

July 23, 2010
Board of Curators Meeting

Also Present

Mr. Gary D. Forsee, President, University of Missouri System
Mr. Stephen J. Owens, General Counsel
Ms. Cindy S. Harmon, Secretary of the Board of Curators
Dr. John F. Carney III, Chancellor, Missouri University of Science and Technology
Dr. Brady J. Deaton, Chancellor, University of Missouri-Columbia
Dr. Thomas F. George, Chancellor, University of Missouri-St. Louis
Dr. Steven Graham, Senior Associate Vice Pres

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2. Minutes of the Board of Curators

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Agreements entered into by the University are subject to review and approval by the Vice President for Finance and Administration and General Counsel.

6. Amendment to Collected Rules and Regulations 100.030 Copyright Regulations, UM

The Collected Rules and Regulations 100.030 Copyright Regulations shall be amended with the following changes to

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2. The University will own the copyright in materials that are:
 - a. commissioned for its use by the University; or
 - b. created by employees if the production of the materials is a specific responsibility of the position for which the employee is hired; or
 - c. sponsored works, which are works resulting from

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University resources than those generally available to all other students within the competition or than those available to the student as part of his/her enrollment with the University. The student shall be entitled to receive any monetary or other prize awarded to the student for his/her performance under such competition in accordance with the rules of the competition and such prize shall not be considered compensation whereby such student would be considered an employee solely based upon receipt of such prize.

- c. The copyrightable work was created by a student as part of a University approved extracurricular activity, using no greater University resources than those generally available to all other students participating in the activity or than those available to the student as part of his/her enrollment with the University.
 - d. The copyrightable work was created by a student on his/her own free time, outside of any University class or sponsored activity, and using no greater University resources than those generally available to all other students as part of their enrollment with the University,
 - e. The student is a full-time student receiving compensation for services rendered to the University which services are unrelated to research or investigation and are unrelated to the creation of computer software.
6. The Chancellor on each campus shall designate an individual or unit who is responsible for implementing reasonable procedures designed to make students aware of Section 100.030A.5 and to provide one or more avenues for students to receive information regarding the University's interpretation of the student's rights and obligations with respect to the creation of copyrightable works.

B. Interpretation and Administration of Policy

1. The Patent and Copyright Committee as described in section 100.020 E. will be advisory in interpretation and future revisions of this policy. The final decision on interpretation and

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application of this policy shall be made by the Chancellor's designee.

2. No interpretation or application of this policy shall serve as a precedent in later cases.
3. Written agreements developed pursuant to section A.2.d. for holders of academic appointments shall first be approved by the chair, then the dean, and finally the Chancellor's designee.
4. Written agreements developed pursuant to section A.2.d. for holders of nonacademic appointments shall first be approved by the director of the unit, then the appropriate vice-chancellor, and finally the Chancellor's designee.

C. Ownership and Use of University Name

1. This policy should strengthen and protect the reputation and academic standing of the University and its faculty, staff, and students. Unless otherwise agreed pursuant to Section A, when the name of the University is associated with any intellectual property, other than the identification of the creator as a faculty, staff, or student of the University, the ownership shall be vested in The Curators of the University of Missouri, a public corporation, and shall display the following symbol and notice:

© Copyright (year) by The Curators of the University of Missouri, a public corporation.

If the registration of the copyright is deemed appropriate by the author(s) and department/area(s), the application for registration with the United States Copyright Office shall be processed through the Office of the Vice President for Academic Affairs.

2. Faculty, staff, other employees, students, department/areas, and schools of the University may not use the name of the University to imply University sponsorship of creative

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or on campuses with no schools or colleges, the Provost and chief academic officer as well as other signatories as indicated by the Board of Curators.

