

June 27, 2022

Darrin,

We have reviewed your submission to the Legislative Audit Commission, which was done without even the courtesy of an update to your colleagues, and which takes a mix of different circumstances and strains to muster up some type of challenge to the governance of our fine university.

That we learned of this request via Twitter, which only highlights the disrespect you show your colleagues, was all the more surprising since you were one of the individuals, in our October 11, 2019 meeting, advocating for the very policy that Regents are bound to in working through governance concerns. Your failure to employ the Board's process as you broadcast your concerns is telling.

Board of Regents Policy: *Code of Conduct for Members of the Board of Regents* states, "Review of an alleged violation by a Regent of state or federal law or an alleged breach of this policy or any other University policy shall be initiated when seven Regents sign a written complaint describing the allegations and deliver it to the Board chair or the vice chair if the complaint is about the chair." You've made no attempts to avail yourself of this process for addressing your concerns, and instead let us and your colleagues learn about your assertions via Twitter. That exemplifies a disrespect for good governance and a disregard for the interests and integrity of this institution.

With the fiduciary duties of a Regent and common decency in mind, we are troubled by your baseless and reckless assertions over the ongoing search for a Chancellor at the University of Minnesota Duluth. Your accusations have been flatly denied by both President Gabel and David McMillan. We know both of these people well, have deep respect for both of them, and believe them; indeed, President Gabel's contemporaneous updates over the search process belie your insinuations. Your continued speculation that there is a problem – without any foundation – unfairly tramples upon their stellar reputations and is detrimental to both UMD and the institution overall.

Conducting yourself as a Regent in this way is especially troubling since you do so knowing that the facts contradicting your manufactured inferences involve private personnel data. You cry foul in the face of contrary facts, and you made no inquiry of Board leadership before broadcasting suggestions of impropriety, knowing that the University is bound to honor its privacy obligations under law as to any employment search. Placing the University in that position is an irresponsible misuse of your position.

Your efforts to revive your December 2021 dissent over the full Board's approval of the President's contract, which includes a performance bonus provision, in order to inflate your latest complaint is similarly misguided. You are entirely correct that the University Charter and the Minnesota Constitution rest governance of the University with the Board of Regents. Your request to the legislature – and the contents of your request – run contrary to that authority. The Board made a

decision with respect to the contract and its performance pay provision by a vote of 9 to 2. This vote – and the contract provision at issue – are all consistent with the Charter, the Constitution, and University policy; there is no basis for your assertion that all aspects of the President’s compensation must be decided by the full Board or that restricts the Board from deciding – as a body – to follow the process approved by the Board. Unhappy with the result, though, at the meeting – and presumably frustrated by your inability to convince your colleagues to vote otherwise – you now ask the legislature to step in on your behalf to change the result. This, as we suspect you recognize, would be an improper intrusion into the Board’s constitutional autonomy.

Let us be clear, the Board of Regents – through a public and transparent discussion and a roll call vote at our December 2021 Board meeting – delegated to the Chair authority to award performance pay to the President after consultation with the Presidential Performance Review (PPR) Committee, which is composed of three regents who in turn receive performance input from approximately 30 members of the wider University community. Nine members of the Board voted to approve this language in the President’s employment agreement and two – yourself and Regent Farnsworth – dissented. Your assertion that exercising a delegated authority from the Board in conformance with a legally binding employment agreement is somehow poor governance – or perhaps even illegal – has no basis. Indeed, the performance pay is capped (it cannot be higher than the amount specified in the contract, it can only be equal or lower), it is awarded based upon goals set by the full Board each year and it reflects performance input received from the full Board of Regents and a wide group of university and community stakeholders. That is a far cry from the process you misportray.

Darrin, we have concerns over the motivation behind your cobbled together complaints. You ignore the process you yourself advocated for and reach to social media to magnify your concern without prior communication to your colleagues. Then you add in a baseless criticism over the delegation of limited authority to the Board chair, a full Board decision which found you unable to persuade your colleagues after an open public discussion. There is a mechanism afforded all Regents to redress governance concerns of the ilk you are advancing. Please adhere to Regents’ policy; avoiding your responsibilities and the accountability that comes with them works to harm reputations and seed distrust of the institution you claim to serve.

Sincerely,



Kendall J. Powell, Chair
Board of Regents



Steven A. Sviggum, Vice Chair
Board of Regents

c. Members of the Board of Regents