williams, Member Romero and Member Carpenter.

Against: Member Yurcic, Member Hodges, Member Perkins, and Member Hunton,

Mr. Thompson resulted in the following roll call vote:

For: Member Yurcic, Member Hunton, Member Hodges, and Member Perkins.

Against: Member Ford, Member Romero, Member Carpenter, and Member Williams

Ms. Martinez said it was a tie vote.

Member Carpenter said we should acknowledge that neither candidate got a majority vote and suggested re-advertising and reconvene in another meeting.

Ms. deMeule said that to comply with the OMA, generally we would need to provide a 10-day notice. A special meeting requires a 72-hour notice.

Vice Chair Perkins asked if this qualifies as a special meeting.

Ms. deMeule said a special meeting is not well defined in the Open Meetings Act. She also noted that this Committee has a very tight time frame for selection of the Superintendent.

Member Carpenter suggested meeting on November 16 which she believed has already been advertised.

Ms. deMeule said the closing date is October 31 for Superintendent applications to come in. She reiterated the statutory requirement is for a majority of the eight members. This does not preclude further discussion.

Vice-Chair Perkins did not know that we will make further progress today. Certainly we are willing to have further discussion on this. Otherwise, it might be best to try to have a special meeting. He understood the desire open if for more nominations. Do we need a special meeting to see if we can break the tie or hold a special meeting that opens up for further nominations? And do the two have to go hand-in-hand?

Member Carpenter felt, in terms of meeting deadlines, that the Committee should acknowledge that one of these two should get a majority of votes but with the deadlock, should be open for new applicants.

Vice-Chair Perkins wondered, if we reopen to new applicants, if we could afford that time.

Ms. deMeule said if the committee wanted to readvertise, it must be done immediately and quickly set a special meeting. The requirement is for 72 hours advance notice.

Member Carpenter proposed an October 25 meeting date.

Member Williams and Member Hodges were not available on that day.

Ms. deMeule noted that November 1 would allow the Committee to do a first review of Superintendent applications and eliminate those that did not meet the statutory requirements.

Ms. Martínez said November 1 is the day after the applications are received so maybe the next week would be better.

Member Carpenter asked about Saturday, November 2.

Member Romero asked if there was any problem going ahead without having selected a Chair.

Ms. deMeule suggested making it the first item of business.

Member Romero suggested November 4.

Several members said they were available on Saturday, November 2, but Member Hodges was not. He asked for a date before then.

The members continued to discuss possible dates.

Ms. deMeule reminded them that telephonic attendance is acceptable if a majority of the membership is present physically.

Member Hodges said he would make every effort to be present telephonically and he could be present on November 4.

Member Romero said he could call in on November 4th.

Member Hunton said November 4th was good for him.

Member Williams asked if the purpose is to interview new candidates and prescreen applications for Superintendent.

Vice-Chair Perkins agreed, and the first item is to select the Chair.

Ms. deMeule asked about the time to meet.

The Committee agreed to meet on Monday, November 4, 10:00 a.m.

Ms. Martínez said she will try to reserve this room for that meeting.

Member Romero asked if these two candidates are not precluded from applying.

Ms. deMeule said they could remain as applicants.

Vice-Chair Perkins agreed they are still candidates and on the 4th, we would only interview the new candidates and not these two again.

Member Hodges suggested the Committee might have additional questions to ask all candidates, but they would not have to do another presentation.

Member Carpenter thought if we found a new candidate with whom we were strong, she would prefer that they be disqualified from reapplying.

Member Williams did not think we would get a majority with more candidates.

The Committee members discussed that issue further.

Vice-Chair Perkins asked Ms. deMeule how the Committee should proceed. He would like both applicants to still be in the process.

Member Romero agreed. They are both highly qualified.

Member Hodges pointed out that neither has been chosen and neither has been disqualified.

MOTION: Member Hodges moved, seconded by Member Romero, that the two should be included in the next selection process.

Member Williams asked if that means they can stand on their presentation and answers today or need to be reapplying.

Vice-Chair Perkins said there might be other questions to ask, so we should have them present in that case.

Ms. deMeule said they should be available to answer further questions.

Member Williams assumed they would both want to continue, but if one wants to withdraw, should that be in the motion?

Vice-Chair Perkins thought so. Otherwise, both are available on the 4th.

VOTE: The motion was approved on the following voice vote:

For: Members Williams, Yurcic, Hodges, Hunton, Romero, and Ford.

Against: Member Carpenter.

Ms. deMeule asked about the closing date for the readvertising.

Ms. Martínez said she would change the date.

Vice-Chair Perkins asked what the original was.

Ms. Martínez said it was October 1. Monday, October 14, is a holiday. She could get the ad in by October 18th for one week. (October 18-25). She could send the applications to the Committee by October 28.

Vice-Chair Perkins announced that, prior to coming in, he had advised Chair

Thompson that he had to pick someone up at the hospital 20 minutes ago, so he excused himself. He left at 11:39 and Mr. Thompson resumed the Chair.

4. SWEARING IN COMMITTEE CHAIR BY BOARD ADMINISTRATOR AND SEATING OF THE CHAIR

Chair Thompson noted that is moot now.

