

MINUTES
STATE CAPITOL COMMISSION
July 17, 2015

1. Introductions / Roll Call

Commissioner Martin called the meeting to order at 9:00 a.m. The roll was called and a quorum established with the following in attendance. Commissioner Martin expressed his thanks for all in attendance and noted that Representative McCormick was in Chattanooga because of the recent shooting and could not be with them. He then asked for a moment of silence to honor the victims of that tragedy.

- Commissioner Larry Martin
- Secretary of State Tre Hargett
- Treasurer David Lillard
- Commissioner Bob Oglesby
- Commissioner Bob Martineau
- Senator Jack Johnson
- Dr. Reavis Mitchell
- Helen “Tootie” Haskins
- Howard Gentry
- Representative Gerald McCormick (absent)
- Comptroller Justin Wilson (absent)

2. Approval of Minutes from the February 26, 2015 Meeting

The Minutes were approved as presented.

3. New Business

A. Discussion of artifacts in the Capitol

i. Complaint by Elizabeth Coker

Commissioner Martin stated that each member had been in receipt of a letter from Gerald McCormick and a letter from Speaker Harwell and Lieutenant Governor Ramsey, as well as a verbal request from Governor Haslam, asking the Capitol Commission to develop criteria to be used to determine who is honored in the Capitol and Capitol complex. He said it had generated a great deal of interest and the opinions expressed were appreciated. He noted one in particular had raised an issue relative to the ownership of the Nathan Bedford Forrest bust and as a potential ethical conflict of interest. He read aloud an excerpt of an email from Elizabeth Coker and asked Thad Watkins, General Counsel to the Commission, to outline the Commission’s options.

Thad Watkins responded that the statute gives the Commission plenary authority over the location and arrangement of all furnishings, statues, plaques and monuments and there are no limitations or restrictions of its authority. He said most of the memorials, statues and plaques have been raised by private funds or have been established by legislative enactments, and neither of them appeared to interfere with the Commission’s authority to review and make its plenary master plan for the arrangement of the busts. He said he respects the organization’s concerns raised over the ownership, but it was his opinion as legal counsel that the Tennessee State Museum (TSM) and the State of Tennessee, generally, are owners of the bust of General Forrest. Therefore, he didn’t think there was

any legal merit to the first portion of the complaint. Regarding the second portion, Mr. Watkins stated it was well settled law, addressed as recently as 1975 by the US Supreme Court, that government decision-makers, including members of State boards and commissions, are presumed to be “fair and impartial”. And that legal presumption is so strong that it cannot be overcome by mere inference but requires a showing of actual prejudice and bias. He said all that was alleged was a vague inference of possible conflict of interest on the part of some of the members by virtue of some organizations they may be in. The law allows that, and he did not see any merit to the second issue. He reminded the members that they have a duty to recuse themselves from a particular matter should they feel they could not be impartial or unbiased.

As far as dealing with these complaints, Mr. Watkins said the Commission had several options—it could defer it for further consideration; it could refer it to another separate independent body; or dismiss the complaint and move on with its business. If the Commission believed the complaints have merit, and wanted to defer action, they could do so. Commissioner Martin asked if it was his recommendation to dismiss the complaint, and Mr. Watkins responded “yes”. Commissioner Martin made a motion to dismiss the complaints filed by Elizabeth Coker, which was properly seconded by Commissioner Martineau. Commissioner Martineau stated that regardless as to ownership of the bust or any artifact, whether it was owned by some organization and loaned or given to the State, or where the funds came from, it didn’t change the Commission’s authority.

Secretary Hargett stated that the issues may, or may not, be part of the agenda discussion. He said there was a lack of specificity and didn’t know how the Commission could act on it one way or the other. He asked Mr. Watkins if he interpreted it as a formal complaint that required action on the part of the Commission, and Mr. Watkins recommended that the Commission take some action on the complaints. Further, Mr. Watkins read an excerpt from an email from Ms. Coker stating that Ms. Coker was filing a complaint formally with the Commission. Treasurer Lillard expressed concern dismissing the complaint out of hand without having any opportunity to hear what they were concerned about. As a former County Commissioner, he said he was used to hearing out citizens and their views before making a final decision. He suggested that the Chair could meet with Ms. Coker at his convenience, or one or more of the members could. He added that sometimes it doesn’t go the way the citizens want it to go, but it was always good to hear the discourse before making a decision. He said he didn’t think it was necessary for the Commission to act on the complaint that day.

