

Agenda Item: Discussion of Vacancies on Councils and Boards of Trustees

Situation: There are three positions on the Umstead Review Panel for the 2014 to 2018 term.

Background: In April, 2014, the Board of Governors will appoint members to the Umstead Review Panel, as provided by statute. A summary of the Umstead Act and the creation of the Panel are attached or reference.

Assessment: The current Panel members have indicated a willingness to be reappointed. Their reappointment is supported by UNC General Administration Office of Legal Affairs staff. Additional nomination also will be accepted.

Action: This item requires a vote.



The University Of North Carolina
General Administration
Division of Legal Affairs

The Statute. The Umstead Act, [NCGS 66-58](#), was enacted in 1929 to prohibit State agencies from unfairly competing with private businesses. The exemptions to the act are longer than the act itself, and historical UNC exemptions range from operating utility plants to selling ice cream. Several Attorney General opinions and court cases have allowed UNC institutions to engage in activities not specifically listed, but which served a “public purpose,” such as selling and fitting hearing aids, and providing information technology consulting for a State agency. There are also blanket exemptions for activities on Centennial Campus, Horace Williams Campus, and Millennial Campuses throughout the system.

In 2005, additional exemptions were added to NCGS 66-58(b). These new exceptions were to confirm that UNC is not in competition with private businesses when it engages in activities that further its mission, as is broadly stated in [NCGS 116-1](#), and to allow for activities that serve the UNC community and the communities in which UNC institutions are located. Proceeds for any activity undertaken are not remitted to the general fund, but are to be placed in a trust fund to continue to conduct the activity or to further the mission of the University.

The Umstead Review Panel. The 2005 exemptions were conditioned upon the BOG establishing the Umstead Review Panel, composed of individuals appointed by the BOG, the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives. The panel was established in 2006 and the procedures are contained in [BOG Policy Manual 100.4](#). UNC-GA Legal Affairs staffs the panel and all of the materials and proceedings are online.

The panel reviews activities that serve the students, employees, and alumni to determine if the activities are unauthorized competition, and reviews activities that serve the community to determine if the activities are unauthorized or unfair competition. Six determinations have been issued by the panel since its establishment, and only one was in response to an objection by an individual.

If the Umstead Review Panel approves of a proposed activity, the UNC institution and individuals involved can rely on that approval as an absolute defense to prosecution.

From: Farris, Ray [<mailto:rfarris@jahlaw.com>]
Sent: Tuesday, January 07, 2014 12:13 PM
To: David Harrison
Subject: RE: Umstead Review Panel

David, if appointed, I will be pleased to serve as set out below. Ray Farris

From: David Harrison [<mailto:harrison@northcarolina.edu>]
Sent: Tuesday, January 07, 2014 8:54 AM
To: Farris, Ray
Cc: Thomas C. Shanahan; Ann W. Lemmon; Karin Szypszak
Subject: Umstead Review Panel

Dear Mr. Farris:

In June, 2014, the Board of Governors will appoint members to the Umstead Review Panel, as provided by statute. Because of your service to the University and State of North Carolina on the Panel, I ask if we may submit your name for reappointment for the 2014 to 2018 term. I have attached a summary of the Umstead Act and the creation of the Panel for reference.

The appointments should be submitted to the BOG Governance Committee in February, 2014, so we would appreciate a response to accommodate that timeline.

Thank you for making the Umstead Review Panel a successful oversight body for furthering the mission of the University of North Carolina and for promoting economic development in the State. Please do not hesitate to contact me if you have any questions.

David

David Lombard Harrison, Associate Vice President for Legal Affairs

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P.O. Box 2688 | Chapel Hill, North Carolina 27515-2688
(919) 962.0330 (direct) | (919) 962.4588 (main)

From: Warwick, Bob [<mailto:Bob.Warwick@mcgladrey.com>]
Sent: Tuesday, January 07, 2014 9:01 AM
To: David Harrison
Cc: Thomas C. Shanahan; Ann W. Lemmon; Karin Szypszak
Subject: RE: Umstead Review Panel

David:
I will be happy to continue to serve on the Umstead Review Panel.

Bob

Bob Warwick, CPA
Tax Manager
McGladrey LLP
300 N. Third St.
Wilmington, NC 28402
910-762-9623 P 910-762-9206 Fax



From: David Harrison [<mailto:harrison@northcarolina.edu>]
Sent: Tuesday, January 07, 2014 8:54 AM
To: Warwick, Bob
Cc: Thomas C. Shanahan; Ann W. Lemmon; Karin Szypszak
Subject: Umstead Review Panel

Dear Mr. Warwick:

In June, 2014, the Board of Governors will appoint members to the Umstead Review Panel, as provided by statute. Because of your service to the University and State of North Carolina on the Panel, I ask if we may submit your name for reappointment for the 2014 to 2018 term. I have attached a summary of the Umstead Act and the creation of the Panel for reference.

The appointments should be submitted to the BOG Governance Committee in February, 2014, so we would appreciate a response to accommodate that timeline.

Thank you for making the Umstead Review Panel a successful oversight body for furthering the mission of the University of North Carolina and for promoting economic development in the State. Please do not hesitate to contact me if you have any questions.

David

David Lombard Harrison, Associate Vice President for Legal Affairs

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From: H D Reaves [<mailto:hdreavesjr@hotmail.com>]
Sent: Tuesday, January 07, 2014 2:15 PM
To: David Harrison
Subject: RE: Umstead Review Panel

David, I would have no objection to having my name submitted for reappointment to the Umstead Review Panel. I think the Panel has averaged about one meeting a year since I was first appointed; I cannot complain about that!

I appreciate your allowing me to visit the GA Building for our meetings, as opposed to attending by phone. It gives me a chance to reacquaint myself with "the good old days" of BOG service, although most of my co-workers are no longer there. At least I can talk with Ray and Bob by phone.

I appreciate the honor of serving.

Cobby

> From: harrison@northcarolina.edu
> To: hdreavesjr@hotmail.com
> CC: tcshanahan@northcarolina.edu; awlemmon@northcarolina.edu;
> Subject: Umstead Review Panel
> Date: Tue, 7 Jan 2014 13:54:15 +0000

Dear Mr. Reaves:

In June, 2014, the Board of Governors will appoint members to the Umstead Review Panel, as provided by statute. Because of your service to the University and State of North Carolina on the Panel, I ask if we may submit your name for reappointment for the 2014 to 2018 term. I have attached a summary of the Umstead Act and the creation of the Panel for reference.

The appointments should be submitted to the BOG Governance Committee in February, 2014, so we would appreciate a response to accommodate that timeline.

Thank you for making the Umstead Review Panel a successful oversight body for furthering the mission of the University of North Carolina and for promoting economic development in the State. Please do not hesitate to contact me if you have any questions.

David

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