BUSINESS AFFAIRS SUB-COUNCIL

January 26, 2005

MINUTES

The meeting began at 9:00 a.m. in the TBR Board room. Present were Mr. John Cothern (Chair, MTSU); Ms. Debra Bauer (NSCC); Mr. Horace Chase (JSCC); Ms. Beth Cooksey (VSCC); Dr. David Collins (ETSU); Mr. Bill Fuqua (RSCC); Mr. Mike Gower (MTSU); Mr. Ken Horner (COSCC); Dr. Charles Hurley (CLSCC); Mr. Al Irby (APSU); Dr. Rosemary Jackson (WSCC); Ms. Linda Maxwell (TTU); Mr. Mike Posey (MSCC); Mr. Terry Rector (TTU); Mr. Mitch Robinson (APSU); Dr. Claire Stinson (NSTCC); Ms. Tammy Swenson (CSTCC); Ms. Velma Travis (DSCC); Mr. Larry Wakefield (TSU); Dr. Bob Adams, Ms. Kathy Crisp, Mr. Tom Danford, Ms. Tammy Gourley, Ms. Angela Gregory, Ms. Deanna Hall, Ms. Lisa Hall, Ms. Debbie Johnson, Ms. Ann Rutland, Ms. Brooke Shelton, Mr. Ron Simmons, Ms. Renee Stewart and Ms. Nancy Washington. (TBR). Charles Lee, David Zettergren, and Sharon Hayes (UOM) participated via conference call.

Dr. Adams introduced Ms. Brooke Shelton as a new Assistant Director of Financial Accounting.

BUSINESS

1. ERP Update

Mr. Tom Danford discussed the ERP progress. The aggressive schedule of implementation of the finance module consists of two major players: SCT has the role of providing software, training, and information and Cornelius and Associates has the role of project management and organizational development consulting.

Currently, the scope of the project is being finalized and refined. Also, a communication plan is being formulated that includes an informational website. Every Cohort I institution met the January 25 deadline for ordering necessary hardware. Chart of accounts training is underway and a data integrity committee is working on cleaning up old data before transport and linkage.

Campus kick-offs begin the week of January 31. Finance and technical training schedules will be distributed soon. Mr. Danford reported that many institutions nation-wide plan to move to SCT Banner and that TBR should receive better SCT resources by being ahead of these institutions. Other fast-tracking benefits include having the student information system up a year earlier than planned and various cost savings. Conversion of the Human Resources and Payroll modules will not be as compressed.

When questioned about business process analysis, Mr. Danford informed the group that SCT does not provide business process analysis. Such analyses are incumbent upon our institutions. The company is better prepared to assist with analysis of student information and human resources systems.

Mr. Danford emphasized that the hardware sheet provided to institutions is merely a guideline. Many campuses may already have some of the equipment. IT directors are being encouraged to coordinate UNIX and SUN training. SUN offers free training.

There is also online information available 24/7.

2. Report of the Committees

A. Finance Committee

Dr. Collins highlighted the following issues from the January 18, 2005, Finance Committee meeting.

- Accounting Issues Related to Administrative Software

  The Finance Committee recommended reporting maintenance and personnel costs in the unrestricted fund and the implementation costs paid to SCT, the licensing fees, and hardware costs in the renewal and replacement fund.

- Guideline B-060 Fees Charges, and Refunds

  The Committee discussed whether students using the elderly and disabled fee waiver are required to pay materials fees. The Committee determined that fees specifically related to the cost of the course should be assessed to elderly and disabled fee waiver students. The Committee recommended a revision to Guideline B-060 to include a reference to special course fees . (See Attachment A)

- Report of Presidents' Expenses

  The Committee also discussed the appropriate accounting treatment for trade-out arrangements with vendors in which the institution is allowed a credit toward purchases. All trade-outs must be recorded in the accounting records and are required to be reported in the President's Quarterly Report of Expenses. Institutions should review their agreements and make the necessary accounting entries.

- Cell Phone Usage and Taxation

  Current tax law states that any personal use of employer-provider cell phones not reimbursed by the employee is taxable income to the employee. If the institution does not have an accountable plan, then the total cost of providing the cell phone is taxable. An accountable plan requires that the institution receive a detailed bill and the employee reimburses the institution for all personal calls made. The institution cannot give employees minutes that are required to be paid whether used or not or night/weekend minutes that are free under the cell plan.

