

**Minutes of the
Free Market Protection and Privatization Board:
Competition Review Advisory Committee**

Wednesday, February 19, 2014
Room 240, Capitol Building
State Capitol Complex

Members present:

LeGrand Bitter (Chair), Rep. Johnny Anderson, Manuel Torres, and Louenda Downs

Members absent:

None

Staff present:

Cliff Strachan, Governor's Office of Management and Budget (GOMB)

Note: Additional information including related materials and an audio recording of the meeting can be found at <http://gomb.utah.gov/operational-excellence/privatization-board/> and the Utah Public Meeting Notice Website (<http://www.utah.gov/pmn>).

1. Welcome and Introductions

LeGrand Bitter called the meeting to order, noting all were present save Rep. Anderson [who arrived during the first presentation].

2. Board Business/Minutes

a. Purpose of the advisory committee

This committee will investigate complaints of unfair competition. A review of student information systems at the Utah State Office of Education has been referred by the board.

Cliff Strachan discussed the time frame and process for the committee, noting that the committee is advisory only, and that it will report to the board which can then forward recommendations to the governor, the legislature and the agency involved. There is sufficient time to conduct a review, make recommendations, and for either the governor, the legislature or the agency to act before or in time for the next legislative session. He opined that he thought the committee can complete the current project by summer.

Being the first meeting of this advisory committee there are no minutes to review.

3. Review Issues Concerning Agency Competition with the Private Sector

a. Nathan Andelin and Kendall Andelin, Relational Data

Messrs. Andelin owns Relational Data, a small software company which products is intended for use by charter schools, currently used by one school in Utah - Legacy Preparatory Academy. Having previously presented to the board, the Andelins want the committee to focus on the Privatization Proposal Summary given to the board at the November 14, 2013 meeting and a Request that USOE Stop Engaging in Unfair Trade Practices dated January 22, 2014. The documents outline the issues and ask for specific results.

Quoting the *Utah Antitrust Act* (UCA 76-10-3102), the Andelins take the position that the Utah State Office of Education (USOE) is unlawfully promoting its services and products in a monopolistic way. USOE cannot appropriately conduct arms length transactions because it competes in same areas. Calling USOE a taxpayer funded business (in regard to student information systems) they feel private sector companies are being “muscle out”.

In discussion with the committee, the committee heard that SIS2000+ has been rebranded as Aspire. In trying to compete in the area of student information systems (SIS), some Local Education Authorities (LEAs) and some USOE staff have commented “how can you compete with free?”. The Andelins charge that USOE “vigorously promotes their products” even supplying to LEAs a marketing tool showing how SIS2000+ compares to PowerSchool and Skyward. Claims that the document is not a comprehensive list of SIS features but which favorably highlights SIS2000+’s features. Alleged that if an LEA is already using SIS2000+ and looks to change, an inference is made that the LEAs funding can be challenged.

With reference to unfair competition, Board of Education rules have been “fomented” by Judy Park and Jerry Winkler (of USOE) to give them power to grant approvals. Mr. Andelin feels that they make it hard for new vendors to enter the market. Another requirement to have a three-month parallel processing requirement (i.e., run two systems) to evaluate and validate new software is difficult and costly for LEAs.

The Andelins admitted they have been approved but later rules have made it more difficult, called it “USOE IT [Information Technology] is protecting their turf”, and asked that barrier raising rules be removed.

A brief discussion of the history of SIS in education ensued but it was noted that USOE had provided a simple history in their documents. Respecting computer services in the annual budget, most legislators and others don’t know about SIS costs.

Another discussion ensued on how and what the questions are respecting SIS development and provision to LEAs and how to address issues of competitiveness.

b. Judy Park and Jerry Winkler, Utah State Office of Education

Judy Park, Associate Superintendent, and Jerry Winkler, IT Director, presented. Ms. Park declared that the role of the Utah State Office of Education (USOE) is to follow state and federal laws - requirements that are always evolving. USOE is responsible for data collection, record keeping, storage of records, etc. related to students and schools in Utah.

Its programs are funded by taxpayers but many programs are spend on smaller LEAs than the larger, especially where there are fewer resources and the agency can fill a need. USOE works with eight other entities (Relational Data is one) to provide SIS services to Utah’s LEAs. USOE welcomes opportunities to improve processes and products but they and LEAs must always comply with federal and state laws.

Mr. Winkler noted the history of SISs in Utah dates to 1967 and he reviewed the document titled Student Information Systems (SIS) originally presented to the board at the November 14, 2014 meeting. He noted that some states operate with only one SIS. Referencing a 1991 Task Force, the current SIS program is based on a statewide effort to create an SIS. User groups continue to provide input into the SIS.

Asked how much the IT budget line was he noted that SIS2000+/Aspire requires 6-7 employees.

Ms. Park commented that the current year's budget requests [i.e., new money] is for financial software and data security issues.

With respect to a specific SIF (schools interoperability framework) data exchange concern raised by Mr. Andelin [outside this meeting], Mr. Winkler expressed a concern about data security because Relational Data had wanted to email the information.

He said USOE wants LEAs to have the best product available and admitted they have previously encouraged legislators to go with one system. Asked whether USOE considers pricing differences for supplying SIS2000+ to larger or smaller LEAs, he noted USOE dropped charges for hosting.

Improvements to SIS2000+/Aspire are in response to requests for improvements to services.

Asked about the culture at USOE, specifically the IT Department, Mr. Winkler responded that they look to see how something can be done cheapest, best or most effectively, the IT Department is already burdened and can't really take on more without adding people. The decision has been made that SIS2000+/Aspire continues to be a valued resource for LEAs.

Asked about advertising or limits on advertising at USOE-hosted data conferences twice a year, which are held to discuss changes to software, requirements, new legislation, etc., he said that the representatives of LEAs don't want the meeting to be a marketing event for outside groups. He said there are specific trade events for such things.

He acknowledged that if USOE's IT Department weren't supporting SIS2000+/Aspire, there are plenty of other things those employees could be doing.

4. Other/Adjourn

The committee began to discuss what must be done, including reviewing budgets and costs of the programs, and even some technical matters such as addressing data security needs for SISs.

Staff suggested that the budgets be gathered and scrutinized, that flowcharts be developed to illustrate the processes involved. There appears to be two parts to the matter - whether it makes financial or economic sense for USOE to be providing the SIS and whether USOE is impeding a free market in the provision of SISs in the state. If committee members have specific questions or additional information they wish gathered, please contact staff.

Members scheduled the next committee meeting for 10:00 AM on Thursday, March 27, 2014; staff will arrange for a meeting room.

Motion: Manuel Torres moved to adjourn. CARRIED

Scheduled meetings:

- Competition Review Advisory Committee, 10 AM on Thursday, March 27, 2014 [in the Seagull Room of the Senate Building].