

Susan Mandiberg: Hello, and welcome everybody to the April 8th meeting of the governance subcommittee of OPDC. We only have an hour, and there's only one thing on the agenda, which is the audit committee charter. I'd like to just start by saying that I'm very comfortable using first names instead of titles. And if everyone else is also, I'll just proceed that way. I'd like to summarize what I think the major issues are and some background. So, the first document that was posted with the agenda is the audit committee charter that was drafted and redrafted. And the final version that we had by the end of the fall 2024. And the second document was one that shows edits that were made by members of the Oregon Judicial Department earlier this winter or this spring. And so what we need to do is discuss some of those changes. And one of the biggest change that the Justice Department made was to... I'm sorry. Oregon Department of Justice. Sorry.

To have this be...have the audit committee be subject to public meeting laws. And this was counter to what the audit committee wanted and what the governance subcommittee wanted, and I believe what the commission had had in mind when this had been discussed in front of the commission. Looking at the reasons that were given, a main reason was that the committee is authorized to provide advice on policy or administration to OPDC. And the conclusion was that it therefore constitutes an advisory body that is subject to the public meeting law. Looking at the Oregon regulations, it seems that if a body such as the audit committee does not actually make recommendations or give advice to the commission... In other words, if all the audit committee does is provide factual information to the commission and the only input or advice that's not factual is given to agency personnel such as Scott or Jessie then it is not subject to public meeting laws.

And so one way to approach this, assuming we want to continue to have the audit committee meetings not be public meetings because of the sensitivity of things that are discussed there, the best approach, I think, to follow...and obviously open to discussion...is to amend various parts of the current charter draft so that it's clear that the audit committee is not giving advice or recommendations directly to the commission and that the only communications between the audit committee and the commission directly would be giving factual input. And it seems that that would not get in the way of anybody doing what they need to do with the audit committee. And Scott has looked at this as well. The actual way it would normally proceed... And, Scott, please correct me if I'm saying this incorrectly. Is that Scott would consult with the audit committee about a variety of things, and they would give advice and input that's not factual to Scott.

And he then would do whatever it is he needs to do with that input, and then he would report to the commission. So, any kind of advice or nonfactual input to the commission would be coming from Scott and not from the audit committee. I believe if that flow of information were made clear in the audit committee charter it would be worth resubmitting the charter to the Department of Justice and seeing

if they still thought it was subject to public meeting laws. There are a variety of things that could be submitted along with a redraft to explain why we think that the audit committee would then not be subject to public meeting laws. So, that seems like an approach to take. But I'd love to have other people's reaction to that.

Rob Harris: As the audit committee member from the commission, I love how you succinctly and accurately put that because that really aligns with my views, having been on this committee, having done a couple meetings, having talked to John Hudsler [Phonetic 00:06:27] and to Scott several times about this. And my understanding of the purpose of the audit committee was exactly as you stated. To protect the independence and the functioning of the internal auditor to provide advice to the internal auditor and I guess to the agency people as well, with how they're interacting. But also to ultimately be able to report factually to this commission in its regular reporting, which I think is annually maybe. It could be more but I know annually. As to factually what is going on, what's happening, and that sort of thing. Without advising the commission itself into adopting policy recommendations that the audit committee has. I never really saw it as adopting policy positions from the audit committee. So, I think you really succinctly put it, and I think that captures what I feel like the audit committee's purpose is and how I think it would be a good approach to resubmitting this to DOJ after making sure that this charter does reflect that perception of the purpose.

Susan Mandiberg: So, I understand where the DOJ attorneys got the approach...got the impression that they got. Because when I saw their explanation, I actually went through the current draft, and there were any number of places, especially in subsection B of the draft, where we actually talk about them giving all kinds of input and advice to the commission. And I've gone through, and I have made a list of those and have thought about ways that those subsections can be amended or eliminated. There's some that can just be eliminated. To make it really clear that advice and input goes to the internal auditor and only facts come to the commission. So, I would be happy to... I know there's so many drafts floating around that it's getting confusing, but I would be happy to do another draft with my recommendations for what should be changed. And I believe Scott might also have some recommendations that may be slightly different from my own or at least along the same lines. Other people, Paul or Rob, could also take a look at it. And I would be happy to consolidate what everybody is putting together or Scott can. And then we could take another look at it at a committee meeting and decide what would be worthwhile resubmitting to the Department of Justice. What do you all think about that?