  As an example of compliance with tax laws, APSU has elected to provide a stipend to employees who demonstrate that their job requires a cell phone. The entire amount of the stipend is taxed as income and the employee is responsible for obtaining the cell phone service. It was advised that each campus review their cell phone policy.

- Policy 4:01:07:02 Foundations

  Legal counsel has developed a model agreement for foundations (Attachment B). The model agreement is only a guideline and does not have to be used verbatim. It will be on the General Counsel website when completed. The Committee recommended that all institutions review current foundation agreements for inclusion of all applicable terms.

- Revisions to Technology Access Fee Spending Plans

  The Committee discussed the appropriate procedures to follow when the Board-approved Technology Access Fee spending plan requires revision. These revisions include new projects and amended projects. If a revision is needed, the institution must submit a letter from the president to request the revision. Dr. Adams is the approving authority for spending plan revisions. The request may come at any time during the fiscal year, but approval should be obtained prior to the expenditure of funds.

- Policy 4:03:02:00 Motor Vehicles

  Ms. Washington discussed proposed revisions to the Motor Vehicle Policy. The revisions include adding official volunteers to the policy's definition of employee. The policy revision also defines official volunteers. The revised policy is attached. (See Attachment C).

- Budget Analysis Forms

  Ms. Stewart discussed the importance of adequately explaining variances on the budget analysis forms of the proposed and revised budget cycles. These variance explanations are used to prepare the Board presentation. The explanations should be sufficiently detailed to describe expenditure/revenue increases or decreases. Explanations such as "increased operating expenses" or "increased estimate" are not sufficient. Additionally, expenditure variances should not be explained by the source of funding (increased student fees, budget carryforward, etc.). The expenditure variance explanation should address what additional purchases will be made (purchased special collection for library, increase in utility rates, etc.).

- July Budget and Fee Increase

  Dr. Adams discussed THEC's requirement that the July Proposed Budget include the fee increases approved at the June Board meeting. The Committee determined that whether or not this can be done will depend upon what level of detail THEC needs. If THEC only needs the fee revenue and the related increase in expenses by function and object code, this information can be obtained. If THEC needs all budget analysis forms revised to detail related revenue/expense increases, it will not be possible to resubmit the entire budget between the date the Board meets in June and July 3rd (THEC's normal due date for budget information).

- Internal Audit Chargeback

The Committee discussed whether the internal audit chargeback should be charged to the internal audit account or the same account in which the system chargeback is charged. The Committee recommended using the same account as the system chargeback.

The Finance Committee minutes were approved.

B. GASB Committee

Dr. Collins highlighted the following issues from the January 18, 2005, GASB Committee meeting.

- Capitalization of Software

  The committee reviewed SOP 98-1 Accounting for the Cost of Computer Software Developed or Obtained for Internal Use. While this SOP does not apply to governmental entities, NACUBO has recommended that colleges/universities comply with SOP 98-1.

  The committee determined that the licensing software agreement for Banner exceeds 75% of the life of the asset. This conclusion was based on the fact that at the end of the initial five-year agreement, TBR institutions can continue to use the software even if an extension is not negotiated. The software will no longer be supported by SCT, but it will still be available for use and therefore will be treated as a capital lease.

  The committee discussed which cost components were appropriate for capitalization. Based upon SOP 98-1, it appears that maintenance costs must be expensed. Dr. Collins will develop a position paper for submission to state audit.

- GASB 40 Deposit and Investment Risk Disclosures

  The committee discussed the requirement of GASB 40, which includes a June 30, 2005, implementation date. The statement requires disclosures related to investment credit risk (including custodial credit risk and concentration of credit risk) interest rate risk, and foreign currency risk.

  A template for the investment note disclosures will be distributed to the committee for agreement and then distributed to all institutions so that they may begin gathering the information required.

- Capitalize or Expense Interest Costs

  The committee reiterated its position that all interest costs should be expensed, including interest related to Banner financing. The capitalization policy will be reviewed to ensure inclusion.

