

**SOUTH DAKOTA BOARD OF REGENTS**

**Committee on Budget and Finance**

**AGENDA ITEM: III – Q**

**DATE: April 1-2, 2015**

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**SUBJECT: Acceptance of Gift Request – South Dakota State University**

South Dakota State University, the State’s public land grant institution, requests the Board accept a Reuter pipe organ (<http://www.reuterorgan.com/>) from Johnson and Wales University pursuant to Board Policy No. 5:8. This Reuter pipe organ is a unique instrument has been identified as having a replacement value of approximately \$1,050,000.00 and is currently located in the Whatley Chapel of Johnson and Wales University (<http://salmenorgans.com/pipe-organs/colorado/whatley-chapel-johnson-wales-univeristy-denver-co/>) in Denver, Colorado.

This Reuter pipe organ will be incorporated into the construction plans for the addition to the Performing Arts Center within the recital hall, for which a Preliminary Facility Statement was approved by the Board at its May 16-17, 2012 meeting. The Reuter pipe organ is a unique and rare instrument that would enrich the music opportunities available to students and faculty.

Johnson and Wales University purchased the Whatley Chapel, including the Reuter pipe organ, with proceeds from tax exempt bonds more than ten (10) years ago. Any transfer of ownership requires that the use of the Reuter pipe organ be for specified non-profit activities, such as transfer to a public institution of higher education for educational purposes, and that Tax Equity and Fiscal Responsibility Act (TEFRA) approval be obtained after notice published in

(Continued)

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**RECOMMENDED ACTION OF THE EXECUTIVE DIRECTOR**

Accept the donation of a Reuter pipe organ from Johnson and Wales University in Denver, Co. for South Dakota State University for inclusion in the Performing Art Center addition and renovations, such acceptance to be effective after compliance with the requirements of Tax Equity and Fiscal Responsibility Act (TEFRA) relating to publication of notices of the transfer and its approval by the Governors of South Dakota and Colorado. The use shall be solely for educational purposes through the term of the Johnson and Wales University associated tax exempt bonds which shall be until not later than 2034. Authorize the university to assist Johnson and Wales University in completing its arrangements to secure the publication of TEFRA notices in South Dakota, as well as gubernatorial approval of the transaction. Authorize the Executive Director to subsequently review, approve, and execute a Gift Agreement in style and form approved by the General Counsel. Authorize South Dakota State University to contract for removal, transportation, storage, and install the Reuter pipe organ in the Performing Art Center addition and renovations in accordance with applicable law, policies, and procedures.

both Colorado and South Dakota. The tax exempt financing condition require, both publication of TEFRA notices in each state and approval by “the applicable elected representative” with governmental unit having jurisdiction over the issuer and, where the recipient is a government agency or institution, over the site where the organ will be located.<sup>1</sup>

SDCL §13-52-1 empowers the Board to accept this gift on behalf of SDSU on the condition that it “shall be used by it only for the specific purposes for which they are given.” In this case, the transfer of the organ is subject to the additional condition that the use of the organ shall be solely for educational purposes through the term of the Johnson and Wales University associated tax exempt bonds which shall be until no later than 2034.

The restriction on the use of the organ for educational purposes does not trigger the requirements of SDCL § 13-52-2 which requires that gifts “that would impose any present or future legal obligations upon the state ... shall not be accepted, received, or administered under § 13-52-1 until the attorney general of this state certifies that the same are free from such obligations, and gifts of real property and of funds for building purposes shall not be so accepted, received, or administered without specific approval by resolution adopted by the Legislature.”

The Board of Regents control over property, any and all property, however possessed, after all, is subject to underlying constitutional and statutory limitations. The Board’s constitutional control is subject to the inherent limitation that it can be exercised only for purposes that further the institutional missions defined by the legislature. *State ex rel. Prchal v. Dailey*, 57 S.D. 554, 234 N.W. 45, 52 (1931) (Campbell, J., concurring specially); *State ex rel. Bryant v. Dolan*, 61 S.D. 530, 249 N.W. 923, 924 (S.D. 1933). SDCL §13-49-11, which conditions the Board’s power to hold, lease, and manage property belonging to the educational institutions, tracks the inherent constitutional limitation on the Board’s power by stipulating that such control is limited to “the purposes for which [the institutions] were established,” however the property may have been acquired.