Rob Harris: I like it.

Paul Lipscomb: As a new person who knows very little about what we're talking about, I am very impressed, Susan, with the work that you've done on this and the thought that

you've put into this already. And I don't see any reason why what you're suggesting wouldn't work. Scott, I'm not familiar with you and what your job is. And I wish you all the luck going forward. This seems to be a tempest in a teapot, so let's get the tempest out of the teapot and move back to something that's more important.

Scott Martin: Thank you. Thank you for your comments.

Jessica Kampfe: Susan?

Susan Mandiberg: Yeah?

Jessica Kampfe: I have a question about resubmitting to the Department of Justice. We will experience some delay as they review any documents to give us advice and come back to the audit committee. And I just want to make sure we have thought about the value that we get out of sending it back to the Department of Justice to review. Do we feel like because we have this initial legal advice from them about the public meeting we want to submit it back to them to make sure that the changes have the impact that is intended? Is that the purpose in sending it back to the DOJ?

Susan Mandiberg: Yeah. I mean my thinking was that if we just made the changes and didn't resubmit it but had the whole commission approve of the redrafted charter, at some point the Department of Justice would probably look at it. And if they thought we were violating public meeting laws, I guess I'd rather know that before rather than after we file it. [Laughs]

Jessica Kampfe: Sure.

Susan Mandiberg: And so it just seems prudent to me given that they had already weighed in... I thought that in resubmitting it there would need to be a cover letter as sort of a brief explaining including with citation to the regulations and to various auditing manuals that Scott knows about...specific citations to support why we think our approach is the right approach. I think some advocacy has to go along with it. We're hampered by not having a functioning general counsel right now. But I think that we can put together the advocacy. Three of us on this committee are lawyers. So, I guess I'd rather find out that it's okay before they think we're violating the laws.

Jessica Kampfe: That makes a lot of sense. Thank you.

Susan Mandiberg: Yeah.

Rob Harris: I agree. Go ahead, Paul.

- Paul Lipscomb: I actually have a different point of view on that. Why couldn't we just tell them, "Hey, we heard you. We understand why you said what you did. So, we're changing our operations, and this is how we've solved the problem that you identified. Thank you very much."
- Susan Mandiberg: Without actually sending them the new draft?
- Paul Lipscomb: Oh, no. Send them the new draft.
- Susan Mandiberg: Yeah, yeah, yeah.
- Paul Lipscomb: And say, "This is what we did." But we're not asking them permission to go forward or to change their mind. We're just telling them, "Okay, we heard you. This is what we did."
- Susan Mandiberg: I like that. I'm not sure we're changing the operations. I sort of think that the redraft is a more accurate explanation of the way it has been operating. Although I've only been around for a year also, so I don't know either. But, Rob, you have your hand up. Just go ahead and talk.
- Rob Harris: Yeah. Having just taken the public meetings law training, which we have to do once during our session, if you violate public meetings laws you're personally liable. And we have a DOJ opinion right now that says this is a public meeting, subject to public meetings. And that makes me nervous. Now, I don't disagree with you that you can make the changes you're making, which will be material substantial changes to the draft we gave to the DOJ. So, certainly defensible for us to take that position. Which I'm not saying we shouldn't adopt this or forward this to the commission with the changes saying we've addressed their concerns, we think they're okay now. But there's a bit of a risk if the DOJ comes back because they are acting as our legal advisor right now from what I understand, without general counsel. And if we... I mean we're taking a risk is what I'm saying. Scott, when is the next audit committee meeting.
- Scott Martin: I believe it's June 9th.
- Rob Harris: So, we don't have any meetings before June 9th. How quickly could we get this turned around? How quickly could DOJ get back and review the redraft before our May commission meeting? When's the May commission meeting, Jessie?
- Jessica Kampfe: They tend to need at least 30 days. Like four to six weeks has been my experience on the turnaround time for them. So, I think it depends on how quickly we get them a redraft whether or not we could make the May commission meeting. And I'm scrolling right now to see. It looks like it's May 21st.

Rob Harris: Oh.

Jessica Kampfe: The May commission meeting. And then the June commission meeting is the one we have in Bend, so that's kind of odd timing. So, that's June 12th.

Rob Harris: And I'm sorry, when was the audit committee meeting again, Scott?