D. Policy on Use of Materials

1. If any of the conditions described in section A.2. are applicable and conditions of A.4. are not applicable, then subject to the following exceptions delineated in subsections D.2. - D.4., the use of materials by any unit of the University of Missouri requires approval only of the unit primarily responsible for the said materials.
2. As long as the author or producer of copyright materials remains a member of the staff of the University:
 - a. The author's approval shall be required for each instance of use of the materials internal to the University other than the uses for which the materials were developed, except as allowed in the agreement between the author and the University reached pursuant to Section A.
 - b. The author may require revision of the materials prior to any instance of internal University use other than the use for which the materials were developed. If the University does not accept the required revision, the author may ask that the materials be withdrawn from use. The University may assign its respective rights in such copyright to the author, subject to a written agreement between the University and the author relating to further internal or external use of materials and division of income from any subsequent use of the materials.
3. In the event that the author should cease employment with the University, the University shall retain the right to make internal use of the copyrighted materials without the author or producer's consent. In such event, the author shall retain a non-exclusive license to use the work for her/his own non-commercial, educational purposes only, but shall not have the right to distribute, sell, or sublicense the work to a third party.

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4. Licensing or sale of copyrighted materials for external use shall be preceded by a written agreement between the University and author or producer specifying the conditions of use, and including provisions protecting the right of the author or producer to revise the materials periodically, or to withdraw them from use in the event revision is not made.

E. Payments to the Author or Producer for Production and Use of Materials Described in A.2 Herein

1. The University acknowledges that the ownership of intellectual property and the sharing of economic returns on such property are related. Therefore, when the University solely holds the intellectual property rights pursuant to section A.2., the revenues will be shared among the creators and used for the common good to support the mission of the University.
2. Payment by the University to the author or producer of intellectual property for its production normally will take place through the reduction of the author's or producer's normal work load. However, staff members on nine-

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or producer for revisions according to University policy on extra compensation.

4. The University with the assistance of those designated by the Chancellor in sections A.3. and B.3. will provide appropriate services to license works covered by this policy. The University and the author will develop a written agreement, which will be approved by the President (or her/his designate), specifying the division of net income (net after sales and distribution costs) between the author or producer and the University. The following general principles shall be reflected in the agreement:

- a. Fifty (50) percent of the net income derived from the external use of University-owned educational materials shall go to the departments, areas, or units responsible for their production, and fifty (50) percent to the authors or producers.

- b. The University may enter into agreements for dividing the net income on some other basis, if special

circumstances are used, or vice versa.

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F. Protection and Liability

1. **Protection** -- In the event of unauthorized use of University-owned materials described in section A.2., i(11th(10ii 19.28 3 0 Tw 19.C

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enter into a written agreement with the University in exchange for the University's agreement to treat such person as an Employee for purposes of this policy. For purposes of the definition of Employee and for the avoidance of doubt, student financial aid including, but not limited to, scholarships, grants, loans, tuition waivers and educational fee reductions, generally available to University students and unrelated to any provision of services by the student to the University shall not be interpreted as compensation. Also, for purposes of this policy, full-time students receiving compensation for services rendered to the University which services are unrelated to research or investigation and are unrelated to the creation of computer software shall not be considered to fit within the foregoing definition of Employee.

3.

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9. **"President"** as used herein shall be deemed to mean the President of the University of Missouri or her/his designee and shall include, when applicable, the Interim President or Acting President.

D. Inventions by Employees of the University

1. Rights of University and of Employees

- a. The University, as the employer and as the representative of the people of the state, shall have the ownership and control of any Invention or Plant Variety developed in the course of the Employee's service to the University. Each Employee of the University is required and shall upon request assign to The Curators of the University of Missouri all domestic and foreign rights to any Invention or Plant Variety made by the Employee within the general scope of her/his duties as Employee of the University, unless such requirement is waived in writing by the University. Remuneration to the Employee for such assignment is detailed in Section 100.020 E.2.c and E.2.d.

An Invention or Plant Variety shall be considered as having been made within the general scope of the Employee's duties for the University if either of the following conditions are met:

- (1) Whenever the Employee's duties include research or investigation, and the Invention or Plant Variety arose in the course of such research or investigation and is

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100.020 D.1.a; for example, the University shall have no rights to Inventions or Plant Varieties developed in the course of summer or consulting employment by an employer other than the University of Missouri, and not resulting from research or information obtained from University services.