5. PROCESS FOR SELECTING A SUPERINTENDENT OF INSURANCE

A. Process for submission and review of applications

Chair Thompson said October 31 is the deadline and we already dealt with the review.

Ms. Martínez said it is through the subcommittee that was appointed at the last meeting. The review is scheduled for November 16.

Chair Thompson said apparently, we could close the session for discussion of candidates and return to open session for the selection.

B. Procedure for the next meeting:

- 1. Open Meeting**
- 2. Conduct Interviews**
- 3. Use of closed session pursuant to Section 10-15-1(H)(2) NMSA 1978 to discuss candidates**
- 4. Reconvene to publicly select Superintendent of Insurance**

Ms. deMeule said she will prepare a script for all members for use of statutory language to explain the exception for going into closed session. She will circulate the script for going into a closed session.

Ms. Martínez said the advertisement is on the Nominating Committee's web site. She asked if the Committee would like to receive applications as they come in or all at once.

Chair Thompson suggested all at once.

Member Carpenter said she might prefer to know as we go.

Member Williams asked if members could know who has applied without looking at the full packet.

Chair Thompson agreed and asked Ms. Martínez to send an email to members

on name of the candidates.

Ms. Martínez agreed. She said she has received one already.

Chair Thompson asked for the location of the November 16 meeting.

Ms. Martínez said the meeting is scheduled to be held at the New Mexico State Bar for that day. We have purchase orders, etc.

6. COMMITTEE ACTION REGARDING 2016 SALARY INCREASE FOR SUPERINTENDENT OF INSURANCE

Mr. Brock reported on the situation and understood it was a surprise that he brought it up during Public Comment. He apologized if he offended anyone. The purpose was to give members the information from the prior Committee and the fact that DFA had not moved it forward and asked the Committee to consider putting it on the next agenda for a ratification of that prior action.

In the interim, he had a communication with your attorney and provided the documents on historical efforts to get the salary issue taken care of and nothing more than that.

Chair Thompson asked for the AG opinion.

Ms. deMeule said the memorandum is confidential under attorney-client privilege.

MOTION: Member Carpenter moved, seconded by Member Romero, to waive that attorney-client privilege.

VOTE: The motion was approved by unanimous voice vote.

Ms. deMeule said it was an unfortunate situation. The Committee has the statutory obligation to set the salary and unfortunately there has not been any action taken officially since 2016. But this Committee does not have the authority to go back to ratify any past action.

Secondly, she did not see how a retroactive act by this committee would be constitutional. DFA and the Governor did not act and, unfortunately, this Committee does not have purview over that. She did not see a legal basis to ratify a past action. The action must be forward-looking, not retrospectively.

Chair Thompson understood the statute says it must not be lower or higher than other cabinet secretaries.

MOTION: Chair Thompson moved to set the salary of the Superintendent at

\$156,000 per year.

Member Hodges believed the Committee did that already.

Chair Thompson accepted that and withdrew his motion.

Member Hodges said the Superintendent is the injured party here.

Ms. deMeule said she understood but her ethical duty is to follow the statute.

Mr. Brock agreed it is complicated. He did not represent the Superintendent as an individual, so he did not know if Mr. Franchini could pursue retroactive pay legally. He was in the same boat and did not know the answer to that question.

Member Hodges said it appears no one knows the answer.

Chair Thompson said Member Hodges was correct. The motion at the last meeting was to set the salary at \$156,000. He asked if any action has been taken to carry it out.

Mr. Brock said the OSI has prepared the paperwork to increase the salary. He did not know if it has been sent to DFA yet. We just got a new HR Officer and that was probably her first act.

Ms. Martínez announced that it has been approved by DFA for the State Personnel Board. So what was done at the last meeting has been done.

Member Hodges wondered if DFA has ever disapproved it before.

Chair Thompson noted that they refused to take any action.

Member Williams asked if the \$156,000 starts with that action.

Ms. deMeule said it is to happen for the fiscal year that ends at July 1, 2020 but is now in place for this fiscal year.

Member Williams was okay with that and would like to put that issue to rest.

MOTION: Member Williams moved, seconded by Member Carpenter, to deny the request for retroactive pay, based on the legal analysis provided.

Amendment: Member Hodges offered an amendment to the motion to add, "because we do not have the authority." Member Williams accepted the amendment as friendly to the maker.

Chair Thompson asked for discussion.

Member Williams said that was based on Mr. Brock's request last time.

VOTE: The motion was approved by unanimous voice vote.

7. PUBLIC COMMENT

Ms. Amy Landau said, "I would like to thank you for your service today and ask that somehow these be made public through TV and newspapers. Member Ford pointed out that you need the public here to say how the work of the Insurance Department affects the public. Thank you for your service.

There were no other public comments.

8. CALENDAR NEXT MEETING

The next meeting of the Nominating Committee was scheduled for November 4 at 10:00 a.m., hopefully at the New Mexico Gaming Control Board room.

9. ADJOURNMENT

Member Hodges moved, seconded by Member Romero to adjourn at 12:00 p.m.