

**Ohio Retirement Study Council  
30 East Broad Street, 2<sup>nd</sup> Floor  
Columbus, Ohio 43215**

**Minutes  
June 13, 2024**

The meeting was called to order by Chairman Romanchuk at approximately 10:01 a.m. in Room 121, the Ohio Statehouse, Columbus, Ohio.

The following members attended the meeting:

**Voting Members**

Adam Bird  
Beryl Brown Piccolantonio  
Paula Hicks-Hudson  
Lora Miller  
Phil Plummer, Vice Chairman  
Dr. Anthony Podojil  
Mark Romanchuk, Chairman

**Non-voting Members**

Karen Carraher, PERS  
Scott Helkowski, Attorney General  
Lynn Hoover, STRS  
Dr. Carl Roark, HPRS  
Caren Sparks, OP&F  
Richard Stensrud, SERS

**Absent**

Bill Blessing, Excused  
Ed Montgomery, Excused

**Staff**

Jeff Bernard  
Ryan Hennigan  
Bethany Rhodes

With a quorum present, the meeting was called to order at 10:01 a.m.

Chairman Romanchuk moved to the May 9, 2024, ORSC minutes. Without objection, the minutes were approved.

Chairman Romanchuk moved to the Board Governance and Fiduciary Duty Presentation by Funston Advisory Services. Randy Miller from Funston Advisory Services and Tiffany Reeves from Faegre, Drinker, Biddle and Reath gave the presentation.

When discussing the topic of Ohio fiduciary standards on slide eight of the presentation, Senator Hicks-Hudson asked what the difference was between a prudent expert and a

prudent investor and what “familiar with these matters” means. Ms. Reeves responded that the prudent investor standard derives from trust law, which is codified in the Uniform Prudent Investor Act (UPIA). She continued by stating that UPIA gives guidance about a prudent process for investors, such as diversification. Ms. Reeves stated that in her opinion, a prudent investor standard and a prudent expert standard are interrelated. She stated that to her knowledge, UPIA is not codified in Ohio. Mr. Miller also responded to Senator Hicks-Hudson by saying there is a difference between a prudent person and a prudent investor/expert, and that the latter standard has been the predominate standard being used across the country. Ms. Reeves concluded by stating that the prudent expert standard means as a fiduciary, board/staff members have the responsibility to use their expertise when relevant.

The presentation continued. When discussing core fiduciary principles on slide 12, Representative Bird asked to whom does a fiduciary display loyalty. Ms. Reeves replied that it is to the beneficiaries and participants that the fiduciaries are required to be loyal. Representative Plummer asked if there are any penalties, criminal sanctions, or personal liability for bad actors when it comes to fiduciary duty. Ms. Reeves responded that she is not an Ohio-licensed attorney, therefore she could not speak to any criminal sanctions. She continued by saying in certain states, criminal sanctions exist, but civil liability would absolutely exist in Ohio for breach of fiduciary duty.

The presentation continued. When presenting on the topic of loyalty to all beneficiaries on slide 15, Senator Hicks-Hudson asked, since there are differing classes of beneficiaries, how is it reconciled to be loyal to all of them at once. Ms. Reeves responded that she would answer that question later in the presentation, given the later material addresses the question raised (slide 16-17).

*Ms. Miller left at 10:49 a.m.*

The presentation continued. When discussing the good governance practice of prudence on slide 21, Chairman Romanchuk asked if Ohio’s pension systems are currently meeting the prudence standards. Mr. Miller responded that since 2016, Funston has reviewed all Ohio pension funds except for OPERS. He stated that, by and large, the systems are meeting the prudence standards. To the extent that gaps were identified, Funston recommended changes, of which about 90% had been implemented. He added that the Ohio systems, at the time of review, were quite well- run. The presentation continued.

*Ms. Miller returned at 10:55 a.m.*

When presenting slide 23 regarding diversification, Chairman Romanchuk asked if an investment policy that took roughly two-thirds of total investment assets and placed them in one company would be a breach of fiduciary duty. Mr. Miller responded that if

the system is running a diversified portfolio, then putting a majority of funds in one investment is probably not prudent, but it would depend on the facts and circumstances surrounding the policy. He continued by saying all the Ohio systems Funston has worked with have prudent due diligence policies. He stated that if in that due diligence screen the investment was screened out, it obviously would not be prudent to invest in it. The presentation continued.