  The GASB Committee minutes were approved.

C. ERP Cost Allocation Committee

Dr. Collins highlighted the basic concepts from the January 19, 2005, ERP Cost Allocation Committee meeting.

The Committee's recommendations are included as Attachment D. Fixed costs were allocated based on the SCT tier system and variable costs were allocated based on funding support.

Dr. Bob Adams has asked for five years financing from the TSSBA. Bonds have to be issued if the financing is for more than five years. Interest payments will be deducted from LGIP accounts monthly. TBR needs to be notified in early July of the planned principle payments in August.

The Presidents Sub Council will attempt to get Board approval to use TAF funds. Dr. Karen Bowyer (DSCC) is developing a position paper from the presidents based on the fact that the new system will be advantageous to the students. A limit of 25-50% of TAF income is being debated. An end date will be included. It is hoped that this will be on the March agenda.

D. Council of Buyers

Angela Gregory highlighted the Council of Buyers meeting held on January 19, 2005.

TTC representation has been added to the Council of Buyers. Members of the Council have been asked to join one of three committees working toward standardization across the system: 1. SCT System Standards, 2. Vendor Application and Commodity Codes, and 3. Terms and Conditions.

Each institution was asked to send returned check volume to Ms. Gregory to determine interest in issuing an RFP for collecting on returned checks.

Nashville State Community College has been approached by American Express offering a government discount rate of 2 1/4 %. This type of service would impact current bank agreements. Debra Bauer will work with Ms. Gregory to determine interest in bidding.

E. Internal Audit

Tammy Gourley highlighted the Internal Auditors meeting held on November 30, 2004.

The group conducted discussions about required audits, TAF audits, TTC director audits, quality assurance audits, and the audit plan. Ms. Gourley has a direct email address to receive reports of fraud.

The internal audit report format will be changed to include an executive summary. This summary will be provided to the Board Audit Committee. The audit manual will be updated.

Ms. Gourley stated that she will seek out investigation training for the group.

F. Human Resources

Debbie Johnson highlighted the Human Resource Officers Committee meeting held on January 12, 2005.

A committee is reviewing the TBR policy on Family Medical Leave

A proposed revision to Policy 5:01:03:03 – Optional Retirement Programs was presented. This revision incorporates the provision for transferring from the ORP to TCRS on an employee's fifth anniversary.

Ms. Johnson discussed the recent changes to the Administrative Closing policy. The intent is to limit mandatory administrative closing days to the 13 provided by Board policy. The guideline was amended to eliminate the allowance of additional mandatory closing days. This is partly an FLSA issue (especially with non exempt personnel) and partly an administrative decision.

Officers were reminded that benefits should not be circumvented when determining if an employee is a regular employee or a temporary employee. Policy definitions must be used with reasonableness and sound judgment. It is the "intent" of the appointment that must be used to determine if a regular position is necessary, e.g. will the work continue beyond six months and/or are the breaks in service between appointments reflective of a temporary use of an employee.

Adjunct Faculty Contracts - State auditors have checked employment contracts and the date of signature by the employee on some of our campuses including NSCC where a finding was taken. Officers should ensure that all employment contracts are signed by the employee and properly approved by appropriate personnel before the effective date. Because the HR Office may not prepare adjunct employment agreements, it is critical that HR train the Academic Office or other departments in properly preparing the contracts and monitoring all contracts to insure that they have been fully executed in a timely manner. Measures should be implemented to ensure that, when possible, contracts are signed prior to the beginning of the contract period. Training sessions may be helpful for department and division secretaries and others responsible for generating adjunct contracts to ensure understanding of and compliance. Any exception to timely obtaining the signature and approval should be documented by memorandum.

3. Faculty Pay Issues

TBR policy states that maximum adjunct rates apply to overload. The faculty sub-council has taken issue with this and asked financial officers to determine if this is a must situation or a may situation. Ms. Crisp advised that the sub council request a legal opinion. It was determined that this is an academic issue and that the opinion be directed back to Academic Affairs.

4. Other

Ms. Crisp stated that a G-030 revision committee is being formed. She listed her choices for the committee and requested that the appropriate business officer support the nominee. The nominees are Judy Hull (TTU), Janine Brink (MTSU), Kathy Kelley (ETSU), Ennis Taylor (CLSCC), and Debbie Scott (WSCC).