Thus, the principal Johnson and Wales conditions on the use of the organ for educational purposes track exactly the inherent limitations on the Board’s power. I.e., the Board would be powerless to do anything inconsistent with the conditions that have been placed upon the gift.

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<sup>1</sup> The applicable elected representative of a governmental unit means—

- (i) Its elected legislative body,
- (ii) Its chief elected executive officer,
- (iii) In the case of a State, the chief elected legal officer of the State's executive branch of government, or
- (iv) Any official elected by the voters of the unit and designated for purposes of this section by the unit's chief elected executive officer or by State or local law to approve issues for the unit.

For purposes of subdivisions (ii), (iii), and (iv) of this paragraph (e)(1), an official shall be considered elected by the voters of the unit only if he is popularly elected at-large by the voters of the governmental unit. If an official popularly elected at-large by the voters of a governmental unit is appointed or selected pursuant to State or local law to be the chief executive officer of the unit, such official is deemed to be an elected chief executive officer for purposes of this section but for no longer than his tenure as an official elected at-large. In the case of a bicameral legislature which is popularly elected, both chambers together constitute an applicable elected representative, but neither chamber does independently, unless so designated under paragraph (e)(1)(iv). If multiple elected legislative bodies of a governmental unit have independent legislative authority, however, the body with the more specific authority relating to the issue is the only legislative body described in paragraph (e)(1)(i) of this section. (26 C.F.R. § 5f.103-2(e)(1)).

Thus, as a practical and legal matter, the limited and temporary condition on the title that Johnson & Wales may convey presents no material limitation within the contemplation of SDCL § 13-52-2.

Likewise, the publication of the TEFRA notice is the precondition to Johnson & Wales University's ability to make the gift at all and therefore does not impose a present or future obligation that limits the Board's title.

The Performing Art Center addition and renovations are part of the University's 2025 Campus Master Plan and construction is planned for no sooner than 2019. The Department of Music and University Facilities have determined that the Reuter pipe organ may be appropriately stored on the University campus in the interim until the project is ready for the instrument's installation. The University has communicated with an organ consultant who has also valued the instrument and provided guidance on its removal, storage, and future installation. The University would contract with an appropriate consultant and service provider to remove the organ, transport to the University for storage and assist with future installation in the Performing Arts Center.

The University recommends that the Board accept the donation of a Reuter pipe organ from Johnson and Wales University in Denver, Co. for South Dakota State University for inclusion in the Performing Art Center addition and renovations, such acceptance to be effective after compliance with the requirements of Tax Equity and Fiscal Responsibility Act (TEFRA) relating to publication of notices of the transfer and its approval by the Governors of South Dakota and Colorado. The use shall be solely for educational purposes through the term of the Johnson and Wales University associated tax exempt bonds which shall be until not later than 2034. Authorize the university to assist Johnson and Wales University in completing its arrangements to secure the publication of TEFRA notices in South Dakota, as well as gubernatorial approval of the transaction. Authorize the Executive Director to subsequently review, approve, and execute a Gift Agreement in style and form approved by the General Counsel. Authorize South Dakota State University to contract for removal, transportation, storage, and install the Reuter pipe organ in the Performing Art Center addition and renovations in accordance with applicable law, policies, and procedures.



South Dakota  
State University

Office of the President

Administration 222, Box 2201  
South Dakota State University  
Brookings, SD 57007-2298  
Phone: 605-688-4111  
Fax: 605-688-4443

**RECEIVED**

**MAR 04 2015**

**SD Board of Regents**

February 27, 2015

Jack Warner, Ed.D.  
Executive Director/CEO  
South Dakota Board of Regents  
306 E. Capitol Avenue, Suite 200  
Pierre, South Dakota 57501

Dear Jack,

South Dakota State University has been offered a Reuter pipe organ from Johnson and Wales University, Denver, Colorado. On March 14, 2014, I approved the recommendation of Laurie Nichols, Provost/Vice President for Academic Affairs to accept a Reuter pipe organ as a gift to the South Dakota State University music department.

Our request to accept this gift has been reviewed by the Governor's office and the attorney general, and also Dr. Shekleton who has the agenda item information.

I respectfully ask that my request to accept this gift be placed on the April 1-2, 2015 agenda of the Board of Regents.

Thank you.