- c. If the University finds that an Invention or Plant Variety made by an Employee of the University outside of the general scope of her/his University duties is used or liable to be used in the public interest and executes a

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The decision on the waiver should be made within a reasonable time following the request for waiver.

- f. The patent rights and/or Certificate of Plant Variety Protection of the University provided under these regulations may be waived, assigned or licensed by the President of the University if the President is satisfied that the patent and Plant Variety provision will reasonably and substantially discharge the obligations of the University of Missouri consistent with the University's interest. In making such determination, the President shall consider all relevant factors including, but not limited to the following:

(1) The amount of royalty or other consideration offered in exchange for such waiver, assignment or license.

(2) The amount of support being provided by any sponsor.

(3) The originator of the research concept.

(4) Whether the research supports work by students who will use the research findings to fulfill educational requirements in their chosen academic programs.

(5) The potential commercial value of the patentable or Plant Variety findings which are likely to result.

(6) The likelihood of patentable or Plant Variety findings resulting from the research.

(7) The recommendation of the principal investigator, the head of her/his department and her/his dean.

(8) The extent of utilization of University resources and facilities in the development of the Invention or Plant Variety.

(9) The amount of indirect costs provided by any sponsor.

(10) The extent to which the University reserves the right to use any patented or patentable products, materials, processes, or Pld6(v)]TJ 0) The9 1(he9 1(h-apv)]TJ [(0)3

2. **Reports of Inventions and Plant Varieties** (See footnote 2 at the end of Section 100.020)

a. **For Inventions:**

(1) Every Invention made by an Employee of the University shall be reported by such Employee to the President. The Patent Committee may prescribe the form and manner of execution of the Invention disclosure report, and such Invention reports shall be treated as restricted reports of the University.

(2) The report shall be made as promptly as possible, taking into consideration such factors as possible publication, public use, or sale and the necessity for protecting the inventor's and the University's rights in the Invention. If an inventive concept is reduced to practice after the Invention report is filed, the patent administrator must be notified forthwith.

(3) For the protection of the rights of the inventor and of the University, laboratory notebook-diaries, Invention reports, seed development data and memoranda or correspondence concerning them are to be considered University restricted data, and should be so marked.

b. **For Plant Varieties:**

Every Plant Variety made by an Employee of the University shall be reported by such Employee to the Employee's head of department (or Dean). The Agricultural Experiment Station may prescribe the form and manner of filing for Certificates of Plant Variety Protection. The report of Plant Variety and all related documents shall be filed with the Patent Administrator prior to the licensing or release (whichever occurs first) of the Plant Variety.

3. **Inventor Requests for Waiver of University Rights** -- If the inventor believes that the Invention or Plant Variety was made outside the general scope of her/his University duties, and if he/she is unwilling to assign the rights in the Invention or Plant Variet

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include in her/his Invention or Plant Variety report information on the following points:

- a. The circumstances under which the Invention or Plant Variety was made and developed;
- b. The Employee's official duties at the time of the making of the Invention or developing the Plant Variety;
- c. Whether he/she wishes a patent or Plant Variety Protection application to be prosecuted, if it should be determined that an assignment of the Invention or Plant Variety to the University is not required under Section 100.020 D.1.; and
- d. The extent to which he/she would be willing voluntarily to assign the rights in the Invention or Plant Variety to the University if it should be 6(s)-5(h)-4(es)-5(a p)-4(at)-6(en)

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5. Action by Supervisor or Department Head

- a. The preparation of an Invention or Plant Variety report and other official correspondence on patent and Certificate of Plant Variety Protection matters is one of the regular duties of an Employee who has made an Invention or developed a Plant Variety, and the supervisor or department head shall see that he/she is allowed sufficient time from her/his other duties to prepare such documents. The supervisor or department head shall ascertain that the Invention or Plant Variety report and other papers are prepared in conformity with these regulations; shall check its accuracy and completeness, especially with respect to the circumstances in which the Invention or Plant Variety was developed; and shall forward whatever comments he/she may deem to be necessary or desirable to the Patent Administrator. The supervisor or department head shall add to the file whatever information he/she may have concerning the governmental and commercial value of the Invention or Plant Variety, and the foreign countries in which it is likely that the Invention or Plant Variety would be the most useful and would have the greatest commercial value.
- b. If the Employee-inventor specifically requests that the University determine her/his rights in the Invention or Plant Variety, the head of the department shall state her/his conclusions with respect to such rights.