Dr. Adams reminded the group that universities must charge community college rates for developmental courses beginning this fall. This was referred to the computer center directors last year. It was suggested to inquire about this through Tom Danford and Ken Brooks. Business Officers were advised to discuss this issue with their Presidents.

TSSBA financing requests need to be submitted to the TBR office by January 28.

The Tennessee Attorney General's office is working on a settlement in an anti-trust lawsuit against Visa and MasterCard. The settlement is $1500 for every million processed by the card companies since 1996. Campuses need to submit a list of merchant id numbers along with a list of banks used during this time period to Ms. Stewart by February 4.

Governor Bredesen's State of the State and Budget addresses are scheduled for Monday night, January 31.

TBR staff is discussing a post-Geier strategy. See Attachments E1-E3.

There being no further business, the meeting was adjourned.

ATTACHMENT A

Guideline B-060

5. Maintenance fees may not be waived. However, specific exceptions are provided in the following instances:

   a. Pursuant to TCA 49-7-113, exceptions exist for certain disabled and elderly students, as well as state service retirees. For audit courses, no fee is required for persons with a permanent, total disability, persons 60 years of age or older and domiciled in Tennessee, and persons who have retired from state service with 30 or more years of service, regardless of age. For credit, a fee of $75 per semester or $50 per quarter may be charged to persons with a permanent, total disability, and persons who will become 65 years of age or older during the academic quarter or semester in which they begin classes and who are domiciled in Tennessee. (Note: This fee includes maintenance fees, student activity fees, technology access fees, and registration fees; it does not preclude an application fee, late fee, change-of-course fee, parking fee, **special**

course fee, etc.). This only applies to enrollment on a space available basis, which permits registration no earlier than four (4) week prior to the first day of classes.

b. Pursuant to TCA 49-7-102, certain statutory fee exceptions exist for dependents and spouses of military personnel killed, missing in action, or officially declared a prisoner of war while serving honorably as a member of the armed forces during a period of armed conflict. If these provisions are invoked by a student, the correct applicable law should be determined.

ATTACHMENT B

Attachment B

January 2005 – SAMPLE AGREEMENT *

AGREEMENT BETWEEN

_________________________ (INSTITUTION)

AND

__________________________ (FOUNDATION)

THIS AGREEMENT is made this _____ day of _________________, 20__, by and between ______________________________ (INSTITUTION) (hereinafter referred to as the "Institution"), and _______________ (FOUNDATION) (hereinafter referred to as the "Foundation").

The Foundation is a private, non-profit public benefit corporation existing by virtue of Tenn. Code Ann. 49-7-107 and Tenn. Code Ann. 48-51-101 et seq. (Tennessee Nonprofit Corporation Act), is tax-exempt under Section 501(c)(3) of Internal Revenue Code, and is organized to work in concert with the Institution . The Foundation is established by Charter and Bylaws dated ___________, and its purpose is as stated therein. As set forth by its charter, the Foundation's objectives are (1) to promote the cause of higher education and particularly the mission of the Institution; (2) to expand educational opportunities; and (3) to acquire, manage and administer Foundation funds to achieve those objectives. The Foundation is organized exclusively for charitable, educational purposes and is empowered to encourage, solicit, receive, manage, administer, control, invest, and disburse contributions, gifts, grants, bequests, and transfers of funds or property of any nature, and carry out the wishes of donors and see that property so received is applied to the uses specified by the donors.

The Institution is a public Institution of higher education created by Tenn. Code Ann. 49-8-101 and governed by the Tennessee Board of Regents. The Institution is authorized to do all things it deems to be in the best interest of the Institution within the parameters of guidelines and policies established by the Tennessee Board of Regents and state and federal law and in accordance with its agreement with the Foundation.

The parties hereby agree as follows:

I. Foundation powers, duties, and responsibilities

1. The Foundation is run by an independent board and is independent of the Institution and the state. It is permissible for one Institutional employee to be a voting Foundation board member, and that should be specified. Other Institutional employees may be ex officio, non-voting members.