Sincerely,

David L. Chicoine, Ph.D.  
President

DLC:lrs

Attachment

cc  Jim Shekleton, Regents General Counsel  
 Tracy Greene, University Legal Counsel



South Dakota  
State University

Office of Academic Affairs

Provost and Vice President for  
Academic Affairs

Box 2201  
SDSU  
Brookings, SD 57007-2098  
Phone: 605-688-4173  
FAX: 605-688-6582

RECEIVED

MAR 10 2014

*RLC*

SDSU President's Office

March 10, 2014

To: David L. Chicoine, President  
From: Laurie Nichols, Provost *L. Nichols*  
RE: Recommendation for accepting Reuter pipe organ gift

Upon request from David Reynolds, Department head of Music, and Dennis Papini, Dean of the College of Arts and Sciences, I have reviewed the opportunity to accept a Reuter pipe organ as a gift to the Music department.

This pipe organ is a unique and rare instrument and would enrich the music opportunities available to our students and faculty. Not only would this acquisition allow us to expand the curriculum to include pipe organ instruction for keyboard learners, but choral groups would also benefit from the organ to accompany musical selections.

If accepted, the organ will be incorporated into the construction plans for the addition to the Performing Arts Center within the recital hall.

After careful review, I add my endorsement to this request as I believe it would add quality, enrich and strengthen programming in the Music Department.

Thank you for considering this request.

*Approved  
David L. Chicoine  
3-14-2014*



South Dakota  
State University

SDSU February 27, 2014

ATTACHMENT I 6

College of Arts and Sciences  
Office of the Dean

Wagner Hall 251, Box 2275A  
South Dakota State University  
Brookings, SD 57007-0094  
Phone: 605-688-4723  
Fax: 605-688-6750

Laurie Nichols, Ph. D.  
Provost and Vice President for Academic Affairs

Re: Reuter pipe organ gift acceptance from Johnson and Wales University, Denver, Colorado

South Dakota State University has been offered a Reuter pipe organ that would be installed in the Performing Arts Center expansion. By Board of Regents policy this gift requires Board approval. The Recital Hall will be a prominent feature of the long awaited expansion of the Performing Arts Center at SDSU. The expansion will add an additional 60,000 square feet of performance and instructional space dedicated to the Music and Theatre Departments.

Since our earliest planning meetings, much debate has taken place as to whether a pipe organ could be included in the 225-seat recital hall. A pipe organ is a high priority of the music program due to its pedagogical and instructional benefit. Students presenting junior and senior recitals desire the use of an organ to produce accompaniments. Faculty members prefer organs for their annual recitals. Choral ensembles regularly perform repertoire written during the Baroque and Renaissance – a time when the organ was the instrument of choice for musical masters such as Bach, Handel, Vivaldi, Telemann, and others. Certainly, the addition of such a high quality pipe organ will provide educational and performance opportunities for students and faculty unrealized in the history of the Music department.

We have the opportunity to acquire a truly remarkable instrument, the Retta Foote Memorial Organ that is currently housed in Whatley Chapel at Johnson and Wales University in Denver, Colorado. Originally installed in 1962 as part of Colorado Women's College, the instrument has been expanded and renovated over the years and is in remarkable working order. The attached appraisal sets the value at \$1,050,000.00.

Johnson and Wales is a for-profit institution with no religious affiliation and provides very few educational opportunities in the arts. As such, the donor institution no longer sees the maintenance of the chapel as a part of its mission. It is now looking for a new home for this instrument. As the original donor of the organ was a South Dakota native, they feel moving the instrument to a South Dakota institution would be appropriate.

I deem this to be a truly remarkable opportunity for the University and hope that you would lend your support of this gift to South Dakota State University.

