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Houston, Texas, June 6, 1952  
Meeting No. 521

The Board of Regents of The University of Texas met in a Special Meeting in Room 1220, Lamar Hotel, Houston, Harris County, Texas, 7 p.m., Friday, June 6, 1952, pursuant to unanimous agreement of the members of the Board. The following were present: Woodward (Chairman), Darden, Rockwell, Sealy and Voyles. Absent, excused, Mrs. Tobin and Messrs. Oates, Swenson and Warren. Chairman Woodward called the meeting to order and appointed Mr. Darden to act as Secretary.

HOGG FOUNDATION - W. C. HOGG MEMORIAL FUND - PROPOSAL TO PURCHASE VARNER COMPANY STOCK AND NOTES.--The Chairman laid before the Board the offer of Miss Ima Hogg, Mrs. Margaret W. Hogg and Mrs. Alice N. Hanszen, dated May 25, 1952, to sell and assign to the Board of Regents as Trustees of the W. C. Hogg Memorial Fund the entire capital stock of the Varner Company and sundry notes of the Varner Company payable to offerors respectively. The original of such offer as filed with the Secretary of the Board of Regents is referred to for all pertinent purposes.

Mr. Rockwell offered the following resolution:

"RESOLVED that the offer of Miss Ima Hogg, Mrs. Margaret W. Hogg and Mrs. Alice N. Hanszen, dated May 25, 1952, to sell and assign to the Board of Regents as Trustees of the W. C. Hogg Memorial Fund all of the capital stock of the Varner Company and certain notes of said Company owned by the offerors and described in said offer, which is here referred to for all purposes, be, and it is hereby accepted;

BE IT FURTHER RESOLVED, that D. K. Woodward, Jr., Chairman of the Board of Regents, D. M. Warren, Vice-Chairman, or either of same, and Maryvenice E. Stewart, Secretary, be, and each of them is hereby, authorized to execute and deliver all documents and to do and perform all acts necessary and proper to complete the purchases described in such offer, provided that before any such documents shall be executed and delivered same shall be approved as to form by University Land Attorney Scott Gaines, and as to substance by Carroll D. Simmons, Vice-Chancellor for Business and Finance."

The motion was seconded by Mr. Darden and was adopted by the following vote:

Ayes: Darden, Rockwell, Sealy, Voyles and Woodward  
Noes: None

Mrs. Tobin and Messrs. Oates, Swenson and Warren, being fully advised, asked to be recorded as favoring the Resolution.

Mr. Sealy gave notice of his desire to extend in the record immediately following these minutes a statement regarding his vote.

There being no further business to come before the meeting the same was, upon motion, duly adjourned.

William E. Darden  
Secretary, pro tem

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STATEMENT OF TOM SEALY CONCERNING HIS AFFIRMATIVE VOTE FOR THE ACCEPTANCE OF THE HOGG PROPOSAL TO SELL TO THE UNIVERSITY OF TEXAS THE LIFE EXPECTANCY OF THE TWO WIDOWS OF TOM AND MIKE HOGG, DECEASED, AND THE ONE-THIRD FEE INTEREST OF MISS IMA HOGG, BEING THE ENTIRE INTEREST IN THE CAPITAL STOCK OF THE VARNER COMPANY, A HOLDING COMPANY FOR REAL ESTATE, OFFICE BUILDINGS, STORE BUILDINGS, ETC., LOCATED IN THE CITIES OF HOUSTON AND SAN ANTONIO, TEXAS, AND BELONGING TO THE HOGG FAMILY

I oppose the acquisition of these properties and the incurring of some Six Million Dollar liability therefor for the reasons hereinafter set out, but voted affirmatively for the acquisition of these properties for the reason that there were only five of us (the minimum required for a quorum) at the Special Meeting of The Board of Regents held in Houston for consideration of this subject and if I voted "No" at that meeting it would have necessitated requesting an additional member or members of the Board to journey to Houston to cast their vote for the proposition, and since it was apparent by telephone calls to the absent members of the Board that the proposal would be adopted by a good majority, I voted affirmatively on the proposition in order to obviate the necessity of holding the meeting open until one or more additional Regents could come to Houston and cast their vote.

I fully know and understand that the Hogg Family, and particularly Miss Ima Hogg, earnestly, sincerely and wholeheartedly feel that their proposal will be a distinct benefit to The University of Texas and I yield to no one in my admiration, affection and esteem for Miss Ima Hogg and my respect for what Miss Hogg and her brothers have done and what she is now doing for the University, but I cannot conscientiously bring myself to the position of accepting the proposal in my capacity as a Regent, my reasons for rejecting the proposal being as follows.