2. The Foundation's responsibilities shall include raising funds for the Institution.
The Institution and the Foundation may share employees and services, including a
database of information on donors. As used herein, the Foundation's "database of information" includes but is not limited to a compilation of contributors, prospects, alumni, friends, and supporters of the Institution. These records, as well as all other data, materials, and information of the Foundation pertaining to past, current, prospective donors is proprietary to the Foundation and constitutes its confidential information and trade secrets.

3. The Foundation may disclose confidential information from time to time to authorized Institution personnel for purposes of cooperative planning and implementation as authorized by the Foundation.

4. The Foundation's responsibilities shall also include administration and management of the following:

a. **Trusts.** Legal devices used to set aside money or property belonging to one person or entity for the benefit of one or more persons or parties. Trust agreements transfer legal title but not ownership of the corpus to the trustee.

b. **Unrestricted gifts.** Assets or income unrestricted in terms of use, eligible recipients, or distribution procedures. A grant of unrestricted funds does not specifically stipulate how the money is to be spent by the grantee.

c. **Restricted gifts.** Assets or income restricted in terms of use, eligible recipients, or distribution procedures.

d. **Endowments.** Bequests or gifts intended to be kept permanently and invested to create income. All endowments shall be established with each donor by a Memorandum of Agreement or trust agreement. This ensures that the donor's intent is fully understood by the Foundation and Institution.

e. **In-kind contributions**. Donations of goods or services rather than cash.

f. **Foundation accounts.** Accounts containing Foundation funds, including scholarship accounts, endowments, investment accounts, and operating fund accounts.

5. The Foundation shall be designated as an entity responsible for promoting and generating private sector support for the Institution.

6. The Foundation shall assist the Institution and its colleges and departments in their fund raising activities, capital campaigns, and development programs with individuals, corporations, Foundations, and other organizations.

7. As mutually agreed by the parties, the Foundation will perform other acts as may be deemed appropriate, consistent with the Foundation's mission and resources.

8. Income Tax Filing: **The Foundation shall provide the Institution with all information needed for the Institution to file an annual form 990 on the Foundation's behalf listing organizational assets, receipts, expenditures and compensation of officers. IRS Form 990 is the annual "Return of Organization Exempt from Income Tax." In the event that the Foundation's gross receipts are less than $25,000, the parties agree that the Institution has the option of either filing a "blank" Form 990, or not filing at all.**

9. **Employment Taxes.** The Foundation may be legally required to file Form 941, "Employer's Quarterly Federal Tax Return." The Foundation shall provide the Institution with all information needed for the Institution to file form 941 on the Foundation's behalf, and the Foundation shall be responsible for timely submission of all tax return forms it receives to Institution personnel. The parties acknowledge that no employment tax filing is required for any quarter in which the Foundation has no payroll or no employees.

10. **Miscellaneous Awards and fees.** The Foundation shall provide the Institution with all information needed for the Institution to file form 1099-MISC on the Foundation's behalf reporting awards, fees, and similar payments that must be reported to IRS by the Foundation. This must be sent to the award recipient no later than January 31st, and to the IRS, with a Form 1096 transmittal, no later than February 28**.** .

11. **Investment and Management of Foundation funds.** The Foundation Board is vested with sole authority to invest and/or manage the Foundation's funds, including but not limited to cash, securities, and real estate, taking the form of trusts, endowments, restricted gifts, unrestricted gifts or otherwise.

12. **Collection of Donations.** The Foundation is responsible for the collection of donations for the Institution's charitable, scientific, and educational purposes.

13. **Additional Foundation authority.** The parties agree that the Foundation Board is empowered to:

a. Solicit gifts or assist the Institution in soliciting gifts from third persons in the name of the Institution and for the benefit of the Institution or any of the Institution's programs;

b. Solicit grants and contracts or accept grants;

c. Enter into contracts for services to be performed using the Institution's facilities and Foundation account funds;

d. Enter into contracts for goods or supplies using Foundation account funds; and

e. Authorize payment of bills or professional fees in the name of or in behalf of the Foundation.

14. No Institutional/state funds shall be used by Foundation for the Foundation's operation, and no state funds will be transferred either directly or indirectly to the Foundation.