Scott Martin: June 9th.

Rob Harris: So, it's just before.

Susan Mandiberg: I could have...I could do a new draft with the changes that I think work and accompany that with kind of a memo to this committee about why I think those changes work. And I could get that to Scott. And he could take a look at it. And we could then put together another meeting of this committee relatively ad hoc like we did this time. Just find a morning time that we can all meet. And I could get that done by Monday and get it to Scott by Monday. And if we could find a time either late next week or early the week after, we could probably get something to the DOJ in the next two weeks. And if we did that, maybe we could get it back in time for one of those...for your next audit committee meeting.

Rob Harris: Yeah. And then it would become a moot point whether we adopt forward it now or... So, if we took the action today to agree to do that, direct you to do that, Susan and Scott, potentially we could get this for approval at the commission in the May meeting.

Susan Mandiberg: With any luck. I think it would depend on how quickly the DOJ people would get back to us.

Rob Harris: Yeah.

Jessica Kampfe: Yeah. Ideally, we'd want to publish May meeting materials by May 14th, which is the Wednesday before the commission meeting. Although with the chair's permission, we could do it on Friday the 16th. So, if we were able to get it back from DOJ with minimal changes or no changes to it by the week of May 12th...

Susan Mandiberg: Have you ever given anything to any attorney to review where you got it back...?

[Crosstalk 00:18:38]

Jessica Kampfe: That's why I said minimal at first. I mean no would be ideal, but... [Laughs] I mean if we have any editing to do, I think Monday, May 12 is the latest we could get it back and hope to have it published in time for the commission meeting on...

Rob Harris: Well... Yeah. Well...

Jessica Kampfe: ...the 21st.

Rob Harris: If we don't...

Paul Lipscomb: Go ahead, Rob.

Rob Harris: If we don't get it back by then we could just post it as the item for the commission meeting if we get it back from [Inaudible 00:19:12] Before the commission meeting then the commission could just discuss that new information, and adopt, and do an amendment, and adopt whatever the amended document will be.

Susan Mandiberg: I think the question arises on whether your next audit committee meeting has to be a public meeting given that that's the advice we have right now. We don't have a charter. All we have is the old charter, which I can't even remember what the old charter says anymore because we've been working on this for a while. But unless we got something back from them before your next audit committee meeting, it might be prudent to make that a public meeting.

Paul Lipscomb: Susan, I understand what you're saying, and I don't disagree. But if the Department of Justice is wanting to act as our attorney at this point, why don't we tell them what we need. We need you to do this by X date.

Susan Mandiberg: Yeah, that would be a good thing to do. And tell me again the date of your next audit committee meeting.

Scott Martin: June 9th.

Susan Mandiberg: Oh, June 9th. Oh, hopefully... If we're aiming for the May meeting, we'll have something back from them before June 9th. I think we're good. All right. If everybody agrees, I will get started on that and get it to Scott. And, Rob, since you've been working so hard on this also, if you wanted to take a shot at looking through it and seeing what you think needed to be changed, I think your input to Scott would also be welcome. I'm happy to give you the list of the things that I thought were most important to look at, which was all of it in B... Let me make sure I've got this correct. All of it in B through E. So, 3B and C, 3E and F, 3G, 3I, and 3M. We need all of it to clarify the kind of input that the audit committee is giving, whether it's factual or input and advice, recommendations, whatever, and to whom. If it's factual, it can be to the commission. If it's advice and recommendations, it has to go to Scott as the internal auditor.

Rob Harris: Yeah, I don't mind taking a first crack, Susan. And if you want to send me your list of bullet points, I can take this, and Scott and I can maybe work on redoing it first.

Susan Mandiberg: Yeah, I can send Scott the list of provisions I think need to be looked at, and then he can share that with you.

Rob Harris: Okay, sounds good.

Susan Mandiberg: Yeah. Anything else on this? Anybody? Brief meeting? [Laughs]

Rob Harris: Yeah.

Susan Mandiberg: All right. We'll probably have to do another brief one sometime pretty soon. So, Mara will be in touch with everybody.

Rob Harris: Okay.

Susan Mandiberg: Thank you, all.

Rob Harris: Thank you.

[Crosstalk 00:23:15]

Scott Martin: Thank you.

Paul Lipscomb: Thank you.

Susan Mandiberg: Yep.