Commissioner Martin said that, based on their General Counsel’s review, he didn’t think taking action at the meeting that day precluded any future discussions, and was open to further information that may alter the Commission’s view in the future. Secretary Hargett moved to divide the motion to take up the two complaints separately, adding that he believed they may be part of the discussion on the agenda. Thad Watkins added that complaints are lodged in an attempt to pretermitt Commission consideration of a subject. Therefore, the orderly way is to dispose of these complaints similar in the way of a court case and preliminary motions. The motion was amended to consider dismissal of the first and then the second portions of the complaint filed by Elizabeth Coker. Vote was taken on #1 with six members voting “yes” (Martin, Oglesby, Martineau, Gentry, Mitchell, Haskins) and three members voting “no” (Hargett, Lillard, Johnson). Roll was taken on #2 with eight members voting “yes” (Martin, Hargett, Oglesby, Martineau, Johnson, Gentry, Mitchell, Haskins) and one member voting “no” (Lillard). Both motions passed and carried.

Commissioner Martin continued the discussion by stating that the task given to the Capitol Commission was an important one. He made remarks citing the Capitol’s history and importance and how many Tennesseans had played a prominent role in building the state and nation. He said the Civil War is an important part of Tennessee history and that many Tennesseans served on both sides and demonstrated extraordinary bravery. Tennesseans should be honored in appropriate ways in the Capitol. He stated that through the years there has not been a clear set of criteria to guide who is

honored in what way. He said the placement or removal of an item honoring a Tennessean should not be done without thought and consideration, and a clear, thoughtful, standard criteria was needed for these decisions. Consistent with the letters received and the verbal request of the Governor, he offered the following motion and proposed resolution for the Commission's consideration and passage:

The Capitol Commission recognizes that only a limited number of historical figures can be honored at one time in the Capitol and Capitol Complex and recognizes a need to periodically review which historical figures should be among those few honored.

Accordingly, the Chairman hereby appoints a subcommittee of the Commission to develop a process for evaluating the characteristics of Tennesseans who should be honored in the Capitol Complex. The subcommittee shall present the process it develops to the Commission for consideration no later than October 1, 2015.

The subcommittee shall be made up of five (5) members of the Capitol Commission. Those members will be Treasurer David Lillard, Chairman of the Tennessee Historical Commission Dr. Reavis Mitchell, Senator Jack Johnson, Commissioner of General Services Bob Oglesby and Commissioner of Environment and Conservation Bob Martineau, who shall serve as the subcommittee chairman.

In its deliberations, the subcommittee shall take into account historical figures who are currently being honored in the Capitol and Capitol Complex, including, but not limited to, historical military figures such as General Nathan Bedford Forrest and Admiral David Farragut, and determine if they should remain among the few historical figures who should be currently honored.

The subcommittee shall be assisted in its work by staff of the State Architect's Office, Department of General Services and the Tennessee State Museum.

A motion was made to adopt the resolution and was properly seconded. Treasurer Lillard suggested it be amended to include the following language after the first sentence in paragraph 2: **"...and other processes regarding the management of the collection."**

Senator Johnson asked if it was to be inferred that the Subcommittee would cease to exist or sunset upon delivery of the report. Commissioner Martin responded that the intent was for this to be a sole purpose. Commissioner Martineau stated that the resolution was consistent with the request made in the Speakers' letter and verbal comments made by the Governor. Secretary Hargett stated that the spirit of the motion is that the subcommittee goes away once the report is completed.

Senator Johnson asked for clarification regarding artifacts belonging to the State when private funds are raised to purchase or commission a piece of artwork. Mr. Watkins responded that, unless there is something written to the contrary, often these are evidenced by written instruments of gifts, but the majority of artifacts have been raised with private funds and donated to the State of Tennessee. If there are remaining legal issues regarding ownership, there is a proper forum for the resolution of those issues, which was beyond the authority of the Commission. He said the argument being, "if we lend it to the State of Tennessee, we get to say where it is placed and when it goes". The General Assembly has said to the contrary that we have a Capitol Commission to consider all of that together, regardless of the funding source or origin. Mr. Heimbach stated that the current process is that those pieces are accepted by the State Building Commission as gifts-in-place. The monuments are accepted by the State and the TSM is the owner. He said he thought it was done more informally, at the time, adding that the monuments are accepted by the State as a gift and, as the curator of art and artifacts, the TSM is the owner.