15. The Foundation shall implement a written, mandatory, document retention and periodic document destruction policy that complies with *Sarbanes-Oxley*, prohibiting document purging if an official investigation is underway or suspected. The policy shall include guidelines for handling electronic files, voice mail, and paper documents.

16. The Foundation shall adopt an ethics policy complying with P.L. 879-2853 (2004), Tenn. Code Ann. § 49-7-107, *as amended*, requiring that state college and university Foundations adopt a code of ethics.

17. **Use of Institution name/marks.** The Foundation may, in connection with its lawful business and activities, use the name of the Institution as well as the Institution's logo, seal, and other symbols and marks.

18. The Foundation shall not delegate the authority to use the Institution's name or marks without written approval of the Institution's president and shall not permit the Institution's name or marks to be used in connection with advertising of non-institution or non-foundation products or services unless such use is consistent with policies of the Institution.

19. The Foundation agrees to cease using the Institution's name and marks in the event:

a. The Foundation dissolves;

b. The Foundation ceases to be a non-profit corporation or ceases to be recognized by the IRS as described in Section 501(c)(3) of the Internal Revenue Code; or

c. The Foundation or the Institution terminates this agreement.

20. The Foundation will be responsible for its own legal counsel.

21. With the assistance of Institution administrative personnel, the Foundation will create the Foundation's budget.

22. The Foundation agrees to comply with all executive orders, federal, state, and local rules, regulations, and laws applicable to similar non-profit corporations.

II. Institution powers, duties, and responsibilities.

1. The Institution agrees to encourage and maintain the independence of the Foundation and, at the same time, foster the cooperative relationship between the Institution and Foundation.

2. Institution employees may:

   a. Provide services within the scope of their employment with the Institution;

   b. Serve as *ex officio* members of the Foundation's board of directors or other governing structure;

   c. Review the financial records of the Foundation to determine that the Foundation is adequately capitalized for any activities undertaken in the name of, for the benefit of, or in conjunction with the Institution;

   d. Request or require evidence satisfactory to the president or the president's designee of insurance or self-insurance adequate in form and amounts to cover foreseeable liability arising from activities undertaken in the name of, for the benefit of, or in conjunction with Institution;

   e. Request periodic review of any written general agreement or memorandum of understanding between the Institution and the Foundation to ensure that it describes each party's responsibilities in a manner that makes it clear to third parties dealing with the cooperative organization that the organization is acting as a legal entity separate from the Institution; and

   f. Take any action necessary to ensure that actions of the Institution's officials, faculty, staff, or employees pursuant to the relationship are consistent with policies established by the Board of Regents and the Institution regarding conflicts of interest, outside activities, and other matters.

3. In consideration of the services provided to the Institution by the Foundation and as set forth herein, the Institution shall assist the Foundation Board in the following:

   a. Provision of office space, telephones, computers, supplies, *et cetera*. These will be considered in-kind services from the Institution,

      [Ideally, the foundation would provide its own staff and pay rent for space on campus. If this is not feasible, be certain that the agreement contains adequate mutual consideration for the services rendered by each party and a description of those services. These in kind services from the Institution shall be appropriately recognized in the foundation's audit.]

   b. Provision of clerical and administrative support services through the Institution's Development Office,

   c. Provision of designated financial services including financial record keeping.

III. Mutual acknowledgements and obligations.

1. Foundation funds shall be utilized in a manner consistent with the wishes of donors and the objectives of the Foundation.

2. The parties agree that investment and maintenance of Foundation funds will occur in accordance with the following principles:

a. If specified by the donor, the endowment principal account will be a permanent endowment that is invested and never expended. Funds expended for purposes set forth by the donor will be taken from interest and/or investment income. Unexpended interest and or investment income may be returned to the endowment to grow the corpus or allowed to accumulate for future distribution or expenditure consistent with the donor's intent.

[Note: Add -language permitting expenditures from the principal under limited circumstances specified in this section. Add provisions to agreements accepting gifts regarding use of gift in the event the donor's wishes can no longer be met.]

b. Each endowment will be accompanied by a Memorandum of Understanding or other document setting forth the donor's wishes and intent with respect to the funds. This Memorandum of Understanding is the legally binding document used to ensure that the money is properly stewarded and that the donor's wishes are met in the distribution of funds. Each memorandum will be created by agreement of the donor and the Foundation. The Institution shall receive a copy of the memorandum. All criteria for the distribution of the endowment's distributable earnings shall be delineated in the document and must reflect the donor's wishes.

c. Restricted funds, whether related to an endowment or not, will be spent only for the purposes intended by the donor both now and in the future.