Thank you,

Dennis Papini, Ph.D.  
Dean, College of Arts and Sciences

David Reynolds, D.M.A.  
Head, Department of Music

cc: David Chicoine, Ph.D., President

attachments

*David*

*of South Dakota*

February 19, 2014

Subject: Valuation of Reuter pipe organ, Whatley Chapel

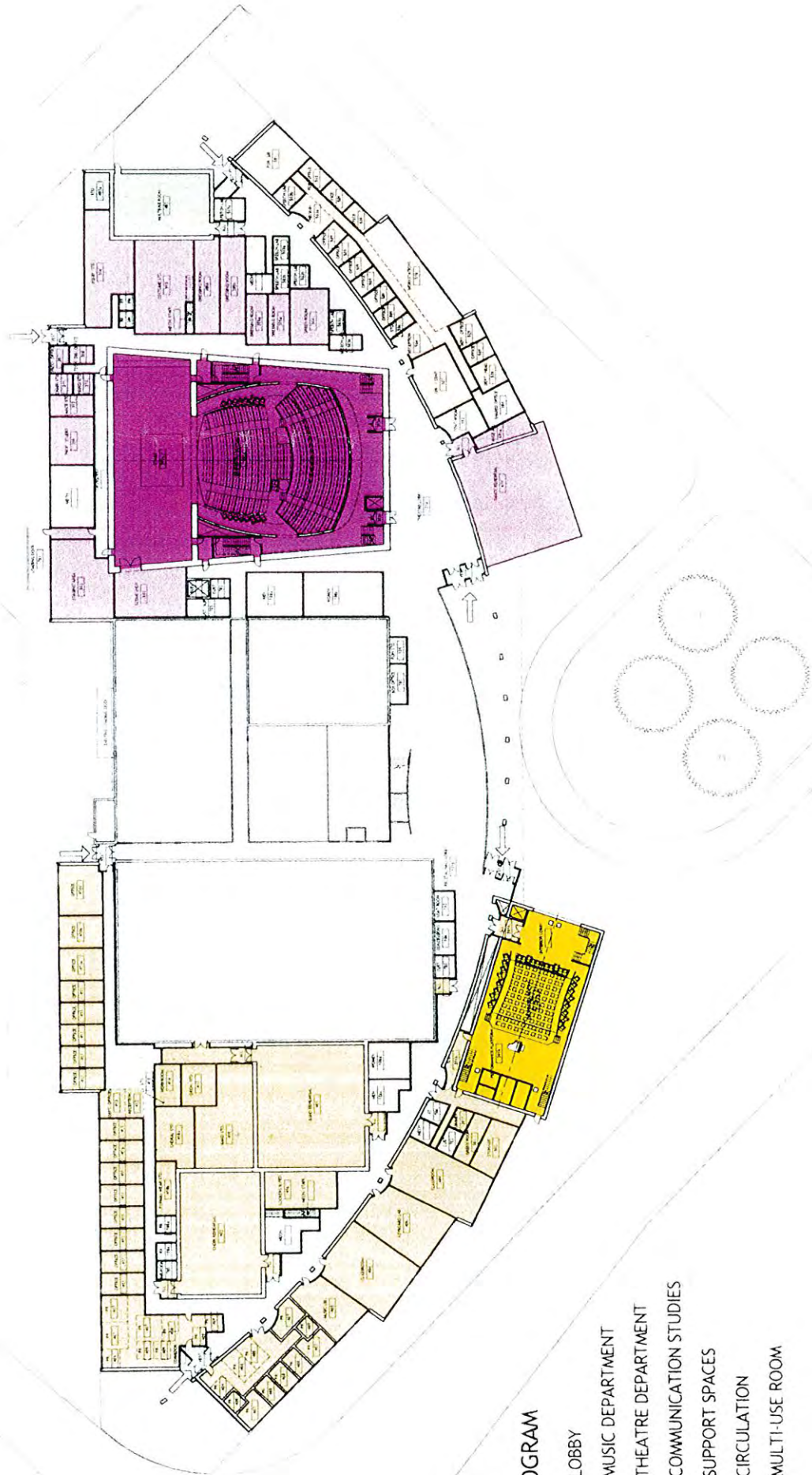
The 1962 Reuter pipe organ, located in Whatley Chapel of Johnson & Wales University, Denver, Colorado, presently has a replacement value of \$1,050,000.00. The organ is 42 stops – 52 ranks. Today the insurance industry uses \$25,000.00 per stop for replacement calculations. The Reuter instrument has been professionally maintained. It has had major additions and mechanical improvements made to it throughout the past years. While not regularly used today, it is in top playing condition.