6. Rights of University and Students

- a. In general, students of the University of Missouri will be entitled to own any Invention or Plant Variety made during their enrollment as a student of the University and will generally not be required to assign his or her ownership to the University; provided, however, the foregoing general rule does not apply and the student will be required to assign his or her ownership interest to the University in any circumstance in which the student meets the definition of "Employee", as defined in Section 100.020C.2. hereof provided such Invention or Plant Variety was developed in the course of the student-Employee's service to the University.

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E. The Patent Committee

1. Appointment

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and he/she shall see that all necessary steps are taken to protect the interests of the University and of the Employee-inventor.

- i. In the event the report of the Invention or Plant Variety is submitted to an entity organization for marketing of patent rights with which the Curators have approved a continuing contract and that entity advises that it is not to the best interests of the University to seek a patent thereon, the President shall within a reasonable time seek other means of obtaining a patent or release the rights of the Invention to the Employee-inventor.

F. The Patent Administrator

1. **Appointment** -- The Patent Administrator will be appointed to serve as a member of the staff under the supervision of the Vice President for Academic Affairs.

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- d. **Publicity concerning Inventions:** In order that the public may obtain the greatest possible benefit from the Inventions in which the University has transferable interest, the Patent Administrator shall see that Inventions assigned to the University shall be publicized to the greatest possible extent. Where patents are obtained by the University, it shall be the duty of the Patent Administrator, upon being advised of the issuance of the patent, to take steps toward listing the patent as available to those who may be interested in securing the use of the patent rights or otherwise marketing the same.

G. Notification of Abandonment -- In the event a decision is reached not to file a patent or Plant Variety Protection application or to abandon a filed application, notice shall be given to the inventor and to the sponsor if the sponsor's contract with the University so provides.

H. Use Of Funds Received By University Relating To Inventions, Patents And Plant Varieties – Whenever the University receives money from any source for the sale, waiver, assignment or licensing of University-owned patents, Inventions, discoveries, or Plant Varieties, the entire amount of such money (except that money received for reimbursement of U.S. Patent and Trademark Office Fees, foreign patent and trademark office fees, external attorneys fees or other external expenses incurred by the University in connection with reexamination of the patent, patent infringement, other defense of the patent or the enforcement or defense of a license agreement, that portion which is for the negotiated indirect cost rate associated with the research project from which the patent, Plant Varieties, Invention, or discovery resulted, and except that portion of money received by the University and paid by the University to the co-owner of a joint invention) shall be divided, distributed and allocated as follows or, in the case of inventions made jointly by University employee(s) and individual(s) employed by the United States Department of Veterans Affairs, with or without compensation, the President of the University has executed a written agreement with the United States Department of Veterans Affairs which provides for different division, distribution and allocation of funds:

1. For Inventions and Discoveries
 - a. Thirty-three and one-third (33 1/3) percent shall go to the inventor.

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b.

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patent application covering the completed concept is accepted by the patent office. The theory is that an acceptable filing is both conclusive proof of practicality and a sufficient disclosure of the concept in the application papers that one with ordinary skills in the arts involved would be able to practice the Invention. Most often, sufficient reduction to practice is neither purely actual nor purely constructive.