3. **Termination**. Either party may terminate this agreement upon sixty days' notice.

4. **Term.** The term of this Agreement shall commence on the date first written below and expire on June 30, 20__. If neither party gives notice of termination prior to the June 30 expiration of the agreement, it will continue on a year-to-year basis. The fiscal year for the purposes of this agreement is July 1 to June 30. If terminated by either party, all funds, assets, data and information in the possession of the Foundation will be promptly transferred to the Institution.

5. **Effect of Agreement/Modification.** This agreement contains all the terms between the parties. It may be amended only in writing signed by legally authorized representatives of all parties.

APPROVED:

____________________________ (Foundation)

By: _________________________________ _______________________

Date

Chair, _____________Foundation Board

_____________________________________ (Institution)

By: _________________________________ _______________________

Date

President, ________________________

ACKNOWLEDGED AND APPROVED:

Tennessee Board of Regents

By: ________________________________ ______________________
Chancellor Charles Manning Date
Tennessee Board of Regents

*** This is a sample agreement and may be useful to a TBR institution in identifying items that may need to be addressed in a contract with its foundation. This sample does not necessarily reflect the only way items may be addressed. All contracts between a TBR institution and its foundation must conform the requirements of TBR Policy 4:01:07:02 and the requirements of state law.**

ATTACHMENT C

POLICY 4:03:02:00

SUBJECT: Motor Vehicles

The purpose of this policy is to establish the minimum regulations and procedures concerning the maintenance and operation of motor vehicles by institutions and ~~area vocational-technical schools~~ **technology centers** and employees of the institutions and ~~schools~~ **technology centers** within the Tennessee Board of Regents System.

A. Definitions

1. "State vehicle" or "motor vehicle" - any motor vehicle owned by the Board or an institution or ~~school~~ **technology center** in the System, or purchased or leased from state funds.

2. "Institution" - any university **or** community college ~~or technical institute~~ within the Tennessee Board of Regents System, and the offices of the Board of Regents.

3. ~~"School"~~ **"TTC"** - any ~~area vocational-technical school~~ **Tennessee Technology Center** within the State Board of Regents System.

4. "Employee" - any person employed full or part-time by an institution or ~~school~~ **TTC, or any person serving as an 'official volunteer' at an institution or TTC. An 'official volunteer' is defined as a person whom the institution or TTC has properly registered with the Tennessee Board of Claims pursuant to Tenn. Code Ann. § 8–42-101(3)(B).**

B. General Provisions

1. Motor vehicles are maintained at institutions and ~~schools~~ **TTCs** in the System to facilitate the official business of the System. It is the responsibility of all employees who use state vehicles to ensure the efficient and economical utilization of such vehicles.

2. All state vehicles shall be used in accordance with the provisions of this policy.

3. All state vehicles shall be marked in accordance with the current TBR Marking Plan as contained in Attachment A.

C. Presidents, Chancellor,~~ and~~ Vice Chancellors, **Legal Counsel, and TTC Directors**

The presidents of the institutions, the Chancellor, ~~and~~ Vice Chancellors, **Legal Counsel, and TTC Directors** may be assigned motor vehicles for use in performing the official functions of their offices.

D. Motor Pools

1. Each institution and ~~school~~ **TTC** is authorized to maintain a central motor pool from which vehicles may be dispatched by employees for official business.

2. When motor pool vehicles are maintained, an employee who needs to use a motor vehicle on state business shall use a pool dispatched vehicle if one is available, unless the employee elects and obtains authorization to use a personally-owned vehicle as provided in the Board's General Travel Policies and Procedures (No. 4:03:03:00).