David R. Salmen

38569 SD Highway 34, Wessington Springs, South Dakota 57382-5808  
Cellular telephone 605.354.1694  
website [www.salmenorgans.com](http://www.salmenorgans.com) email [Orgn2nr@aol.com](mailto:Orgn2nr@aol.com)

# FIRST FLOOR PLAN

1/16" = 1'-0"



## PROGRAM

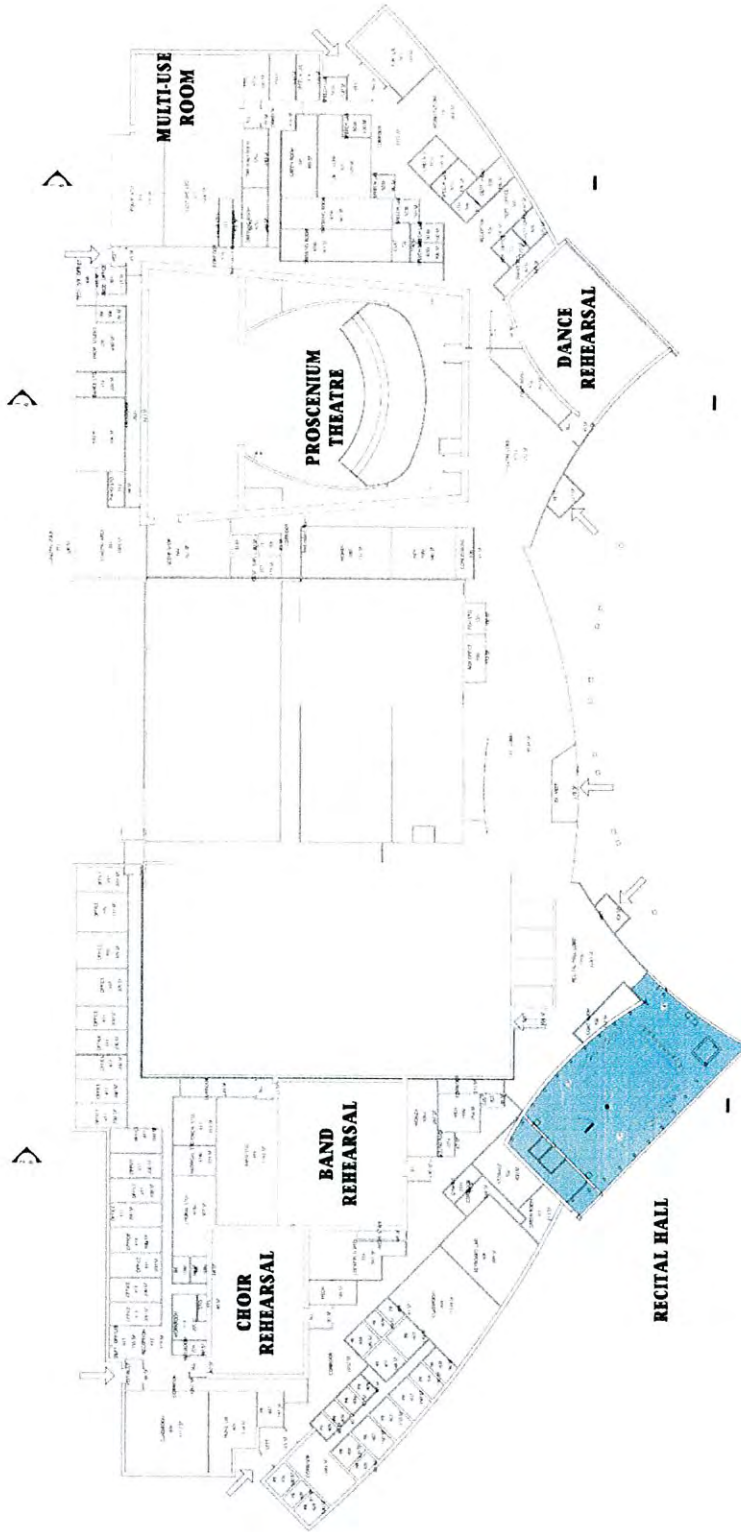
- LOBBY
- MUSIC DEPARTMENT
- THEATRE DEPARTMENT
- COMMUNICATION STUDIES
- SUPPORT SPACES
- CIRCULATION
- MULTI-USE ROOM





# FIRST FLOOR

1/16" = 1'-0"



HOLZMAN MOSS BOTTINO  
ARCHITECTURE

PERFORMING ARTS CENTER  
SOUTH DAKOTA STATE UNIVERSITY

12/18/13