1.

In the first place, it is my feeling that regardless of the merits or demerits of the Hogg proposal and the financial benefits which it is hoped the University would derive therefrom, The Board of Regents of The University of Texas should not, as a matter of public policy, go out into the open market and purchase real estate or other properties which have the effect of involving the University in the operation of a business requiring a high degree of business management of properties rented to numerous tenants under contracts expiring at various times, the making of new contracts, the collection of rentals, the procurement of tenants and the maintenance and operation of the properties and ultimate disposition thereof. It is a serious question of policy as to whether the Regents of The University of Texas, a Constitutional agency of the State, acting as they are under limited powers and without a source of funds upon which to draw to cover operating losses or a loss that might arise between the agreed purchase price and the amount realized from the sale of the properties, can lawfully or with propriety acquire by purchase the stock of a business corporation engaged in a business of the type described. There are really two basic questions in this general inquiry: (1) Can the Regents properly engage in a business undertaking of the nature described? (2) Can they with safety do so without the authority to draw upon either the Permanent Fund or the Available Fund to cover losses or shortages in the business undertaking?

2.

Even if we assume that as a matter of policy the University should purchase a corporation engaging in a business of this kind, I am not certain that the business is being purchased with adequate safeguards for the University.

We know, for instance, that the Great Southern Life Insurance Company building, which is one of the properties owned by the corporation, is a nine story office building, without air conditioning and that the first three floors thereof are occupied under a lease running only from

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month to month. We know that the other six floors will be vacated next year by the Great Southern Life Insurance Company as to five floors and the Hogg Family as to the sixth floor, so that we are already confronted with quite a problem as to the management, modernization and leasing of this building, if we are not able to dispose of it for the amount for which it was appraised. It is true that the appraisals, as made, are honestly represented as being extremely conservative appraisals, but the higher appraisal has been used and adopted in the Hogg proposal for the sale of these properties to the University and no one can foresee the economic conditions with which we may be confronted during the period of time covered by the proposal.

We are further confronted with the possibility that the Federal Government may increase or change the Federal income tax laws with respect to the operation of a business by an educational institution and the City of Houston and other agencies may see fit to levy ad valorem taxes on these properties on the theory that they are not subject to tax exemption for the reason that they do not comprise a part of the educational plant of The University of Texas, but involve the operation of a business.

Furthermore, the basis for the valuation of the two life estates representing two-thirds of the interest in the stock is the life expectancy of the life tenants on mortality tables most favorable to them. That is to say, 27.2 years for Mrs. Hanszen and 26.4 years for Mrs. Hogg; one of these ladies being 52 years of age and one 53 years of age at the present time and in my judgment it is questionable procedure for the Regents to buy the life estates based on assumed expectancy under mortality tables. The effect of this proposal is to buy the life estates on the assumption, in one case, that the life tenant will live 26 years and, in another case, 27 years. Actually, the life estate may terminate at any time. The time of termination of either life is highly speculative and uncertain. Notwithstanding the total uncertainty of the period of the life tenancy in each case, this proposal contemplates a valuation upon and payments during a period of 26 or 27 years. Can the Regents as the trustees for the University, the owner of the remainder, take such a risk? Perhaps the standard that should guide the Regents is: Could they take this risk if the University were not the owner of the remainder? If this standard is applicable, it seems clear that the Regents should not make this purchase. It is not believed that any reasonable businessman, not the owner of the remainder, would purchase the life estates here on the basis of the mortality tables. One way to look at this is that a purchase by the Regents of the life estates as here proposed might be considered as varying the effect of the grant of the remainder to the University under the Hogg wills.

As the owner of the remainder interest on an undivided two-thirds interest in the stock of the Varner Company, I would be most willing and happy for the University to join the life tenants of this two-thirds interest and Miss Ima Hogg, as the owner in fee of the remaining one-third interest, in the sale of these properties to some third person, firm or corporation on terms satisfactory to the Hogg Family and it seems to me a sale of this kind to a third party would be the best thing for everybody concerned. This is not the proposal as presented, however, and with all due deference to Miss Ima Hogg and the other members of the Hogg Family, I have regretfully concluded that I must oppose the proposal as adopted by a majority of The Board of Regents, for the reasons set out herein. I hope Miss Ima and the members of the Hogg Family will understand and appreciate the spirit in which this statement is made. The University has never had better friends anywhere than the Hogg Family and I know that in this instance it is their genuine feeling that they are doing what is best for the University. My only wish is that I could be just as sure as they are about the matter.