Interrelation between Mental and Physical Elements -- As between inventors with essentially the same idea, the date of conception controls priority for the right to a patent; provided that he/she who first conceived the idea used reasonable diligence in perfecting and reducing her/his conception to practice. However, if the inventor who first conceived the idea is the second to reduce it to practice, he/she bears a heavy burden to prove her/his priority. The uncorroborated testimony of the inventor on either element is insufficient alone. Therefore, sufficient records to prove both the earliest possible date of conception and diligence in assuring the concept is workable are essential. Accordingly, any project work or research out of which Invention rights may arise should be documented by contemporaneous maintenance of a laboratory notebook-diary in which periodic entries are made describing the work accomplished. Each entry should be dated and signed by the persons actually doing the work recited. The notebook-diary also should be read and signed periodically as "witnessed" by one or more associates of the inventor who are not engaged in the work but who are capable of understanding the descriptions recited and can testify as to their understanding of the concepts therein disclosed at the time of their signatures. Such a witnessed record may be vital in obtaining or defending the rights of the inventor and of the University should others assert prior Invention. The next best evidence would be a timely, complete, and accurate Invention report in accordance with these Patent Regulations.

Footnote 2 -- Disclosure of Invention form (UMUW 16B and 16C) is available from the Graduate Deans' and Research Coordinators' offices on each campus.

Footnote 3 -- The elements of Plant Variety Protection may be described generally as protection available for self-pollinating seeds and plants. Such seeds or plants cannot have been offered for sale or sold for a period of more than one year prior to filing an application under the Plant Variety Protection Act. Disclosure of Plant Variety form (UMUW 16D) is available from the Graduate Dean's and Research Coordinator's offices on each campus.

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8. Spinal Cord Injuries and Congenital or Acquired Disease Processes Research Program Board Members, UM

Justin M. Brown, M.D., shall be approved as a new member of the Spinal Cord Injuries and Congenital or Acquired Disease Processes Research Program Advisory Board for a term to begin immediately.

9. Amendment to Collected Rules and Regulations 340.040 Holidays, UM

The Collected Rules and Regulations 340.040 Holidays shall be amended with the following changes to clarify existing language, with one substantive policy change. With this revision, units/departments that operate 24 hours a day and/or 7 days a week may elect to observe the holiday on the actual day of the holiday instead of the official University holiday.

Collected Rules and Regulations

340.040 Holidays

Amend. Bd. Min. 7-23-2010

Bd. Min. 6-28-68; Amended Bd. Min. 11-19-71; Amended Bd. Min. 3-23-73; Amended Bd. Min. 9-20-74; Amended Bd. Min. 4-25-75; Amended Bd. Min. 9-9-77; Amended 9-7-79; Amended 11-13-81; Amended 7-30-82, effective 9-1-82; Bd. Min. 12-12-69; Amended Bd. Min. 11-13-81; Bd. Min. 7-15-86; Bd. Min. 1-25-90; Amended 9-26-97; Amended 7-19-02; Amended 10-23-09, Amended 07-23-10.

A. **Observance of Holidays** -- The following days have been designated as official University holidays:

- New Year's Day
- Martin Luther King, Jr., Day
- Memorial Day
- Independence Day
- Labor Day
- Thanksgiving Day and the Friday following
- Christmas Day
- And other days as may be designated by the President

Holidays are considered to extend over a 24-hour period. When a holiday

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Finance

Schematic Design, University Hospital and Clinics 6th and 7th floor, UMHC – presented by Vice President Krawitz (schematic design on file)

It was recommended by Chancellor Deaton, endorsed by President Forsee, recommended by the Finance Committee, moved by Curator Russell and seconded by Curator Downing, that the following action be approved:

the schematic design prepared by HMN Architects, Inc., Kansas City, Missouri, for the University Hospital and Clinics 6th and 7th Floor Renovation at University of Missouri Healthcare shall be approved.

Funding UMHC Capital Improvements from Hospital Revenue \$15,610,000.

Roll call vote:

Curator Bradley voted yes.
Curator Carnahan voted yes.
Curator Downing voted yes.
Curator Erdman voted yes.
Curator Fraser voted yes.
Curator Goode voted yes.
Curator Haggard voted yes.
Curator Russell voted yes.
Curator Wasinger voted yes.