3. Motor pool vehicles shall be available for either trip assignments or special assignments. Motor pool vehicles available for trip assignments will be centrally controlled by the institution or ~~school~~ **TTC** and made available for specific trips and returned to the motor pool upon completion of trips and shall be used only for official business and not for personal use. Special assignment of motor pool vehicles may be made to a division or a person when necessary for use on a regular basis. Motor pool vehicles, including those used for trip assignments and special assignments, may not be used for commuting purposes unless the employee:

(a) is departing upon or returning from an official trip away from his or her headquarters or the employee needs the vehicle to conduct institution or school business after regular working hours or before his or her usual working hours on the next day; or

(b) has been recommended by the president or director and approved by the Chancellor to be authorized to use the vehicle for commuting purposes.

E. Authorized Operators and Passengers

1. Only employees of an institution or ~~school~~ **TTC** with proper departmental authorization may be authorized to operate a state vehicle for official business. Authorization to use a state vehicle shall be limited to official use within the scope of employment of the employee.

2. All employees must have a valid driver's license prior to being authorized to operate a state vehicle.

3. Passengers in state vehicles shall be limited to the following:

(a) employees of the institution or ~~school~~ **TTC** when within the scope of employment;

(b) students of the institutions or ~~schools~~ **TTC** engaged in institutional or school sponsored activities; and

(c) other persons when it is necessary for them to accompany an employee on official business or as guests of the institution or ~~school~~ **TTC**.

F. Penalties for Misuse of Vehicles

1. Employees who misuse vehicles will be subject to disciplinary sanctions, depending upon the magnitude of the misuse and the frequency with which it has occurred. Misuse includes any of the following:

   (a) Utilization of radar detection devices in state vehicles;

   (b) Violations of traffic laws; this includes exceeding posted speed limits, reckless driving, and illegal parking;

   (c) Careless operation that results in damage to the vehicle or injury to persons or property;

   (d) Use of a vehicle for personal business or unauthorized commuting purposes; or

   (e) Use of a vehicle contrary to the provisions of this policy.

2. The president of the institution, director of the s~~chool~~ **TTC**, or the Chancellor should determine the penalty appropriate for each violation; and in addition may require the employee to pay for damages to the vehicle caused by misuse.

G. Notice of Liability and Penalties for Misuse

A notice of liability and penalties for misuse of motor vehicles (Attachment B) shall be posted at the site where vehicles are normally checked out, and be contained in each vehicle for the benefit of drivers.

H. Exceptions

Any exception to this policy must be approved in writing by the Chancellor.

Source: TBR Meetings, June 29, 1979; June 27, 1980; September 30, 1983; June 29, 1984; June 27, l986; June 24, 1988; September 21, 1990

Attachment A

MARKING PLAN FOR STATE VEHICLES

The provisions of the marking plan are as follows:

(1) All institutions and technology centers will develop and/or affix their own individual decal containing a minimum surface area of sixty square inches to all licensed vehicles.

(2) The identifying emblem will be displayed on the passenger and driver's door unless otherwise stated. Some vans will be marked on the side at mid-panel height, and some institutions or technology centers will further identify the vehicle as security, maintenance, etc.

(3) Vehicles assigned to the chancellor, vice chancellors, legal counsel, presidents, and Tennessee technology center directors will carry regular series license plates and no decal identification.

These provisions will remain in full effect until revoked or altered in writing by the Chancellor of the Tennessee Board of Regents.

Source: Memorandum dated February 28, 1986, from Chancellor Thomas J. Garland to the State Commissioners of Finance and Administration and General Services

Attachment B

NOTICE OF LIABILITY AND PENALTIES FOR MISUSE OF MOTOR VEHICLES

In the case of accidents involving employees of the institution or ~~school~~ **TTC** operating State vehicles, claims may be made against the institution or ~~school~~ **TTC** only through the Tennessee Claims Commission. Claims against the State filed with the Claims Commission shall operate as a waiver of any cause of action, based on the same act or omission, which the claimant has against any State officer or employee. The waiver shall be void if the Commission determines that the act or omission was not within the scope of the officer's or employee's office or employment. State employees are absolutely immune from liability for wrongs which occur within the scope of the officer's or employee's office or employment. In the event an employee misuses a State vehicle, he or she will be subject to one or more of the following penalties: written reprimand or warning, suspension without pay, dismissal, or payment for damages to the vehicle.