Secretary Hargett asked who currently makes the decision to put a bust in the Capitol or a painting on the wall. It was his impression that it could come from this body or by a legislative act signed

by the Governor. Mr. Heimbach responded that the TSM is the owner of the artifacts in the Capitol and they guide and direct the placement of those artifacts. The Capitol Commission has the authority to direct the TSM to put, replace or remove items throughout. If the items are already owned by the State, he assumed they would go to the TSM unless there was some objection by either of the bodies mentioned. If it is a new piece, the process is that it comes to the Commission to determine its appropriateness in conjunction with the Monuments and Memorials Master Plan. Upon approval by the Commission it is then taken to the State Building Commission, who then accepts those items as gifts-in-place before being placed in the appropriate location.

Secretary Hargett asked if the TSM had the ability to place or remove items in the Capitol without Capitol Commission approval or approval from the two Speakers. Mr. Watkins spoke of the plan showing the location of the busts in the Capitol that was approved by the Capitol Commission. Secretary Hargett said he felt like it should be the Capitol Commission that determines what comes and goes, or the two Speakers. As much respect as he had for the TSM, he didn't think they should get to determine what goes where. Mr. Watkins responded that it had been the custom and practice that all statues come before the Commission for approval and placement. As far as portraits in individual offices, he didn't think the Capitol Commission was involved at that level. Secretary Hargett responded that he hoped that would be part of what the subcommittee considers as to who has the authority as to what is displayed.

Peter Heimbach stated that the question had not come up before and agreed that he would expect the subcommittee to return that as part of their answer. He gave one example as a standard practice that he didn't believe had been passed by the Commission or any other body which was that the last eight Governors have their portraits hung in the central hall of the First Floor, and the TSM coordinates the rearrangement in a specific order. He didn't know the specific origin of that practice, but with the inauguration of a new Governor, he assumed Governor Haslam's portrait would be commissioned and those portraits would be rotated at that time. With regard to the individual offices, Mr. Heimbach believed that the tenants may choose what was hung in their offices through coordination with the TSM. However, in the various common spaces, there has been no official guidance, leaving it to the discretion of the TSM.

The proposed resolution, as amended by Treasurer Lillard, was unanimously approved.

B. Recommendations and discussion of policy revisions

This item was deferred to a later meeting.

C. Requests for approval of the following events

Thad Watkins stated that a lot of requests are received for non-governmental use of the Capitol. Most are light, no-impact events such as prayer groups, choral groups and other light assemblies. However, from time to time, there are other requests for non-governmental use of the Capitol that have potential major physical impact on the facility. He said the Commission has taken due notice of that and its policy of prohibiting weddings and wedding celebrations in the public areas, and have that as a standard policy now going forward. It becomes trickier when there are other special requests that are quasi-governmental, governmental related or actual governmental. The Commission's authority extends only to approval of non-governmental events. He had three requests for potential high-impact events and wanted to bring them in front of the Commission and that they should be prepared at the next meeting to discuss a possible going forward policy.

i. Delek Tournament of Hope

Mr. Watkins stated that the first request was a charitable organization. It had no affiliation with government and was not government related. It was simply a community fund-raising organization

wanting to have their VIP sponsorship reception at the Capitol in late September. He said that the staffs of General Services, State Architect's office and TSM are concerned about the impact of these events on the fragile Capitol. He said there are allowances made for governmental uses that have potential impact and are carefully supervised. Staff strongly recommended against approving the request, adding that he thought it would be an open invitation to other organizations to seek the same premises. The Commission unanimously declined the request.

ii. YMCA Civic Engagement Benefit Dinner

Mr. Watkins stated this was an event that the Commission approved last year and who were requesting again to hold their dinner reception this year. While not directly governmental, the "Y" has a high school legislature that is government inspired and emulates government activities. For that reason, the Commission approved their request last year and also requested a report on how the event went.

David Carpenter, Facility Administrator for the Capitol, was recognized and stated that the event last year went very well. He said they had some adjustments that needed to be made in order to accommodate flow on the Second Floor, but it was not an issue. He said when they have events of this size during a work day it does challenge and impact the tenants of the building. Load in is primarily on the Ground Floor so those tenants feel the impact. Large delivery vehicles are a challenge, navigating the Capitol driveway during the work day because of tenant parking and pedestrian traffic. He noted that this year's event was scheduled for a Saturday night, making it easier to accommodate and cleaning for Monday morning's business. He said that staff recommended approval.