The motion carried.

Debt Financing Approval, Thomas Jefferson Hall Phase III Renovation, Missouri S&T – presented by Vice President Krawitz

It was recommended by Chancellor Carney, endorsed by President Forsee, recommended by the Finance Committee, moved by Curator Carnahan and seconded by Curator Russell, that the following action be approved:

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Debt Financing approval of the total project cost of \$7,144,730 for the Thomas Jefferson Hall Phase III Renovation for Missouri University of Science and Technology shall be approved.

Roll call vote:

Curator Bradley voted yes.
Curator Carnahan voted yes.
Curator Downing voted yes.
Curator Erdman voted yes.
Curator Fraser voted yes.
Curator Goode voted yes.
Curator Haggard voted yes.
Curator Russell voted yes.
Curator Wasinger voted yes.

The motion carried.

Fiscal Year 2012 State Capital Appropriations Request, UM – presented by Vice President Krawitz (slides on file)

It was recommended by Chancellor Deaton, Chancellor Morton, Chancellor Carney and Chancellor George, endorsed by President Forsee, recommended by the Finance Committee, moved by Curator Carnahan and seconded by Curator Fraser, that the following action be approved:

the President shall be authorized to submit to the appropriate state offices the University of Missouri Fiscal Year 2012 State Capital Appropriations Request, as on file with the minutes of this meeting.

Roll call vote:

Curator Bradley voted yes.
Curator Carnahan voted yes.
Curator Downing voted yes.
Curator Erdman voted yes.
Curator Fraser voted yes.
Curator Goode voted yes.

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- (4) An increase in state appropriations for University of Missouri Health Care of \$7.0 million or 4.2% plus restoration of the base appropriation to the FY2009 level. These increases are

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BOARD OF CURATORS MEETING – EXECUTIVE SESSION

A meeting of the University of Missouri Board of Curators was convened in executive session at 9:55 A.M., on Friday, July 23, 2010 via TelePresence/VideoConference originating in Ellis Library TelePresence Center, on the University of Missouri-Columbia campus, and at remote locations via conference telephone pursuant to public notice given of said meeting. Curator Judith Haggard, Chairwoman of the Board of Curators, presided over the meeting.

Present

The Honorable David R. Bradley
The Honorable John M. Carnahan III
The Honorable Warren K. Erdman
The Honorable Buford M. (Bo) Fraser
The Honorable Wayne Goode
The Honorable Judith G. Haggard
The Honorable Doug Russell
The Honorable David G. Wasinger
Student Representative Laura A. Confer

The Honorable Don M. Downing was absent from the meeting.

Also Present

Mr. Gary D. Forsee, President, University of Missouri System
Mr. Stephen J. Owens, General Counsel
Dr. Steven Graham, Senior Associate Vice President Academic Affairs
Ms. Cindy S. Harmon, Secretary of the Board of Curators

Curators' Professorship: Professor Fred Hawthorne, MU – presented by Senior Associate Vice President Graham

It was recommended by Chancellor Deaton, endorsed by President Forsee, recommended by the Academic, Student and External Affairs Committee, moved by Curator Fraser and seconded by Curator Erdman, that the following action be approved:

that upon the recommendation of Chancellor Deaton, the Provost and the Dean of the School of Medicine, Professor M. Frederick Hawthorne shall be named to

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the position University of Missouri Curators' Professor, effective September 1, 2010. Professor Hawthorne will receive a \$10,000 annual stipend as long as he holds this position. \$5,000 will go to increased compensation (salary and benefits less applicable taxes) with the remaining \$5,000 available for professional expenses associated with his

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position. \$5,000 will go to increased compensat

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Curator Haggard voted yes.
Curator Russell voted yes.
Curator Wasinger voted yes.

The motion carried.

There being no further business to come before the Board of Curators, the meeting was adjourned at 11:06 A.M., on Friday, July 23, 2010.

Respectfully submitted,



Cindy S. Harmon
Secretary of the Board of Curators

Approved by the Board of Curators on September 24, 2010.