*Representative Bird left at 11:00 a.m.*

When discussing slide 24 regarding cost management, Vice Chairman Plummer asked if the fees of Ohio's pension systems were outrageous compared to other states. Mr. Miller responded that the large systems in Ohio subscribe to a peer benchmarking company called CEM Benchmarking, and that through the comparison that they provide, it appears that the Ohio systems' fees are typical and reflect prudence. He continued by stating the CEM database is robust. Vice Chairman Plummer asked if the CEM Benchmarking data was available to the public. Mr. Miller responded that CEM Benchmarking is a private firm and their data is proprietary with confidentiality agreements. Director Carraher added that OPERS does subscribe to CEM and provides their information to the OPERS Board, at which point it becomes public record. Representative Brown Piccolantonio asked who makes the determination of whether someone is acting as a prudent expert.

*Representative Bird returned at 11:03 a.m.*

Ms. Reeves responded to Representative Brown Piccolantonio that the answer is contextual. She continued by saying that if someone has a particular knowledge or expertise, they should use that knowledge to inform their decision-making. She added that when it comes to the question of whether or not someone should have used said knowledge or expertise in a given situation, that might be something a court would have to determine when there is a claim for a breach of fiduciary duty. She continued by stating someone's credentials are an objective manifestation of expertise.

Representative Brown Piccolantonio asked a follow-up question of who determines whether someone has overstepped their use of expertise. Ms. Reeves replied that such an issue is why the respective roles of boards, staffs, and outside consultants are so important. She continued by saying the role of the board is high-level decision-making in terms of strategy, policy, rulemaking, and governance, whereas the board delegates to staff the tactical execution-level of such decisions. She stated that it is important to distinguish between the lanes and levels of authority within the governance structure of a pension system.

Senator Hicks-Hudson stated that through her experience of being an attorney, she understood that the roles of attorneys on boards are extremely limited. She said, in the

general sense, it should be those who elect the board members who determine whether or not board members have met the requirements of fiduciary duty.

Dr. Podojil asked if Aon, as governance consultant to STRS, served any role related to board compliance to fiduciary duty and if there were any best practices in terms of compliance that the ORSC should consider to ensure fiduciary duty is maintained. Mr. Miller replied that it is the plan sponsor who is responsible for board compliance to fiduciary duty, which in Ohio is the General Assembly. He continued by stating that it was Funston's belief that the practice of having an entity like the ORSC is leading practice throughout the country. Ms. Reeves added that pension boards are self-governed, and where governance goes off the rails is when boards do not hold themselves accountable to the governance structure that they created. She continued by citing slide four of the presentation, which delineated the roles of pension boards when compared to other agencies or staff, specifically as it relates to oversight and strategy. Dr. Podojil asked where the ORSC sits in relation to fiduciary duty as it pertains to Ohio's public pensions. Director Rhodes responded that the ORSC exists to advise the General Assembly and other elected officials on any matters that could potentially impact the public pension systems. She added that ORSC's charge is broad, but any decisions the Council makes are not binding on the legislature. She concluded by stating any recommendations that the Council feels should be made to the legislature could be taken up by the Council, but any ORSC decisions are not binding on the General Assembly.

Dr. Podojil asked, in reference to slide three of the presentation, is there any indication of how poor governance might impact pension performance. Mr. Miller responded that poor governance would imply poor performance.

Chairman Romanchuk asked if a system's governance consultant were to terminate their role as consultant with the system, how should the ORSC respond to such a situation. Mr. Miller responded that such a situation is unprecedented in his experience, and the answer would depend on how the ORSC defines its role when such a situation happens. Chairman Romanchuk followed-up by asking if Mr. Miller or Ms. Reeves had enough information to guide the ORSC in what potential red flags there might be in such a situation. Mr. Miller responded that potentially a forensic-style investigation to determine the cause of the termination might be in order. Ms. Reeves added that they do not have insight or enough information to look under the hood at the problem and draw an inference from the situation, but a negative inference could be a possibility. She continued by saying an appropriate step the ORSC could take is to find a mechanism for further information, which could include launching an investigation or hiring a third-party to look under the hood.

The presentation continued. When discussing the topic of transparency on slide 25 of the presentation, Chairman Romanchuk asked if the Ohio systems were being transparent and accountable. Mr. Miller responded that his experience would lead him to say yes, with the caveat that he was unaware of current private market reporting practices, so it is possible that there could be room for improvement there. Chairman Romanchuk followed-up by asking if Mr. Miller would categorize Ohio's systems as better than average in terms of transparency when compared to the rest of the systems he has looked at across the country. Mr. Miller replied that he thinks all the Ohio systems he has looked at were well-run and they are probably better than average. He added that the four Ohio systems Funston studied at the time had very strong management teams and displayed sophisticated organizational structures.