Commissioner Martineau commented that, while the YMCA is technically a non-profit, its express purpose in this event is fostering education of government by getting youth involved. The Commission unanimously approved the request.

iii. Tennessee Intercollegiate State Legislature (TISL)

Mr. Watkins stated that the Tennessee Intercollegiate State Legislature (TISL) is recognized by statute and that State agencies are supposed to give support to its functions and events. They have a heavy event annually at the Capitol that runs several days, and there have been concerns in the past about the impact on all the people and the facility. He said staff recommended approval of the request with the caveat that TISL pay close attention to coordinating with David Carpenter on deliveries, placement and scheduling of events so as not to disrupt the government operations in the Capitol.

Peter Heimbach commented that one thing TISL added last year was remarks by him to address the delegates to stress the importance of the Capitol and the preservation of the grounds and building and the honor that was afforded them to be able to use them. He said it was well received and TISL asked that it be expanded this year; so additional State staff will be addressing it to make it part of their program. Treasurer Lillard commented that he was in support of the request. This organization has been in Tennessee and has held its intercollegiate event in the Capitol every year since 1966, except for the year the Capitol was closed for renovation. It is truly a valuable function and brings college students from across the state, from all types of universities, to Nashville. He said that it's done great work for the General Assembly and for government at large and for Tennesseans, and he moved its approval. The request was unanimously approved.

D. Request for approval of the following modifications

i. Capitol Hill Tree Marker

Peter Heimbach stated that the request was brought forward upon recommendation of staff and in compliance with the Monuments and Memorials Master Plan. He said it was in recognition of Ms. Melissa Proctor (deceased) who was the longest serving staff member in the Capitol, serving in the Governor's Office for 30 years. A tree was planted in her honor in conjunction with the Capitol Hill

Landscaping Master Plan and the request was to add a marker to the base of the tree in engraved granite. He said it would also come to the State Building Commission for acceptance of a gift-in-place, and all the funds for the marker had been privately raised.

Secretary Hargett discussed honoring other employees who had lengthy service records, such as Margaret Tolleson, who worked in the Secretary of State's Office for over 40 years. He asked if any thought had been given as to what the criteria was going to be to determine who should be honored. Peter Heimbach responded that the consideration to other employees was not given. He said this particular request had come from the Governor's office whose staff had raised the money for the marker. He said if the Commission saw fit to approve this, it might be appropriate to request the same of Ms. Tolleson.

Treasurer Lillard mentioned Mary Smith, who worked almost 50 years for State government, and retired with the Treasury Department. He said if the Commission approved the request, there needed to be a caveat that they were not going to approve any more memorials like this unless they have a policy in place to differentiate it in some way. He mentioned all the dedicated, long-serving State employees, expressing concern that Capitol Hill could be covered with markers. He said it was an issue that cries out for some uniform policy.

Commissioner Martin suggested that they move forward with this one request because it had proceeded pretty far down the road. He asked Mr. Heimbach and Mr. Watkins if they could incorporate into their policy discussion the question raised by Secretary Hargett and Treasurer Lillard so that they have a more consistent approach going forward. Treasurer Lillard moved approval of the request for the marker with the caveat that no more would be approved until there was a written policy in place that comprehensively dealt with the issue. The request was unanimously approved.

ii. Warrant Officers Memorial

Peter Heimbach presented a request for approval of a monument to the U.S. Army Warrant Officer Association to be placed on the War Memorial Plaza in honor of the fallen Warrant Officers. Chief Warrant Officers Ricky Tackett and Robert Nicholson, president of the Volunteer Chapter of the Warrant Officer Association, were recognized. Officer Tackett stated they have a list of 30 officers dating back to World War II from Tennessee who have died in combat. He said they have raised all the funding themselves, have a plan for upkeep and to add new names as necessary. Treasurer Lillard asked if they were approving a design and where it would be located. Officer Tackett responded that the design was copied from the USS Nashville that is currently mounted on the Plaza. Mr. Heimbach stated that it is to be located in one of the planters flanking the fountains, which is the appropriate place in accordance with the Monuments and Memorials Master Plan. Treasurer Lillard confirmed that it would become a gift-in-place and State property. The request was unanimously approved.

4. Old Business

A. Update on Capital Projects on Contiguous Grounds

John Hull, Deputy Commissioner for the Department of General Services, presented an update on the following capital projects on the grounds of the State Capitol.

i. Capitol landscaping upgrades

New semicircular staircase adjacent to James Robertson Parkway will be the most visible part of the project and will be symmetrical to the existing staircase in keeping with the Master Plan. Project design is on hold due to discussions with AT&T and Metro to resolve issues related to easements and the necessary relocation of underground utilities such as telephone, water, and gas lines. Additional discussions are in progress with Metro regarding the exchange of credits for impervious surfaces between Capitol Hill and the new State Parking Garage and First

Tennessee Ballpark. The decisions made will affect the aesthetics of the drainage and detention areas to be created on Capitol Hill as part of the overall project. Due to the issues at hand, a construction schedule is not yet determined, but a 12-month duration is likely.

ii. Capitol exterior lighting

The Capitol Commission, in a previous meeting, addressed the issue of the size of LED lights for the ground mounted fixtures. The ground mounted fixtures have been repaired and restored rather than being replaced as new LED fixtures would be larger and more obtrusive. Work is complete. The roof mounted fixtures are being replaced with LED fixtures and color changing options which will be used to light the cupola's exterior. The proposed white lights were changed to a deeper blue color spectrum providing more vibrant color using less energy based on a recent mock-up. Completion is expected in the Fall of 2015.

iii. Capitol cupola restoration

Project Design is underway. Construction will begin in February 2016. Additional funding was requested and approved at June SBC, increasing the project scope to include repairs to the stonework and interior lighting upgrades. All work including the original scope of restoring the ironwork will be accomplished at one time as the job is very labor intensive. Completion is anticipated by Summer 2016.

iv. Motlow Tunnel

Waterproofing Project Design is currently on hold as a result of the decisions affecting Legislative Plaza. Facilities Management will continue to maintain existing conditions and prevent further deterioration until further decisions are made.

v. David Crockett bust

This is being handled by the TN Arts Commission who will procure the bust through an artistic selection by a contest. Funding was appropriated in the FY15 budget in the amount of \$25,000. Additional funding of \$35,000 was appropriated in the FY16 budget to continue the project. It is anticipated that the project budget increase to \$60,000 will be presented and approved at the August SBC meeting.

B. Update on Capital Projects on Adjacent Grounds

John Hull provided an update on the following capital projects on the adjacent grounds of the State Capitol.

i. Bicentennial Mall Urban Master Plan

As approved by the SBC on May 13, 2015; the master plan was updated by Earl Swensson Associates. The revisions were presented and approved at the June SBC meeting. The plan has been modified to show the New State Museum and First Tennessee Park.

ii. New State Museum

The FY16 budget appropriated \$120M for a new 130,000 square foot facility to be located on the Bicentennial Mall. An additional \$40M will be added to the project from private donations to the Museum effort for the \$160M project approved at the May 13, 2015 SBC meeting. We are in the process, over the next several months, of procuring the project management company that will provide direction and oversight to the project. The building Designer, the Construction Manager, the Exhibit Designer, and the Exhibit Fabricator will follow. At this time we have completed the procurement of the PMaA, and Compass Partners, LLC was the best evaluated proposer. The Museum is scheduled to open by Summer 2018.

iii. Cordell Hull & Central Services Buildings

Cordell Hull will be renovated while the Central Services area will be demolished and a new parking garage will be constructed on that site, under the public plaza. Remaining tenants within Cordell Hull will relocate to leased space within the UBS building nearby during the Fall of 2015. Additional functions will relocate to the John Sevier Building from Central Services by September 2015 so demolition activities can proceed. The Legislature will be relocated from Legislative Plaza and War Memorial buildings to a renovated Cordell Hull building as approved at the May 13, 2015 SBC meeting, expanding the scope of the State Capitol Mechanical and Electrical Upgrades project which formerly included renovations to War Memorial and Legislative Plaza. Interior renovations, exterior additions to the first floor to accommodate public meeting spaces, and improved access to the Capitol are included in the scope of work. The new garage is anticipated to maintain the current view of the Capitol from the east and provide approximately 150 parking spaces. The project will be fully funded totaling \$136.5M from the State. The RFP for CMGC preconstruction services has been released and evaluated with selection to be approved at the July ESC. The recommended CMGC is Skanska. The project is estimated to be complete in the Summer of 2017.

iv. Legislative Plaza & War Memorial

Upgrades and renovations have been put on hold as the tenants will relocate to Cordell Hull. Planning efforts are currently underway for both of these facilities.

v. Library & Archives

Planning activities for a new State Library & Archives building have been underway through Design Development; however, no additional funding was appropriated in the FY15/16 budget to proceed further.

5. Other Business

There being no other business, the meeting adjourned at 10:20 a.m.

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