Senator Hicks-Hudson stated that there is a current crisis of confidence among the beneficiaries of the Ohio systems because the communications from systems to beneficiaries may not have been in a manner where the beneficiaries could understand systems' actions. Mr. Miller replied that he recalls including in their report a specific recommendation for STRS to have a more structured stakeholder communication plan given there were concerns. He added that from an investment standpoint and service to the beneficiaries, there was a high level of performance, but there were a lot of incorrect statements being made by some beneficiaries that were refuted in the report. Senator Hicks-Hudson replied that she agreed with Mr. Miller, but that if there exists a current crisis of confidence amongst the beneficiaries, then the issue comes down to systems clearly communicating to beneficiaries. Mr. Miller replied that in his opinion, the best way to address those perceptions is through verification. He continued by stating that this verification occurred, but "they don't appear to have been believed."

The presentation continued. During the presentation of slide 27, Chairman Romanchuk asked, in light of some of the statutory requirements the General Assembly places on the pension systems, such as being at or below 30-year amortization, how should the ORSC and the General Assembly balance giving the boards tools to meet mandates given to them by the plan sponsors. Mr. Miller replied that often, the equation of contributions plus investment returns equaling benefits plus expenses is a fundamental equation for pensions, and there is not a stock answer as to the types of levers the boards can control to achieve that equation. He added that it is possible to look at board authority policies in other states, such as California's CALPERS, which does not have a statutory limitation on contribution rates. He further stated that the idea of putting the levers of board authority in the same hands is an important principle.

The presentation continued. When the presentation ended, Representative Bird asked if investment sourcing by trustees was a problem in other states. Mr. Miller replied that it is not a common problem, but it is typically seen in smaller, municipal systems.

Chairman Romanchuk asked if it is unusual to not have an employer representative on a board, and if there is not one, should there be. Mr. Miller responded that it is fairly typical to have employer representatives on boards, but the real question is the level of member representation. He added that there is a question of expertise; typically, expertise comes from appointed members. He continued by stating some states have boards comprised completely of appointed members. Chairman Romanchuk asked if Ohio is doing a good job with appointments to the boards, and if there were best practices for governmental bodies to consider when making appointments. Mr. Miller responded that from Funston's experience, Ohio's appointments of trustees has been pretty good, but there have been issues when an appointed seat is vacant, it sits open for a long period of time. He added that some of Funston's clients have used the strategy of identifying the characteristics of good trustees, as well as the gaps in their boards members' expertise when it comes to appointment standards. He continued by stating with boards that are elected, you get what you get via the election process.

Chairman Romanchuk asked if Mr. Miller was aware of any other states having a list of best practices they use when considering appointments. Mr. Miller replied that he is aware of one system in Wisconsin, which happens to be an investment board, that has such a mechanism. Ms. Reeves added that they have created trustee position descriptions and self-evaluation processes that are provided to the appointing authority to determine the skills needed. Chairman Romanchuk asked what the ORSC could be doing better. Mr. Miller replied that the ORSC has a very capable staff, but there have been times the Council has seemed to not meet very regularly or been very active. He added that the ORSC charter seems to grant broad oversight authority and responsibility, but he was not familiar with how ORSC's output was put back into the legislature. He continued by stating the organization most analogous to the ORSC was the Texas Pension Review Board, which has authority over several hundred systems that do not have a lot of resources.

Vice Chairman Plummer asked if there were any recommendations as to the ORSC having more teeth for enforcement of requests of the Ohio boards. Mr. Miller replied that it is a question of if there are statutory changes that are needed, which should be determined by the ORSC. He added that the Ohio system is setup for trustees to have their own decision-making authority within the governance and statutory structure that is provided. He continued by stating he has seen that if that setup is not working, the framework is changed; sometimes you have to change the rules of the game. Representative Plummer followed-up by asking what changes Mr. Miller or Ms. Reeves would recommend, understanding it would be through the process of a statutory change. Mr. Miller responded that he was not ready to answer that question today, but there is not a right or a wrong answer; there are many alternatives. He continued by stating he would recommend the process being identifying the alternatives to improving

the system, rank them from least to most beneficial, and evaluate the pros and cons of each option to home in on a course of action. There were no further questions.

Chairman Romanchuk moved to old or new business. Chairman Romanchuk stated that given recent events and the presentation given to ORSC, he is creating the ORSC STRS subcommittee, comprised of himself as Chairman, Vice Chairman Plummer, Representative Brown Piccolantonio, and Dr. Podojil. There was no further old or new business to be brought before the Council.

Chairman Romanchuk said that the next ORSC meeting is scheduled for July 11<sup>th</sup>, 2024, subject to the call of the Chair, and that the creation of the subcommittee would determine if that meeting in July would need to take place.

The meeting adjourned at approximately 11:51 a.m.

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Date Approved

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Mark Romanchuk, Chairman

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Bethany Rhodes, Secretary

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Phil Plummer, Vice-Chairman